

**SCHEDULE**

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**DEFAULT CONSTITUTION CONSTITUTION OF THE LOCAL GOVERNMENT**

**PART I - PRELIMINARY**

**§ 1. Name of the local government**

The name of the local government is \_\_\_\_\_ local government.

**§ 2. Local government area<sup>1</sup>.**

The area of jurisdiction of the local government is an atoll/Island<sup>2</sup> and, in accordance with Article IX, Section 1(2) and (3) of the Constitution of the Marshall Islands, extends to the sea and the seabed of the internal waters of that atoll/island and to the surrounding sea and seabed to a distance of 5 miles from the baselines from which the territorial sea of that atoll/island is measured, as more particularly described in Schedule 1 attached hereto.

**§ 3. Capitol.**

The principal office of the local government shall be located at, or at such other place in the local government area as the Council by resolution declares.

**PART II- WARDS<sup>3</sup>****§ 4. Division of the local government area into wards.**

In accordance with Section 119 of the Local Government Act 1980 (4 MIRC 1), the local government area is divided into the following wards, as more particularly described in Schedule 2 attached hereto, each electing the number of members of the Council set out against its name:

- (a) \_\_\_\_\_ Ward, returning \_\_\_\_\_ members;
  - (b) \_\_\_\_\_ Ward, returning \_\_\_\_\_ members;
- and etc.

**PART III- THE LEGISLATURE****§ 5. Establishment of the legislature.**

A legislature, to be known as the \_\_\_\_\_ Council, is hereby established for the local government, and in accordance with Section 113(1) of the Local Government Act 1980 (4 MIRC 1) the ordinance-making, taxing and appropriation powers of the local government under Article IX, Section 2 of the Constitution of the Marshall Islands are vested in it.

**§ 6. Membership and elections.**

- (1) The Council shall consist of members being:
  - (a) the members elected by the wards, as specified in Section 4 of this Constitution; and

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<sup>1</sup>If the local government covers only part of an atoll or island, or if it covers an atoll or island that is less than 10 miles from an atoll or island that has its own local government, this Section will need not be redrafted to describe the boundaries in accordance with the principles prescribed in Section 107(3) of the Local Government Act 1980 (4 MIRC 1).

<sup>2</sup>Or as the case may be.

<sup>3</sup>Omit if unnecessary or not desired.

(b)<sup>4</sup>

(2) The members referred to in Subsection (1)(a) of this Section shall be elected by ballot/consensus<sup>5</sup> by eligible voters, as provided for by Sections 113 and 123 of the Local Government Act 1980 (4 MIRC 1).

(3)<sup>6</sup>

(4)<sup>7</sup>

**§ 7. Qualifications.**

(1) The qualifications for election as a member referred to in Section 6(1) (a) of this Constitution are set out in Section 109(1) of the Elections and Referenda Act 1980 (2 MIRC 1)<sup>8</sup>.

(2) [see footnote 7]

**§ 8. Term of office.**

(1) The term of office of a member referred to in Section 6(1)(a)2 of this Constitution:

(a) commences on the day after the day on which his election is announced under Section 129 of the Local Government Act 1980 (4 MIRC 1) or Section 185 of the Elections and Referenda Act 1980 (2 MIRC1), as the case may be; and

(b) terminates (unless the seat of the member becomes vacant earlier under Section 9 of this Constitution on the day before the day announced for the first election meeting under Division 2 of Part VI

<sup>4</sup> Iroj, etc., membership and appointed or ex officio membership, if desired, specifying manner of election or appointment either here or in a separate Subsection.

<sup>5</sup> Delete whichever is inappropriate.

<sup>6</sup>

One of the following provisions should be enacted as appropriate as Subsection (3):

(a) If the Local Government Constitution provides for a general election to be conducted by ballot, the following language shall be inserted: "The general election of members referred to in Subsection (1)(a) [or as the case may be] of this Section shall, beginning in the year 1995, be conducted once in every fourth calendar year on the third Monday in November."

(b) If the Local Government Constitution provides for a general election to be conducted by consensus. the following language shall be inserted: "The general election of members referred to in Subsection (1)(a) [or as the case may be] of this Section shall, beginning in the year 1995, be conducted once in every fourth calendar year, the first election meeting of which shall be conducted on the third Monday in November."

[P.L. 1991-114, § 2(2).deleting Subsection 6(3) of the Act and substituting alternate provisions as new Subsection 6(3).]

Each Local Government shall, if necessary to comply with the terms of P. L. 199 1114, enact conforming amendments to their respective Local Government Constitutions in accordance with this Chapter before January 1, 1995. The Ministry of Interior and Outer islands Affairs shall assist Local Governments in determining whether such conforming amendments are required and in the drafting of such amendments.

In the event that any such amendment to a Local Government Constitution would operate to shorten the term of office of any person elected by ballot or by consensus in accordance with the provisions of the Local Government Constitution in effect immediately prior to the effective date of such amendment, the Local Government Council shall:

(a) give reasonable notice to all prospective candidates prior to any such election that the term of office for all candidates will be shortened for that election; and

(b) shall state the new term of office for that election. [P.L. 1991-114, § 3, setting forth the transition provisions for amending existing Local Government Constitution to conform to these amendments.]

<sup>7</sup>Provision for Iroj, etc., membership and appointed membership, if any.

<sup>8</sup> Add any further qualifications or disqualifications desired, in accordance with Section 9(2) of the Elections and Referenda Act 1980 (2 MIRC 1).

of the Local Government Act 1980 (4 MIRC 1) at the next general election to the Council, or the day proclaimed under Section 142 of the Elections and Referenda Act 1980 (2 MIRC1) for that election, as the case may be.

(2)<sup>9</sup>

**§ 9. Vacation of seats.**

- (1) The seat of a member of the Council becomes vacant if, and only if:
  - (a) his term of office terminates in accordance with Section 8 of this Constitution;
  - (b) he ceases to possess the qualifications for election that he was required, under Section 7 of this Constitution, to have at the time of his election or appointment; **[see footnote 3]**
  - (c) he dies;
  - (d) he resigns his seat by notice in writing to the local government; or
  - (e) he is removed from office under Subsection (2) of this Section.
- (2) The Council may, by the affirmative vote of not less than three-fourths of the total membership of the Council, remove a member from office, for cause.

**§ 10. Casual vacancies.**

- (1) If the seat of a member of the Council referred to in Section 6(1)(a) of this Constitution becomes vacant otherwise than by the termination of his term of office in accordance with Section 8 of this Constitution, the vacancy shall be filled as soon as practicable by a special election in the ward or area that he represented.
- (2) **[see footnote 7]**

**§ 11. Meetings.**

- (1) Meetings of the Council shall be held at least once in every month of the calendar, on such days and at such times as are fixed by the Council, by resolution, or in default by the Mayor, by notice in accordance with the Rules of Procedure of the Council.
- (2) The Chief Electoral Officer shall, as soon as practicable after the declaration of the results of the first general election to the Council, by notice to all members, call a meeting of the Council.
- (3) The Mayor may at any time, and shall as soon as practicable after receipt of a petition of a majority of the members of the Council, stating the business to be dealt with, call a meeting of the Council, by notice in accordance with the Rules of Procedure of the Council stating the business to be dealt with.
- (4) A special meeting shall deal only with the subjects stated in the notice calling the meeting.
- (5) Meetings of the Council shall be held in public.
- (6) The quorum for a meeting of the Council is a majority of the total number of the membership of the Council.
- (7) The Mayor shall preside at all meetings of the Council at which he is present, and, subject to Section 18 of this Constitution and to the Rules of Procedure of the Council, in his absence or during a vacancy in his office a member elected by the members present shall preside.
- (8) Except as otherwise provided by the Local Government Act 1980 (4 MIRC 1), all questions before a meeting of the Council shall be determined in accordance with the majority of the votes of the members present and voting, but no question shall be decided on an evenly divided vote.

**§ 12. Procedures.**

- (1) The Council shall keep and publish a journal of its proceedings.
- (2) The Council shall make Rules of Procedure, not inconsistent with this Constitution, any Central

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<sup>9</sup> Not to exceed four years

Government law or any ordinance of the local government, for the regulation and orderly conduct of its proceedings and the dispatch of its official business.

(3) Subject to this Constitution. any Central Government law or any ordinance of the local government, the Council may regulate its own proceedings.

**§ 13. Committees.**

The Council may establish standing and other committees to deal with any matter than can, in its opinion, more properly or more conveniently be dealt with by a committee.

**PART IV - THE HEAD OF THE LOCAL GOVERNMENT**

**§14. Office of the head of the local government.**

An office of head of the local government, who shall be known as the Mayor, is hereby established for the local government.

**§ 15. Qualifications.**

The Mayor must be a member of the Council who is 25 years of age or more.

**§16. Election.**

(1) The Mayor shall be elected by the Council by the affirmative vote of a majority of the total number of the membership of the Council.

(2) If on a ballot no member receives the votes of a majority of the total number of the membership of the Council, the candidate receiving the lowest number of votes (or if there be more than one such candidate, one of them selected by lot) shall be excluded and a fresh ballot taken, and so on until one candidate has received the votes of a majority of the total number of the membership.

(3) If at the end of that procedure no candidate has received the votes of a majority of the total membership of the Council, the election is void and a fresh election shall be held on the next sitting day of the Council, and so on until a member is elected Mayor.

**§17. Vacation of office.**

(1) The office of the Mayor becomes vacant if, and only if:

- (a) his seat in the Council becomes vacant under Section 9 of this Constitution;
- (b) he is dismissed under Subsection (2) of this Section; or
- (c) he resigns his office by notice in writing to the Clerk of the local government.

(2) The Council may, by the affirmative vote of not less than two-thirds of the total membership of the Council, dismiss the Mayor from office.

(3) If the office of the Mayor becomes vacant by reason of the termination of the term of his office as a member of the Council in accordance with Section 8 of this Constitution, he shall continue to perform the functions of the Mayor until a new Mayor is elected, but unless he becomes again a member of the Council he shall not vote or take part in its deliberations otherwise than as the member presiding at a meeting.

**§ 18. Acting head of the local government.**

(1) In the event of the absence or incapacity of the Mayor, his functions shall be performed by a member of the Executive Committee appointed by him, or in default, the Executive Committee.

(2) For the purpose of the performance of any function of the Mayor that a member of the Executive Committee is authorized to perform by virtue of Subsection (1) of this Section, the member shall be deemed to be the Mayor, and any reference in any law or in the Rules of Procedure of the Council to the Mayor shall be read as including a reference to that member accordingly.

**§ 19. Functions of the head of the local government.**

The Mayor has such powers, functions, duties and responsibilities as are conferred or imposed on him by this Constitution, an ordinance of the local government, a Central Government law or the Rules of Procedure of the local government.

**PART V - THE EXECUTIVE****§ 20. Establishment of the executive.**

(1) An executive committee of the local government, to be known as the Executive Committee of the \_\_\_\_\_ Council, is hereby established, which shall, in accordance with Section 114(1) of the Local Government Act 1980 (4 MIRC 1), be the principal executive arm of the local government.

(2) The Executive Committee is collectively responsible to the Council for the executive government of the local government area, and for the performance of the functions of the Executive Committee and the members of the Executive Committee under this Constitution, an ordinance of the local government or a Central Government law.

**§ 21. Composition.**

(1) The Executive Committee shall consist

(a) the Mayor; and

(b) three (3) members of the Council appointed by the Mayor in writing, to be known as Executive Members.

(2) The quorum for a meeting of the Executive Committee is two (2).

**§ 22. Vacation office.**

(1) The office of the Mayor or becomes vacant in accordance with Section 17 of this Constitution.

(2) The office of an Executive Member becomes vacant if, and only if:

(a) his seat in the Council becomes vacant under Section 9 of this Constitution;

(b) the office of the Mayor becomes vacant under Section 17 of this Constitution;

(c) he is dismissed from office under Subsection (3) of this Section; or

(d) he resigns his office by notice in writing to the Mayor.

(3) The Mayor may at any time, with or without cause, dismiss an Executive Member from office.

(4) If the office of the Mayor becomes vacant otherwise than by reason of his dismissal under Section 17(2) of this Constitution, the Executive Members shall continue to perform their functions (including the function of appointing under Section 18 of this Constitution a member of the Executive Committee to perform the function of the Mayor).

(5) If the office of an Executive Member becomes vacant by reason of termination of the term of his office as a member of the Council under Section 8 of this Constitution, he may continue to perform the functions of an Executive Member until a new Mayor is elected, but unless he becomes again a member of the Council he shall not vote or take part in its deliberations.

**§ 23. Acting appointments.**

In the event of the absence or incapacity of an Executive Member, the Mayor may during such absence or incapacity:

(a) appoint another Executive Member to perform some or all of his functions

(b) appoint a member of the Council to act as an Executive Member; or

(c) do both of the foregoing.

**§ 24. Allocation of responsibilities to Executive Members.**

(1) Subject to this Constitution, any ordinance of the local government and any Central Government law, the Mayor may from time to time allocate to an Executive Member responsibility for matters within the competence of the

Executive Committee (including responsibility for the administration of ordinances of the local government).

(2) The Mayor is responsible for any matter the responsibility for which is not for the time being allocated under Subsection (1) of this Section.

(3) Nothing in this Section affects the collective responsibility of the Executive Committee under Section 20(2) of this Constitution.

**§ 25. Functions of the Executive Committee.**

The Executive Committee has such powers, functions, duties and responsibilities as are conferred or imposed on it by this Constitution, an ordinance of the local government or a Central Government law.

**§ 26. Advice to the Council, etc., of certain matters.**

(1) The Mayor shall promptly notify the Council and the Minister of the Government of the Marshall Islands responsible for local government matters of:

(a) the appointment, dismissal or resignation of a member of the Executive Committee;

(b) the appointment, or the termination of the appointment, of a member of the Council to act as an Executive Member under Section 23(b) of this Constitution;

(c) the appointment by him of a member of the Executive Committee to perform the functions of the Mayor under Section 18(1) of this Constitution; or

(d) the allocation under Section 24(1) of this Constitution of responsibilities to Executive Members and the appointment under Section 23(a) of this Constitution of an Executive Member to perform functions of another Executive Member.

(2) The Executive Committee shall promptly notify the Council and the Minister of the Government of the Marshall Islands responsible for local government matters of the appointment by it of a member of the Executive Committee to perform the functions of the Mayor under Section 18(1) of this Constitution.

(3) The Clerk of the local government shall promptly notify the Council and the Minister of the Government of the Marshall Islands responsible for local government matters of the resignation or the dismissal of the Mayor under Sections 17(1)(c) and 17(2) of this Constitution, respectively.

## PART VI- FINANCE

**§ 27. Control of revenue and expenditure.**

(1) No taxes shall be imposed and no other revenue shall be raised, and no monies of the local government shall be expended, unless authorized by law.

(2) Subsection (1) of this Section does not apply to the acceptance of grants (other than loans) from the Government of the Marshall Islands, or to expenditure from such grants for the purposes for which, and subject to the conditions on which, they are made.

(3) All money received by the local government, shall, unless otherwise authorized by ordinance of the local government or by or under Local Government Financial Memoranda issued under Section 146(2) of the Local Government Act 1980 (4 MIRC 1), be paid into a fund or account established in accordance with such an ordinance or the Financial Memoranda.

**§ 28. Financial responsibility of the Executive Committee.**

(1) It is the responsibility of the Executive Committee to make proposals to the Council on all matters relating to the budget, and in particular the Executive Committee shall make recommendations to the Council for the raising of taxes and other revenue, and for the expenditure of money of the local government.

(2) The Executive Committee is accountable to the Council for all expenditure of money of the local government and for relating such expenditure to appropriations made by the Council or to other authority conferred by this Constitution, an ordinance of the local government or a Central Government law.

(3) Except on the recommendation or with the consent of the Executive Committee, signified by or on behalf of the Mayor, the Council shall not make or approve any ordinance or other proceeding introduced by a member other than the Mayor or an Executive Member if the ordinance or proceeding would, in the opinion of the member of the Council presiding:

- (a) dispose of or charge any of the revenue of the local government;
- (b) revoke or alter (otherwise than by way of reduction) any such disposition or charge; or
- (c) impose alter or abolish any tax, rate, due, fee or fine.

**§ 29. Budgets and appropriations.**

- (1) The Executive Committee shall cause to be introduced into the Council with respect to each financial year:
- (a) a set of budget estimates of revenue and expenditure; and
  - (b) an Appropriation Ordinance to make appropriations for expenditure.

The Executive Committee may also introduce additional supplementary estimates and Supplementary Appropriation Ordinances.

- (2) Subject to any Local Government Administrative Memoranda issued under Section 146(1)

(a) of the Local Government Act 1980 (4 MIRC I) in relation to the format of ordinances and to any Local Government Financial Memoranda issued under Section 146(2) of that Act, Appropriation Ordinances and Supplementary Appropriation Ordinances shall follow the general form of Central Government Appropriation Bills and Supplementary Appropriation Bills under Article VIII, Sections 6 and 8 of the Constitution of the Marshall Islands.

(3) Subject to any Local Government Financial Memoranda issued under Section 146(2) of the Local Government Act 1980 (4 MIRC 1), an ordinance of the local government may make provision, in accordance with the principles of Article VIII, Sections 7 and 9 of the Constitution of the Marshall Islands, for anticipated and reprogrammed expenditures and a Contingencies Fund.

(4) Nothing in this Section prevents appropriations for specific purposes being included in an ordinance of the local government other than an Appropriation Ordinance or a Supplementary Appropriation Ordinance.

(5) Appropriations lapse at the end of the financial year to which they respectively relate, unless, in relation to any particular head of appropriation, an ordinance of the local government provides otherwise.

**§ 30. Loans.**

The local government shall not accept loans, grant charges against its future revenue, or incur indebtedness chargeable to future revenue otherwise than in accordance with Section 150 of the Local Government Act 1980 (4 MIRC 1).

**§31. Accounts.**

(1) The Executive Committee shall cause to be kept full and proper accounts and records of revenue and expenditure of the local government, assets of or under the control of the local government and liabilities of the local government.

(2) The accounts and records shall comply with any Local Government Financial Memoranda issued under Section 146(2) of the Local Government Act 1980 (4 MIRC 1), subject to any directions of the Auditor-General, and any ordinance of the local government.

(3) The Executive Committee shall, as soon as practicable after the end of a financial year lay before the Council accounts relating to all revenues and expenditures of the local government for that financial year, together with any report of the audit of the accounts under Section 32 of this Constitution.

**§ 32. Audit.**

(1) In addition to the audit provided for by Section 140 of the Local Government Act 1980 (4 MIRC 1), the Auditor-General or a person authorized by him may at any time audit the accounts and records of the local government, and any accounts laid or to be paid before the Council under Section 31(3) of this Constitution.

(2) The Auditor-General or authorized person shall report to the Council and to the Minister of the Government of the Marshall Islands responsible for local government matters on the audit and shall, in his report, draw attention to any irregularities in the accounts and records, or in the accounts, as the case may be.

(3) For the purpose of an audit under Subsection (1) of this Section, the Auditor-General or authorized person has the powers and rights referred to in Article VIII, Section 15 of the Constitution of the Marshall Islands.

**§ 33. Financial Memoranda.**

Subject to this Constitution, all persons concerned with the financial administration of the local government shall comply with any Local Government Financial Memoranda issued under Section 146(2) of the Local Government Act 1980 (4 MIRC 1).

**PART VII- STAFF**

**§ 34. Employment of staff.**

(1) The Mayor, on behalf of the local government, may appoint a Clerk of the local government, and such other officers and employees as he considers necessary for the effective operation of the local government.

(2) The local government is the employer of the Clerk and the other officers and employees.

(3) The terms and conditions of appointment and employment of the Clerk and the other officers and employees shall be determined by or under an ordinance of the local government, and in the absence of such an ordinance are, with the necessary modifications, those members of the Public Service holding equivalent positions, for which purpose any reference in any Central Government law to:

(a) the Chief Secretary or a Department head, shall be read as a reference to the clerk or

(b) the Public Service Commission, shall be read as a reference to the Executive Committee.

**§ 35. Secondment, etc., of public servants.**

Subject to any arrangements made under Section 116(3) of the Local Government Act 1980 (4 MIRC 1), and to anything to the contrary in any ordinance of the local government, a member of the Public Service who is seconded to the local government in accordance with that Section, shall be deemed to be an officer of the local government for the purposes of any ordinance of the local government other than an ordinance prescribing terms and conditions of employment by the local government.

**PART VIII- AMENDMENT OF THE CONSTITUTION**

**§ 36. Method of amendment.**

(1) This Constitution may be amended by ordinance of the local government approved on two occasions by a two-thirds (2/3) majority of the total membership of the Council, provided that:

(a) not less than thirty (30) days, or such shorter period as is approved in any particular case, and for a special reason, by the Minister of the Government of the Marshall Islands responsible for local government matters, has elapsed between the first and second such occasion; and

(b) before the second occasion the Mayor has obtained from that Minister and presented to the Council a report by the Attorney-General on the validity of the amendment.

(2) If the Minister of the Government of the Marshall Islands responsible for local government matters recommends to the local government, amendments to this Constitution, the Council shall consider those amendments, but need not adopt them, with or without modification.

**§37. Central Government recommendations as to ordinances, etc.**

If the Minister of the Government of the Marshall Islands responsible for local government matters recommends to the local government that an ordinance be made, amended or repealed, the Mayor shall cause the

recommendation to be presented to the Council together with the comments of the Executive Committee pertaining thereto.

**§38. Advice as to validity of ordinance, etc**

(1) The Mayor may, and shall if so directed by the Council, request the Minister of the Government of the Marshall Islands responsible for local government matters for a report by the Attorney-General on the validity of any ordinance or proposed ordinance of the local government, or of any action or proposed action by the local government.

(2) If the Minister furnishes a report as requested in accordance with Subsection (2), the Mayor shall present the report to the Council.

**§39. Vacancies.**

The validity of any thing done by the Council or the Executive Committee or (subject to any ordinance of the local government and to the Rules of Procedure of the Council) by a committee of the Council, is not affected by any vacancy in its membership, provided that the number necessary to form a quorum for a meeting remains.

**§ 40. Service.**

Where any document or thing is to be given to, served on or communicated to a local government at a time when there is a vacancy in the office of the Mayor or the Mayor is absent or incapacitated, and there is no person appointed under Section 18 of this Constitution, it is sufficient if it is addressed to the Clerk of the local government.

**§41. Effective date.**

This Constitution shall be effective on a date fixed by the Minister of the Government of the Marshall Islands responsible for local government matters.

**SCHEDULE I**

**Reference Section: 2 - Default Constitution**

**THE LOCAL GOVERNMENT AREA**

*(Include the baselines from which the territorial sea is measured, or an accurate reference to them, e.g., by reference to a map or chart.)*

**SCHEDULE 2**

**Reference Section: 4, Default Constitution**

<b>Name of Wards</b>	<b>Description of ward</b>
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