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An Act to govern the establishment, operation and licensing of trust companies in the Republic of the Marshall Islands.

Commencement: 10 October 1994
 Source: P.L. 1994-110

PART I - PRELIMINARY

§201. Short title.

This Chapter may be cited as the “Trust Companies Act 1994”. [P.L 1994-110, §1.]

§202. Interpretation.

In this Chapter:

(a) “Commissioner” means the Commissioner of Trust Companies appointed under the provisions of this Chapter;

(b) “corporation” means a corporation incorporated or registered under the provisions of the Associations Law of 1990, and regulations made thereunder;

(c) “foreign trust company” means a trust company established or incorporated outside the Republic;

(d) “license” means a license issued to conduct trust business in the Republic;

(e) “licensed trust company” means a trust company licensed under the provisions of this Chapter;

(f) “nonresident” means an individual, corporation, or other juridical person;

(g) “person” means an individual, company, corporation, partnership or any body incorporate or unincorporate and includes every director, manager, agent or secretary of such person;

(h) “place of business” means any branch or office of a licensed trust company in the Republic including a mobile office;

(i) “qualified auditor” means a Certified Public Accountant, or firm of Accountants being a member of an institute approved or recognized by law possessing a certificate to practice as an Accountant issued by the council of such institute;

(j) “resident” means:

(i) a citizen of the Republic residing in the Marshall Islands, or an individual domiciled therein;

(ii) a corporation incorporated in the Republic, a body corporate established under any written law of the Republic, or any firm, partnership or other organization formed in the Republic;

(iii) a branch, subsidiary, affiliate, extension, office, or any other unit of a corporation or other juridical person established under the laws of any foreign country, operating in the Republic;

(k) “trust company” means a trust company established or incorporated in the Republic;

(l) “trust business” means the business of acting for the benefit of another in a fiduciary capacity whether as trustee, executor, administrator or any similar capacity. [P.L. 1994-110, §2.][paragraphs numbered to conform to the format of the Code (Rev.2003)]

§203. Use of the words “trust”, “trustee”, “trust company”, “fiduciary”, “treuhand”.

(1) No corporation other than a licensed trust company shall use as part of its name or its description any of the words “trust”, “trustee”, “trust company”, “fiduciary”, “treuhand”, or any of the derivatives or their equivalent in another language, and no licensed trust company shall carry on the business of trusts in the Republic unless it uses as part of its name at least one of such words.

(2) No person, firm, individual or group of individuals shall for the purpose of carrying on any business, use as part of its or his name or description any of the words “trust”, “trustee”, “trust company”, “fiduciary”, “**treuhand**”, or any of the derivatives or their equivalent in another language. [P.L. 1994-110, §3.]

§204. Commissioner.

(1) The Commissioner of Banking, appointed by the President with the concurrence of the Cabinet, shall also serve as Commissioner of Trust Companies and be in charge of the administration, the enforcement of the provisions of this Chapter and the regulations made thereunder.

(2) The registrar of non-resident domestic corporations shall also administer the registrar of trust companies. [P.L. 1994-110, §4.]

PART II- TRUST COMPANY LICENSES

§205. Requirement of a license.

No trust business shall be transacted in the Republic except by a corporation which is in possession of a valid license issued by the Commissioner of Trust Companies, with the approval of the Cabinet, authorizing the transaction of trust business in or from within the Republic. [P.L. 1994-110, §5.]

§206. Application for license.

An application for the grant of a license shall be made in writing to the Commissioner and shall in addition to the information that may be required under the regulations, contain the following particulars:

(1) **domestic trust company.** In the case of an application for a license by a domestic trust company:

(a) the name and the address of the registered office of the corporation and the principal office of business in the Republic;

(b) two certified copies of the articles of incorporation and the by-laws of the corporation;

(c) the amounts of authorized capital and paid-up capital, and the number and class of shares held by the shareholders or subscribers;

(d) the full names, addresses, nationalities and occupations of the shareholders or subscribers holding more than ten percent (10%) of the issued capital;

(e) details (as are required by the Commissioner) of shareholders holding more than ten percent (10%) of the issued stock, directors and the principal officer;

(f) the full name, address, nationality, occupation and financial standing of each director, and including any trust administration experience;

(g) a balance sheet audited by an independent qualified auditor showing that the capital has been provided pursuant to Parts III and IV of this Chapter as applicable;

(h) the name, address and the professional qualification of the auditor;

(i) the date the financial year ends;

(j) the full names, addresses, nationalities and trust administration experience of the principal officer and his deputy;

(k) the name of each subsidiary corporation of the applicant, address of its registered office and principal place of business, and the type of business engaged in;

(l) the specific type of trust business to be conducted by the trust company, and the place in which the trust company intends to do business;

(m) a letter or document from an approved body under Section 228¹ of this Chapter, indicating the current insurance covering assets held;

(n) an initial non-refundable application fee of \$_____ ²

(o) such other particulars or information as may be required under this Chapter or regulations made thereunder:

(2) **foreign trust company.** In the case of an application for a license by a foreign trust company:

(a) particulars required in Paragraphs (a), (b), (c), (q), (j), (I), (m), (o) and (p) of Subsection (1) of this Section;

(b) the full names, addresses, occupations and nationalities of shareholders each owning more than thirty percent (30%) of the issued stock of the trust company, certified by the trust company's secretary;

(c) a list of the names of directors and chief executive officer certified by the secretary;

(d) the full names and trust company experience of the manager of the branch in the Republic, and his deputy;

(e) the latest annual report and audited financial statements of the trust company, which financial statements shall provide two (2) year's figures and show that the trust company's capital complies with the requirements of either Section 218 or 221 of this Chapter as applicable;

(f) a copy of the certificate of corporate registration in the Republic;

(g) evidence of insurance by an approved body under Section 228 of this Chapter, relating to assets held in the Republic; however, the Commissioner may, with the approval of the Cabinet, waive the requirement of such insurance, in the case of any trust company of international repute, if there is no such requirement under the law of the country where such trust company is incorporated. [P.L. 1994-110,§6.][paragraphs under subsection (1) re-numbered to conform to sequence (Rev.2003)[

§207. Grant or refusal of license.

On receipt of the application, the Commissioner, with the approval of the Cabinet, shall grant, or without assigning any reason therefor, refuse to grant a license. [P.L. 1994-110,§7.]

§208. Trust company license.

(1) In granting a license to a trust company (which license shall be in writing) the Commissioner, with the approval of the cabinet may specify any terms and conditions which shall be complied with by the trust company.

(2) No person may be granted a license in a name which, in the opinion of the Commissioner, is likely to mislead or confuse the persons for which it is intended to provide any or all of its services

(3) No license shall be issued or renewed except upon the payment of the license fee referred to in Section 209 of this Chapter.

(4) A licensed trust company shall not engage in any trust business other than the business specified in the license.

(5) The initial license granted shall be valid from the date of issue to the end of December of the same year and the license shall thereafter be issued for a period of twelve (12) months beginning the first day of January of each succeeding year.

(6) The application for renewal shall be made prior to the expiration of the current license along with the license fee and providing such information as may be required by the Commissioner under this Chapter or the regulations made thereunder.

(7) A copy of the license granted to the trust company under this Chapter shall be kept displayed conspicuously in all places of business of the trust company in the Republic. [P.L. 1994-110, §8.]

§209. License fee.

Every trust company shall pay to the Registrar of Trusts an annual license fee in the amount of US\$ _____³ [P.L. 1994-110, §9.]

§210. Approval of the Commissioner for any change.

The prior approval in writing of the Commissioner shall be required:

- (a) for a change of location of any existing place of business within the Republic;
- (b) for a licensed domestic trust company to open a branch, agency, or office in any place outside of the Republic;
- (c) for trust company to open a representative office or such type of office of business in the Republic;
- (d) for a licensed domestic trust company to acquire the business of another trust company or of any branch of another trust company;
- (e) for a person, group of persons, partnership, company or corporation to acquire a substantial interest in a licensed trust company incorporated in the Republic by or under any written law. [P.L. 1994-110, §10.]

§211. Suspension, revocation or variation of license.

(1) In the case of a licensed trust company:

- (a) which has failed to commence operations within six (6) months following the granting of the license;
- (b) where the Commissioner is satisfied that the licensed trust company has failed to comply with any of the terms and conditions of its license issued under Section 208 of this Chapter;
- (c) where the trust company has failed to pay its debts generally as they become due;
- (d) where any custodian or receiver has

³[Amount not stated in original Act]

been appointed under any bankruptcy or similar laws for the relief of or relating to deposits;

(e) where a licensed trust company has ceased to do trust business;

(f) which violates any of the provisions of this Chapter or the regulations made thereunder;

(g) which fails to comply with any direction issued by the Commissioner as specified under this Chapter or the regulations made thereunder;

(h) which fails to pay the license fee when due;

(i) that knowingly gives any information to the Commissioner which is untrue or misleading;

(j) which fails to comply with the corporate law of the Republic;

(k) which is, in the opinion of the Commissioner, carrying on business in or from within the Republic in a manner detrimental to the public interest or to the interest of the settlers, beneficiaries, protectors, trustees, and other clients of the trust company; or

(1) which is a branch of a financial or trust institution incorporated outside the Republic whose license to carry on business in that country has been suspended or withdrawn by the appropriate authority outside the Republic, the Commissioner may, with the approval of the Cabinet, by notice given in writing, suspend the license and require the trust company to show cause why the license fee should not be revoked or varied.

(2) A licensed trust company may, within sixty (60) days after receipt of notice of suspension of the license under Subsection (1) above, submit to the Commissioner reasons why the license should not be revoked or varied.

(3) The Commissioner shall, with the approval of the Cabinet, within thirty (30) days from the receipt of the reasons referred to in Subsection (2) above;

(a) either revoke or vary the license; or

(b) withdraw the suspension unconditionally. [P.L. 1994-110, §11.]

§212. Power to give directions.

(1) Where the Commissioner has given notice of suspension under Section 211 of this Chapter, he may give directions to the trust company:

(a) prohibiting it from dealing with or disposing of its assets in any manner specified in the direction;

(b) prohibiting it from entering into any transaction or class of transaction so specified;

(c) prohibiting it from soliciting the administration of trusts; or

(d) requiring it to take certain steps or pursue a particular course of action.

(2) Where a licensed trust company has failed to comply with the directions issued under Subsection (1) of this Section, the Commissioner may make an application in court directing such trust company to forthwith cease business in or within the Republic and may upon such order take charge, or authorize an officer in writing to take charge on his behalf, of all its books, records and all other material.

(3) In the case where the Commissioner withdraws the suspensions unconditionally, under Section 211 of this Chapter, he shall deliver or direct the officer authorized to deliver to such trust company forthwith, the books, records, and all other material taken into his custody.

(4) Notwithstanding anything contrary to any other law, no action or proceeding may be

instituted in any court against the Commissioner, an authorized officer, or the Government of the Marshall Islands, with respect to any loss or damage incurred, likely to be incurred, or alleged to be incurred by reason of any action done in good faith under Section 211 and 2 12(1), (2) or (3) of this Chapter. [P.L. 1994-110, §12.]

§213. Cessation of business.

(1) Where a license has been revoked under Section 211(3)(a) of this Chapter, the Commissioner shall direct the trust company forthwith to cease business in and from within the Republic, and he or an officer authorized by him in writing, may take charge of all of its books, records and other material and take such measures as may be necessary to prevent the continuance of the business of such trust company under the supervision of the Commissioner or an authorized officer within a period of three (3) months.

(2) Where revocation has been made with respect to a foreign trust company the Commissioner shall forthwith inform the parent office of the trust company to honor the obligations and liabilities incurred in the conduct of the business of the branch office in the Republic. [P.L. 1994-110, §13.]

§214. Transacting trust business without a license.

If the Commissioner has reasonable ground to believe that any person is transacting trust business without a license he may examine, or authorize an officer in writing to examine, the books, accounts and records of such person for the purpose of ascertaining whether such person has contravened or is contravening any of the provisions of this Chapter. Any refusal by such person to submit such books, accounts or records to the Commissioner or authorized officer shall be prima facie evidence that such person is transacting trust business without a license. [P.L. 1994-110, §14.]

§215. Penalty.

(1) If any person referred to in Section 214 of this Chapter is transacting trust business without a license he shall be guilty of an offense and shall upon conviction be liable to a fine not exceeding \$_____⁴

(2) Any applicant who knowingly or recklessly furnishes any information which is false or misleading in a material particular in connection with an application under this Chapter, shall be guilty of an offense and shall upon conviction be liable to a fine not exceeding \$____⁵ or to a term of imprisonment not exceeding six (6) months, or both. [P.L. 1994-110, §15.]

§216. Exemption from trustee licensing requirement.

A person who is licensed under this Chapter is not required to be licensed under the Regulation of Professions and Occupations Act (as Amended) to conduct trust business. [P.L. 1994-110, §16.]

§217. Existing businesses.

A person who at the commencement of this Chapter is carrying on trust business has a period

⁴[No amount inserted in original Act]

⁵[No amount inserted in original Act]

of 3 months to comply with the provisions of this Chapter. [P.L. 1994-110, §17.]

PART III - CAPITAL REQUIREMENTS AND TRANSFERABILITY OF SHARES

§218. Capital requirements.

(1) Every trust company licensed to do local trust business shall at all times maintain unimpaired issued capital stock in an amount not less than____dollars (\$____)⁶, originally paid up in cash; provided, however, that the Commissioner shall, with the approval of the Cabinet, set forth the required minimum amount of capital from time to time.

(2) A licensed trust company shall not reduce its paid-up capital without the prior written approval of the Commissioner.

(3) Where the capital of a licensed trust company has become deficient in terms of the provisions of the preceding Subsections, the Commissioner may grant a reasonable period of time for making good such deficiency. [P.L. 1994-110, §18.]

§219. Transferability of shares.

No shares or other interests, whether legal or equitable, in a trust company shall be issued, transferred or otherwise disposed of without the prior written approval of the Commissioner, except that the Commissioner may exempt any trust company from the provisions of this section, subject to the terms and conditions as the Commissioner considers necessary. [P.L. 1994-110, §19.]

PART IV - FINANCIAL STATEMENTS, AUDIT, INFORMATION AND INSPECTION

§220. Financial statements.

At the expiration of each financial year every licensed trust company incorporated in the Republic, with respect to all business transacted by it, shall prepare, with reference to that year, a balance sheet as of the last working day of each financial year and a profit and loss account with respect to that year. [P.L. 1994-110, §20.]

§221. Auditors.

(1) Every licensed trust company shall appoint annually an independent financial auditor, whose duties shall be to audit financial statements of the trust company.

(2) The audit of the financial statements shall be completed within three (3) months of the end of the financial year, and the auditor shall state that his examination was made in accordance with generally accepted auditing standards and in his opinion the financial statements present fairly the financial position of the trust company at the date of the audit in conformity with the generally accepted accounting principles.

(3) If a licensed trust company fails to appoint an auditor as required, the Commissioner shall have the power to appoint the auditor.

(4) The remuneration of the auditor, whether appointed by the licensed trust company or by the Commissioner, shall be paid by the licensed trust company and, in the case of an auditor

⁶[No amount inserted in original Act]

appointed by the Commissioner in terms of Subsection (3) of this Section, it shall be determined by the Commissioner.

(5) No person who is a director, officer, employee or agent of such licensed trust company shall be eligible for appointment as auditor for the trust company. Any person appointed as auditor who may, after such appointment, become a director, officer, employee, or agent of such licensed trust company, shall forthwith cease to be such auditor. [P.L. 1994-110, §21.]

§222. Forwarding of financial statement to the Commissioner.

Every licensed trust company shall transmit to the Commissioner within four months after the close of the financial year its audited financial statements. The Commissioner shall be provided with information he may reasonably require concerning a trust company's financial statements. [P.L. 1994-110, §22.]

§223. Extension of time.

Where a licensed trust company has, in circumstances beyond its control, failed to comply with the provisions of Section 220 and 221 of this Chapter the Commissioner may, on an application made by such licensed trust company, in his sole discretion, grant a reasonable period of time for compliance with the provisions of the Sections herein mentioned. [P.L. 1994-110, §23.]

§224. Information and inspection.

(1) The commissioner may, from time to time, cause an examination to be made by any of his duly authorized officers, of each licensed trust company or any of its affiliates in the Republic, where in his judgment such examination is reasonably necessary or expedient in order to determine that such licensed trust company is in a sound financial condition and that the requirements of law have been complied with in the conduct of its business.

(2) Each licensed trust company referred to in Subsection (1) of this Section shall provide for the inspection by an officer appointed by the Commissioner, at such time as the officer specifies, all books, minutes, accounts, cash, securities, documents and vouchers relating to its business and shall supply all information concerning its business as requested by such officer.

(3) If any books, minutes, accounts, cash, securities, documents, and vouchers are not produced or information is not supplied, or if any item produced is false in any material particular, the defaulting trust company or affiliate or both, shall be guilty of an offense and shall upon conviction be liable to a fine not exceeding \$ _____⁷ [P.L. 1994-110, §24.]

PART V - DIRECTORS AND OFFICERS

§225. Directors.

(1) No person shall be appointed or elected as a director of a licensed domestic trust company if:

- (a) he is a member of the Nitijela;
- (b) he has been bankrupt, has suspended payment, or has compounded with his creditors; or

⁷[Amount not in original Act]

- (c) he has been convicted of any offense involving dishonesty or fraud.
- (2) A director of a licensed trust company shall cease to be a director if:
 - (a) he becomes subject to any disqualifications mentioned in Subsection (1) of this Section;
 - (b) he becomes permanently incapable of performing his duties, or
 - (c) he has been convicted of any act or thing which is of a fraudulent or illegal character, or which is manifestly opposed to the objectives and interests of the licensed trust company. [P.L. 1994-110, §25.]

§226. Change of directors and officers.

Except with the prior approval of the Commissioner no domestic trust company shall change its directors or principal officers. An application for such change shall be made in writing along with the information required in Section 206(1)(e) and (k) of this Chapter. [P.L. 1994-110, §26.]

§227. Officers.

(1) Notwithstanding anything contained in any other written law, a person shall be disqualified for employment or appointment as the manager or other official in a licensed trust company, and such manager or other official shall cease to be so employed if:

- (a) he becomes bankrupt, suspends payment, or compounds with his creditors; or
- (b) if he is convicted of any offense involving dishonesty or fraud.

(2) No person who has been a director or a chief executive officer of a trust company which has been wound up by the Court shall, without the express authority of the Commissioner, act or continue to act as a director or the chief executive officer of a licensed domestic trust company. [P.L. 1994-110, §27.]

PART VI- GENERAL

§228. Insurance.

(1) The Commissioner may require a licensee to effect a policy of insurance with a reputable insurance company against:

- (a) losses arising out of claims of negligence or breach of duty by the licensee or any employee;
- (b) the dishonesty of employees or of the licensee;
- (c) loss of documents;
- (d) such other risk as the Commissioner may from time to time stipulate; in such amount and of such a nature as the Commissioner may determine to be fit and proper, having due regard to the nature and the type of business carried on by the licensee.

(2) In the event that the insurance is withdrawn, canceled or not renewed, the licensee shall immediately notify the Commissioner and shall cease to carry on its business until the insurance has been reinstated or replaced. [P.L. 1994-110, §28.]

§229. Changes in corporate structure.

(1) Within two (2) months of a trust company making changes in its articles of incorporation or by-laws, such changes shall be furnished to the Commissioner in the form of a copy of the resolution authorizing the change, certified by a director and secretary of the trust company.

(2) In the case where any licensed domestic trust company intends to change its name or the

authorized capital, such trust company shall obtain the prior approval of the Commissioner for such change. [P.L. 1994-110,§29.]

§230. Secrecy.

(1) Except in the performance of his duties under this Chapter, every officer and employee of every licensed trust company shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of the trust company and of any clients of such trust company that may come to his knowledge in the performance of his duties, and he shall, before entering upon his duties, sign a declaration pledging himself to observe strict secrecy with respect to such matters and not to reveal such matters except when required to do so:

(a) by a settlor, beneficiary, protector or other trustee to whom such matters relate or by his personal representative;

(b) by a Court of law in the Republic;

(c) in circumstances where in the interest of such trust company it is necessary to reveal such matters; or

(d) in order to comply with the provisions of this Chapter and the provisions of any other written law.

(2) Except in the performance of his duties under this Chapter the Commissioner, and every officer or employee working under the Commissioner, shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of any licensed trust company, or of any of its clients that may come to his knowledge in the course of his business.

(3) Every person who contravenes the provisions of Subsection (1) or (2) above shall be guilty of an offense and shall upon conviction be liable to a fine not exceeding \$_____ ⁸. [P.L. 1994-110, §30.]

§231. Immunity.

Neither the Cabinet nor the Commissioner nor any of the officers or employees working under the Commissioner shall be subject to any action, claim or demand by or liability to any person with respect to anything done or omitted to be done in good faith in pursuance of, conferred upon the Cabinet or the Commissioner, or an officer or employee under the Commissioner by this Chapter. [P.L. 1994-110, §31.]

§232. Regulations.

Notwithstanding the provisions of the Administrative Procedure Act 1979, the Commissioner may, with the approval of the Cabinet, make regulations with respect to any matter affecting, or connect with, or incidental to, the proper carrying out of the provisions of this Chapter; provided, however, the Commissioner shall, before the regulations are made, give adequate opportunity to the licensed trust companies to make representations on the intended regulations. [P.L. 1994-110, §32.]

§233. Liability of directors.

Where the person convicted of an offense under this Chapter is a body corporate, every person who at the time of the commission of the offense was a director or an officer of the body

⁸No amounts inserted in original Act]

corporate shall be deemed to be guilty of that offense unless he proves that the offense was committed without his knowledge, or that he exercised all due diligence to avoid the commission of such offense. [P.L. 1994-110, §33.]

§234. Failure to comply with the provisions of this Chapter.

Any person who, being a director or manager of a licensed trust company who

- (a) fails to take reasonable steps to secure compliance by the trust company with the requirements of this Chapter; or
- (b) fails to take all reasonable steps to ensure the correctness of any statement submitted under the provisions of this Chapter, shall be guilty of an offense. [P.L. 1994-110, §34.]

§235. Willfully making false entries.

Any director, manager, trustee, auditor, employee or agent of any licensed trust company who:

- (a) willfully makes or causes to be made a false entry in any book or record or in any report, slip, document, or statement of the business, affairs, transactions, conditions, assets or liabilities or accounts of such trust company;
- (b) willfully omits to make an entry in any book or record or in any report, slip, document or statement of the business, affairs, transactions, condition, assets or liabilities or accounts of such trust company or willfully causes any such entry to be omitted; or
- (c) willfully alters, abstracts, conceals or destroys an entry in any book or record or in any report, slip, document or statement of the business, affairs, transactions, condition, assets or liabilities or accounts of such trust company or willfully causes such entry to be altered, abstracted, concealed or destroyed, shall be guilty of an offense and shall upon conviction be liable to a fine not exceeding \$ 8 or a term of imprisonment not exceeding one year, or both. [P.L. 1994-110, §35.]

§236. Declaration by the Commissioner.

Notwithstanding anything to the contrary in any other Section of this Chapter, the Commissioner may, by order, from time to time:

- (a) declare any person to be a trust company for the purpose of this Chapter, in which case the relevant provisions of this Chapter shall apply to such person; or
- (b) make a declaration as under Paragraph (a) of this Section with respect to any agency of a licensed trust company for the purposes of this Chapter. [P.L. 1994-110, §36.]

§237. Trust company disclosure of fees.

Each trust company holding a domestic license shall maintain a list of fees and charges for services provided, such list to be available for inspection by settlers, beneficiaries, protectors and trustees upon request. [P.L. 1994-110, §37.]

PART VII- PENALTIES AND EXCEPTIONS

§238. Offenses relating to this Chapter.

(1) Every person who contravenes or fails to comply with any of the provisions of this Chapter or any rule, regulation, order, direction or requirement made or given under this Chapter

shall be guilty of an offense and shall upon conviction be liable to a fine not exceeding \$____.⁹

(2) Every person who is guilty of an offense for which no punishment is prescribed in the preceding provisions, shall upon conviction be liable to a fine not exceeding \$____.¹⁰

(3) Any person who attempts to commit, or does any act preparatory to the commission of any offense under this Chapter, shall be deemed to be guilty of such offense. [P.L. 1994-110, §38.]

§239. Exceptions.

The provisions of the Business Licenses Act 1983 shall not apply to trust companies licensed under this Chapter. [P.L. 1994-110, §39.]

⁹[Amount not in original Act]

¹⁰[Amount not in original Act]

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