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AN ACT

to provide for the seizure, detention or forfeiture of currency which is derived from, or intended to be used in criminal conduct.

ENACTED BY THE NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS

§1. Short Title.

(1) This Act shall be known as the Currency Declaration Act, 2009.

§2. Interpretation.

(1) In this Act, unless the context otherwise requires -

“**Authorised Officer**” means -

- (a) a customs officer;
- (b) an immigration officer; or
- (c) a police officer:

duly appointed under the applicable laws of the Republic of the Marshall Islands:

“**Craft**” means any vehicle or vessel that is used for transportation on land, the sea, or in the air:

“**Currency**” includes –

- (a) the coin and paper money of the Republic of the Marshall Islands or of a foreign country that is designated as legal tender and which is customarily used and accepted as a medium of exchange in the country of issue;
- (b) monetary instruments that may be exchanged for money, including cheques, travellers cheques, money orders, and negotiable instruments in a form in which title passes on delivery;
- (c) precious metals and precious stones;
- (d) any kind of monetary instrument which is found at any place in the Republic of the Marshall Islands, if the instrument is specified by the Minister of Finance by Order, subject to annulment by the Nitijela; or
- (e) currency in electronic form.

“**Republic of the Marshall Islands**” means any land territory within the territorial limits of the Republic of the Marshall Islands, and includes the

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1 internal waters and territorial sea of the Republic of the Marshall Islands; and
2 “the Republic” shall have a corresponding meaning:

3 “**Recoverable currency**” means currency that is obtained through unlawful
4 conduct:

5 “**Currency obtained through unlawful conduct**” means currency obtained
6 by or in return for the unlawful conduct:

7 “**Unlawful conduct**” means -

8 (a) conduct that is unlawful under the criminal law of the Republic of the
9 Marshall Islands: or

10 (b) conduct that is unlawful under the criminal law of another country or
11 territory, and if it occurred in the Republic, would be unlawful under the
12 criminal law of the Republic:

13 “**Minimum amount**” means the amount set by the Minister of Finance by
14 Order, subject to annulment by the Nitijela, as being the minimum sum which
15 can be seized pursuant to powers of seizure as set out in this Act:

16 “**Mixed currency**” means recoverable currency which is mixed with any other
17 currency.

18 **§3. Obligation to declare.**

19 (1) A person who enters or leaves the Republic of the Marshall Islands with
20 currency amounting to \$10,000 or more, or its equivalent in any other
21 currency, shall make a declaration to an authorised officer in the form
22 prescribed in Schedule 1 of this Act.

23 (2) Any person failing to declare currency in the prescribed sum to an authorised
24 officer, shall commit an offence under this Act and shall be liable on
25 conviction to a fine not exceeding \$50,000 and or forfeiture of the currency
26 under section 10.

27 **§4. Power of an authorised officer to question.**

28 (1) An authorised officer may question a person entering into or departing from
29 the Republic of the Marshall Islands on the source, ownership, acquisition,

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1 use, or intended destination of any currency in that person's possession or
2 custody that is in excess of \$10,000 or more.

3 (2) A person who, without reasonable excuse on being questioned by an
4 authorised officer, fails or refuses to answer any question put to that person by
5 the authorised officer, commits an offence and shall be liable on conviction to
6 a fine not exceeding \$5,000

7 **§5. Power of an authorised officer to search.**

8 (1) If an authorised officer has reasonable grounds for suspecting that a person is
9 carrying currency-

10 (a) which is recoverable currency or is intended by any person for use in
11 unlawful conduct and the amount of which is not less than the
12 minimum amount; or

13 (b) that such person has failed to declare, the amount of which is
14 not less than the minimum amount in the prescribed form -

15 the authorised officer may exercise the powers in subsection (3) of this
16 section.

17 (2) If an authorised officer who is lawfully on any premise, place, or craft at a
18 Port of Entry has reasonable grounds for suspecting that there is on the
19 premise, place or craft, currency-

20 (a) which is recoverable currency or is intended by any person for use in
21 unlawful conduct; and

22 (b) the amount of which is \$10,000 or more,
23 the authorised officer may, subject to subsection (6), search the premise, place,
24 or craft for such currency.

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- 1 (3) Subject to subsection (6), the authorised officer may, so far as he or she thinks
2 that there are reasonable grounds for suspecting that there is recoverable
3 currency being carried by any person, or is intended for use in unlawful
4 conduct, the amount of which is \$10,000 or more, and it is necessary or
5 expedient, require the person to submit to: –
- 6 (a) a search of any goods that a person has in his or her possession; or
7 (b) a search of his or her person.
- 8 (4) An authorised officer exercising a power under subsection (3)(b) may detain a
9 person for so long as it is necessary for the officer to exercise the search.
- 10 (5) A search of a person under subsection 3(b) must be carried out by an
11 authorised officer of the same gender as the person to be searched.
- 12 (6) An authorised officer exercising a power to search under this section must -
- 13 (a) obtain a search warrant prior to conducting the search, if there is
14 adequate time to obtain one; and
- 15 (b) exercise such powers so far as it is reasonably required for the
16 purposes of this Act.
- 17 **§6. Seizure of currency.**
- 18 (1) An authorised officer may seize currency, if he or she has reasonable grounds
19 for suspecting that the currency is, in whole or in part -
- 20 (a) recoverable currency;
21 (b) intended for use by a person in unlawful conduct; or
22 (c) undeclared currency, intended for use in unlawful conduct.

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1 (2) In the event that currency is found on one person, or more than one
2 person who are together, the total sum of currency found must be more
3 than the minimum amount before a seizure is authorised by this Act.

4 (3) In the event that the currency found is in a car or other vehicle, or aircraft, or
5 watercraft, or any other transport by any means, in any fixed place, albeit in
6 different parts of the location where the currency is found then the total sum of
7 currency found must be \$10,000 or more before a seizure is authorised by this
8 Act.

9 (4) An authorised officer exercising the power of seizure under this section must -

10 (a) obtain a search warrant prior to seizure of currency, if there is
11 adequate time to obtain one; and

12 (b) exercise such powers so far as it is reasonably required for the
13 purposes of this Act.

14 **§7. Detention of seized currency.**

15 (1) If an authorised officer continues to have reasonable grounds for his or her
16 suspicion, or for the purposes of investigation, currency seized under section 6
17 may be detained for a period of 72 hours.

18 (2) The period for which any currency, or part of it, may be detained may be
19 extended by an order of the High Court, upon application by an authorised
20 officer. Such order may authorise the detention of any currency-

21 (a) for a period of up to three months from the date of the order:

22 (b) in the case of any further order under this section, beyond the end of
23 the period of two years from the date of the first order.

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- 1 (3) Upon receipt of an application for an order under subsection (2), a Judge of
2 the High Court may make an order if satisfied, that one of the following
3 conditions is met -
- 4 (a) that there are reasonable grounds for suspecting that the currency is
5 recoverable currency and that either-
- 6 (i) its continued detention is justified, while its source, ownership,
7 use or destination is further investigated or consideration is
8 given to bringing proceedings against any person for an offence
9 with which the currency is connected; or
- 10 (ii) proceedings against a person for an offence with which the
11 currency is connected has been started and has not been
12 concluded:
- 13 (b) that there are reasonable grounds for suspecting that the currency is
14 intended to be used in unlawful conduct and that either -
- 15 (i) its continued detention is justified while its intended use is
16 further investigated or consideration is given to bringing
17 proceedings against any person for an offence with which the
18 currency is connected; or
- 19 (ii) proceedings against a person for an offence with which the
20 currency is connected has been started and has not been
21 concluded.
- 22 (4) An application for an order may also be made in respect of any currency
23 seized under section 6, and a Judge of the High Court may make the order if
24 satisfied that -

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1 (a) the condition in subsection (3)(a) or subsection (3)(b) is met in respect
 2 of part of the currency; and

3 (b) it is not reasonably practicable to detain only that part.

4 (5) An order under subsection (2) must provide for notice to be given to any
 5 persons affected by it.

6 **§8. Interest.**

7 (1) If currency is detained under section 7 for more than 48 hours, it is at the first
 8 opportunity to be paid into a sub-account of the General Fund (pre-designated
 9 by the Banking Commissioner and Secretary of Finance) and held there; and
 10 the interest accruing on it is to be added to it on its forfeiture.

11 **§9. Release of detained currency.**

12 (1) This section applies while any currency is detained under section 7.

13 (2) A Judge of the High Court may direct the release of the whole or any part of
 14 the currency if satisfied, on an application by the person from whom the
 15 currency was seized, that the conditions in section 7 for the detention of the
 16 currency are no longer met in relation to the currency to be released.

17 (3) An authorised officer may, after notifying the High Court under whose order
 18 currency is being detained, release the whole or any part of it if satisfied that
 19 the detention of the currency to be released is no longer justified.

20 **§10. Forfeiture.**

21 (1) While currency is detained under section 7, an application for the forfeiture of
 22 the whole or any part of it may be made to the High Court by an authorised
 23 officer.

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- 1 (2) The Court may order the forfeiture of the currency or any part of it if satisfied
2 that the currency or part -
3 (a) is recoverable currency; or
4 (b) is intended by any person for use in unlawful conduct.
- 5 (3) In the case of recoverable currency which belongs to joint tenants, one of
6 whom is an excepted joint owner, the order may not apply to so much of it as
7 the Court thinks is attributable to the excepted joint owner's share.
- 8 (4) Where an application for the forfeiture of any currency is made under this
9 section, the currency is to be detained (and may not be released under any
10 power conferred by this Act) until any proceedings in pursuance of the
11 application (including any proceedings on appeal) are concluded.
- 12 (5) Where currency has been seized and detained under sections 6 and 7, and no
13 notice of appeal has been received by either the seizing authority or the High
14 Court within a period of 60 calendar days from the time of detention or
15 seizure, then the currency will be automatically forfeited to the Republic.

16 **§11. Appeal against forfeiture.**

- 17 (1) Any party to proceedings in which an order is made under section 10 for the
18 forfeiture of currency who is aggrieved by the order, may appeal to the High
19 Court.
- 20 (2) An appeal under subsection (1) must be made within the period of 60 calendar
21 days beginning with the date on which the order is made.
- 22 (3) The appeal is to be by way of a rehearing.
- 23 (4) The Court hearing the appeal may make any order it thinks appropriate.
- 24 (5) If the Court upholds the appeal, it may order the release of the currency.

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2 **§12. Application of forfeited currency.**3 (1) Currency forfeited under this Act, and any accrued interest on it is to be paid
4 into the General Fund, provided that it must not to be paid -5 (a) before the end of the period within which an appeal under section 11
6 may be made, or7 (b) if a person appeals under that section, before the appeal is determined
8 or otherwise disposed of.9 **§13. Victims and other owners.**10 (1) A person who is the owner of any currency or any part of it detained under this
11 Act, may apply to the High Court for an order for the currency to be released.12 (2) An application for an order under subsection (1) may be made in the course of
13 detention or forfeiture proceedings, or at any other time.

14 (3) If it appears to the Court concerned that: -

15 (a) the applicant was deprived of the currency to which the application
16 relates, or of currency which it represents, by unlawful conduct;17 (b) the currency was not, immediately before the owner was deprived of it,
18 recoverable currency; and

19 (c) that the currency belongs to the person claiming ownership -

20 the Court may order the currency to which the application relates to be
21 released to the applicant.

22 (4) If -

23 (a) the applicant is not the person from whom the currency to which the
24 application relates was seized;

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- 1 (b) it appears to the Court that, that currency belongs to the applicant;
- 2 (c) the Court is satisfied that the conditions in section 7 for the detention
- 3 of that currency are no longer met or, if an application has been made
- 4 under section 9, the Court decides not to make an order under that
- 5 section in relation to that currency; and
- 6 (d) no objection to the making of an order under this subsection has been
- 7 made by the person from whom that currency was seized;
- 8 the Court may order the currency to which the application relates to be
- 9 released to the applicant or to the person from whom it was seized.

10 **§14. Determination of unlawful conduct.**

- 11 (1) In determining whether or not conduct has been unlawful, the Court before
- 12 which the issue is to be determined must decide on a balance of probabilities
- 13 whether it has been proved-
- 14 (i) that any matters alleged to constitute unlawful conduct have occurred;
- 15 or
- 16 (ii) that any person intended to use any currency in unlawful conduct.
- 17 (2) In deciding whether any currency was obtained through unlawful conduct-
- 18 (i) it is immaterial whether or not any money, goods or services were
- 19 provided in order to put the person in question in a position to carry out
- 20 the conduct,
- 21 (ii) it is not necessary to show that the conduct was of a particular kind if it
- 22 is shown that the currency was obtained through conduct of one of a
- 23 number of kinds, each of which would have been unlawful conduct.

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1 (3) The portion of the mixed currency which is attributable to the recoverable
2 currency represents the currency obtained through unlawful conduct.

3 **§16. Matters relating to recoverable currency.**

4 (1) Currency is recoverable currency if it is obtained through unlawful conduct.

5 (2) Where currency obtained through unlawful conduct ("the original currency")
6 is or has been recoverable, currency which represents the original currency is
7 also recoverable currency.

8 (3) If a person deals in any manner whatsoever by which -

9 (i) he or she disposes of recoverable currency, whether the original
10 currency or currency which represents the original currency; and

11 (ii) he or she obtains other currency in place of it, the other currency
12 represents the original currency and is recoverable.

13 (4) If a person disposes of recoverable currency which represents the original
14 currency, the currency may be followed into the hands of the person who
15 obtains it, and it continues to represent the original recoverable currency.

16 **§17. Effective date.**

17 This Act shall come into force in accordance with the Constitution and the
18 Rules of Procedures of the Nitijela.

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Schedule 1

(Section 3(1))

THE REPUBLIC OF THE MARSHALL ISLANDS

Declaration of International Transportation of Currency Form

Declaration to be made by a person entering or leaving the Marshall Islands under section 3 of the Currency Declaration Act, 2007.

Currency means the coin and paper money of the Marshall Islands or of a foreign country that is designated as legal tender and which is customarily used and accepted as a medium of exchange in the country of issue; monetary instruments that may be exchanged for money (such as cheques, travellers cheques, money orders, negotiable instruments in a form in which title thereto passes on delivery), precious metals and precious stones; where the context permits, currency includes currency in electronic form

- NAME: (first, middle, last)
- DATE OF BIRTH.
- PASSPORT NUMBER.....
- COUNTRY OF ISSUE.....
- ADDRESS in MARSHALL ISLANDS.

I hereby declare that I am taking* out of The Marshall Islands/bringing* into The Marshall Islands currency amounting to more than Ten Thousand United States dollars or its equivalent in any other currency.

AMOUNT DECLARED.

SOURCE OF FUNDS.

INTENDED USE OF FUNDS. PersonalBusiness.....

Intended use of funds.....

.....

Signature of traveller.

Declarant.

[*Make appropriate deletion.]

.....

OFFICIAL USE

Reviewed by: Name and rank:

Signature:

Original: Banking Commission

Copy: Division of Customs

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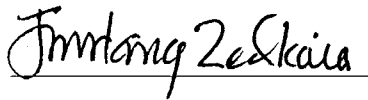
CERTIFICATE

I hereby certify:

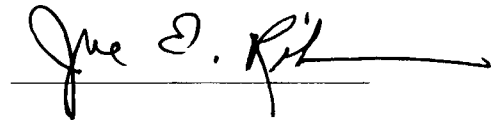
- (1) That Nitijela Bill No: 48 was passed by the Nitijela of the Republic of the Marshall Islands on the 13th day of May, 2009; and
- (2) That I am satisfied that Nitijela Bill No.: 48 was passed in accordance with the relevant provisions of the Constitution of the Republic of the Marshall Islands and the Rules of Procedures of the Nitijela.

I hereby place my signature before the Clerk this 5th day of June, 2009.

Attest:



Hon. Jurelang Zedkaia
Speaker
Nitijela of the Marshall Islands



Joe E. Riklon
Clerk
Nitijela of the Marshall Islands