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An Act to re-enact and reconstitute Title 10 Chapter 6 of the MIRC, the Marshall Islands Development Authority(“MIDA”), in order to re-develop as the business arm of the Government, and re-named to the Office of Commerce and Investment, and for other purposes

relating to the functions of the Office. [Marshall Islands Development Authority (MIDA) Act repealed by P.L.2005-48]

Commencement: November 25, 2013

Source: P.L. 2013-21

### PART I - PRELIMINARY

**§601. Short title.**

This Chapter may be cited as the Office of Commerce and Investment Act, 2013.

**§602. Interpretation.**

(1) In this Chapter, unless the context otherwise requires:

(a) “member of the Board” includes the Chairman and other persons appointed under Section 607 of this Chapter;

(b) “the Board” means the Board of Directors of the Office established by Section 607 of this Chapter;

(c) “the Minister” means the Minister to whom Office of Commerce and Investment has been assigned by the Cabinet

(d) “the Office” means the Office of Commerce and Investment established by Section 604 of this Chapter.

(2) A reference in this Chapter to the functions of the Office includes a reference to its functions under any other Act, and in relation to any such functions the provisions of this Chapter shall be read subject to that Act.

**§603. Application of Article VII of the Constitution.**

Article VII (Public Service) of the Constitution of the Marshall Islands does not apply to or in relation to the Office.

### PART II- THE OFFICE OF COMMERCE AND INVESTMENT

**§604. Establishment of the Office.**

An Office of Commerce and Investment is hereby established.

**§605. Incorporation of the Office.**

(1) The Office:

(a) is a corporation;

(b) has perpetual succession;

(c) shall have a seal;

(d) may enter into contracts;

(e) may acquire, hold, charge and dispose of property;

(f) may sue and be sued in its corporate name;

(g) and for the purposes of its functions, has all the powers, functions, duties and responsibilities of a corporation.

(2) The provisions of the Associations Law, as amended, do not apply to or in relation to the Office.

**§606. Management of the Office.**

(1) Subject to this Act and to the Regulations made under Section 631, the business of the Office shall be controlled and managed by a Board of Directors.

(2) The Board has and may exercise and perform all the powers and functions of the Office under this Chapter.

**§607. The Board of Directors.**

(1) There shall be a Board of Directors of the Office, which shall consist of seven (7) members.

(2) The members of the Board including the chairman shall be appointed by the Cabinet, four of the members shall be appointed from the private sector.

**§608. Compensation.**

The member of the Board appointed under Section 607 of this Chapter shall be entitled to such compensation as the Cabinet may determine.

**§609. Term of office.**

(1) The term of office of the member appointed under Section 607 of this Chapter shall be two (2) years and that member shall be eligible for reappointment.

(2) Notwithstanding the provisions of Subsection (1) of this Section the member appointed under Section 607 of this Chapter may be removed for cause by the Cabinet.

**§610. Vacation of office.**

A member of the Board appointed under Section 607 of this Chapter vacates his office:

- (a) on death;
- (b) if he or she resigns from his office by writing addressed to the Cabinet; or
- (c) if he or she is removed from office under Section 609(2) of this Chapter.

**§611. Delegation by the Board.**

(1) The Board may, by written instrument, delegate to any person any of its powers and functions except the power to make by-laws under Section 615 of this Chapter.

(2) A delegation under Subsection (1) of this Section may apply:

(a) to the whole of the Republic, or to that part of the Republic, specified in the instrument of delegation; or

(b) to all enterprises conducted by the Board or in which the Board is involved, or to such of them as are specified in the instrument.

(3) A delegation under Subsection (1) of this Section may be made subject to limitations and conditions.

(4) A delegation under this Section is revocable, by written instrument or at will, and no such delegation prevents the exercise or performance of a power or function by the Board so delegated.

**§612. Procedures of the Board.**

Subject to this Chapter and to the by-laws made under Section 615 of this Chapter, the Board shall determine its own procedures.

**§613. Disclosure of, and disqualification for, interest.**

(1) If a member of the Board has a personal interest in the subject matter of any question before a meeting of the Board:

(a) he or she shall disclose his or her interest at the meeting; and

(b) he or she shall take no part in the deliberations (except as directed by the Board), or in the decision, of the Board on the question.

(2) A disclosure under Subsection (1) of this Section shall be recorded in the minutes.

(3) Unless the Minister directs otherwise, failure to comply with the requirements of Subsection (1) or (2) of this Section does not invalidate any proceedings of the Board.

**§614. Misconduct in public office.**

A failure to comply with Section 613 of this Chapter is misconduct in public office within the meaning of Section 240.6 of the Criminal Code (31 MIRC 1).

**§615. By-laws.**

(1) Subject to this Chapter and to the regulations made under Section 631 of this Chapter, and with the approval of the Minister, the Board shall make by-laws to govern and regulate the operation of the Office and the Board.

(2) The by-laws shall provide for:

(a) the quorum at and the conduct of meetings of the Board;

(b) the appointment and duties of a Secretary to the Board; and

(c) any other matters relating to the Board and the operations of the Office that the Board thinks appropriate.

**§616. Staff of the Office.**

(1) Subject to any directions of the Cabinet, the Office:

(a) shall employ a Chief Executive Officer; and

(b) may employ such other employees, consultants and advisers as the Board thinks necessary for the performance of the functions of the Board.

(2) Persons referred to in Subsection (1) of this Section shall be employed on such terms and conditions as the Board determines, after consultation with the Public Service Commission for such terms and conditions.

**PART III - POWERS AND FUNCTIONS OF THE OFFICE OF COMMERCE AND INVESTMENT**

**§617. Policies of the Office.**

(1) Subject to this Chapter, the Office is responsible for determining its own policies for carrying out its functions.

(2) The Office shall keep the Minister informed of the policies of the Office, and of any major enterprises, and new types of enterprises, in which it proposes to engage.

(3) The Minister may at any time give to the Office directions as to policy, and in particular, its priorities.

(4) If the Board considers that a policy direction under Subsection (3) of this Section:

(a) is not in the best interest of the performance of its functions;

(b) is not reasonably within the financial capabilities of the Office, or

(c) would unduly strain the resources of the Office, the Board may so advise the Cabinet, in writing, but until the Cabinet orders otherwise the Office shall carry out that policy.

(5) A copy of any direction under Subsection (3) of this Section, and of any advice or order under Subsection (4) of this Section, shall be presented, as soon as practicable by the Minister to the Nitijela.

**§618. Functions of the Office of Commerce and Investment.**

(1) The primary function of the Office under this Chapter is to investigate, study, develop and implement social and economic development programs and projects, alone or in conjunction with other governmental, private organizations, or agencies, for the betterment of the economic and social conditions of the inhabitants of the Republic.

(2) In particular, the Office shall encourage and develop, and may manage, businesses of economic or social importance to the Republic, such as tourism, poultry farming and piggeries.

(3) In addition, the Office shall conduct, on behalf of the Government of the Marshall Islands, such business enterprises as the Cabinet directs, on such terms and conditions as are agreed on between the Office and the Cabinet; provided, however, in all decisions of the Board or the Cabinet, the protection of existing enterprises shall be given highest consideration.

- (4) Subject to any policy directions under Section 617 of this Chapter, in the conduct of any enterprise under Subsection (3) of this Section, the Office shall comply with sound business practice.
- (5) The Office also has such functions as are conferred on it by any other Act.

**§619. Powers of the Office.**

(1) Subject to this Chapter and any other law, the Office has, in addition to any other powers conferred by this Chapter and any other law, all powers that are necessary or convenient for carrying out its functions.

(2) Without limiting the generality of Subsection (1) of this Section, but subject to this Chapter and any other law, the Office may:

(a) identify, promote, advise on, assist and bring about new endeavors of development or the expansion of existing areas of development, for the increase of the economic productivity of the Republic;

(b) establish, subsidize, advise on, assist or promote, or participate in the establishment or promotion of, any enterprise, and manage or participate in the management, supervision, conduct or control of the business or affairs of, any enterprise;

(c) expend funds for the study or implementation of projects determined by the Board to be of social or economic benefit to the inhabitants of the Republic;

(d) provide advisory extension services for the benefit of any enterprise;

(e) make or guarantee loans to assist the acquisition, construction, development, administration or extension of any enterprise;

(f) acquire property, or any interest in or related to property, and own, hold, improve or develop, conserve or rehabilitate any property, or prepare any property for development, conservation or rehabilitation;

(g) form, or assist or participate in forming companies, corporations and joint ventures for the purpose of carrying on business enterprises;

(h) borrow money and accept advances, contributions and other assistance, in accordance with Section 623 of this Chapter;

(i) authorize expenditures and investment of funds;

(j) make contracts and other instruments that the Board considers necessary or convenient for the exercise and performance of its powers and functions;

(k) insure, or provide for the insurance of, any property, project or operation against all or any risks with an insurer approved by the Minister;

(l) obtain from any governmental or other office any license, concession, right, power or privilege that may be useful for the purposes of the Office;

(m) appoint agents or attorneys, whether in the Republic or elsewhere; and

(n) cooperate with other persons and authorities with regard to any of the abovementioned matters.

(3) Subject to any other law, the Office shall not compete with or duplicate the working of any other office or agency of the Government of the Marshall Islands, or any public corporation or statutory agency, except with the approval of the Cabinet.

**PART IV - FINANCE**

**§620. The Office of Commerce and Investment Fund.**

(1) An Office of Commerce and Investment Fund (hereinafter “the Fund”) is hereby established.

(2) The Fund is a fund other than the Marshall Islands General Fund within the meaning and for the purposes of Article VIII, section 3 (2) of the Constitution.

**§621. Payments into the Fund.**

(1) There shall be paid into the Fund:

(a) any money appropriated by the Nitijela for the purposes of the Office, either generally or in relation to any particular purpose; and

(b) any other amounts received by the Office under or for the purposes of this Chapter or any other law, including:

(i) the receipts from any business or enterprise;

(ii) the proceeds of the sale, lease or other disposition of property of the Office; and

(iii) repayments of loans.

(2) Separate accounts shall be kept within the Fund with respect to:

(a) each particular purpose for which money is appropriated as referred to in Subsection (1) (a) of this Section;

(b) purposes of the Office under any other law, and if there is more than one such Act then with respect to its purposes under each such Act; and

(c) any activity of the Office as directed by the Cabinet.

**§622. Payments out of the Fund.**

(1) Payments may be made out of the Fund only for:

(a) the purposes of the Office;

(b) the costs and expenses of the Office;

(c) the purposes of working capital and petty cash, and similar purposes; and

(d) the costs of administration of this Chapter and any other Act that confers function on the Office.

(2) No money shall be withdrawn from the Fund except in accordance with this Chapter and with the procedures prescribed by the Financial Management Act (11 MIRC 1).

**§623. Borrowings, etc.**

(1) With the approval of the Cabinet and subject to such conditions and within such limits as it imposes, and subject to Subsections (3) and (4) of this Section, the Office may borrow money, on overdraft or otherwise, for its purposes.

(2) Subject to any directions of the Board and to Subsections (3) and (4) of this Section, the Office may accept advances, grants, contributions, gifts and other forms of assistance for its purposes.

(3) No money may be borrowed by the Office, and no advance, grant, contribution, gift or assistance may be accepted by the Office, from the Government of the United States or any of its agencies, or from any source outside the Republic, except through the Government of the Marshall Islands or with the concurrence of the Cabinet.

(4) Where any money is borrowed, or any advance, grant, contribution, gift or assistance is received, for a specific purpose or subject to conditions, it may be expended or used only for that purpose or subject to those conditions.

**§624. Bank accounts.**

(1) The Office shall open a bank account or accounts with a bank approved by the Cabinet for the purposes set forth in subsection (2) of this Section.

(2) Separate accounts shall be opened with respect to:

(a) each business or enterprise in which the Office is actively engaged; and

(b) the functions of the Office under any other Act, and if there is more than one such Act then with respect to its functions under each such Act.

**§625. Accounts and records.**

(1) The Office shall maintain, in accordance with the procedures prescribed by the Financial Management Act, proper accounts and records with respect to the Fund, any money paid into or out of the Fund, and any property purchased with money from the Fund, shall maintain such accounts and records with respect to the property and financial transactions of the Office generally.

(2) Separate commercial accounts shall be kept for each business or enterprise in which the Office is actively engaged.

(3) The accounts to be laid before the Nitijela by the Minister under Article VIII, Section 5(4) of the Constitution of the Marshall Islands shall include accounts relating to the Office.

(4) The accounts and records referred to in Subsections (1) and (2) of this Section are subject to audit under Article VIII, Section 15 of the Constitution of the Marshall Islands.

#### **§626. Dividends.**

(1) As soon as practicable after the end of each financial year, but subject to subsection 627 relating to the disposition of excess monies of, or in the possession or under the control of, the Office, such proportion as is directed by the Board of the profit of the Office shall be withdrawn from the Fund and invest pursuant to section 627.

(2) In Subsection (1) of this Section, "profit" means the excess of receipts (otherwise than out of the Marshall Islands General Fund or under Section 622 of this Chapter) over expenditure, after making due provisions for:

(a) losses of previous years carried forward;

(b) depreciation, amortization of debts, and contingencies, and other proper provisions and reserves; and

(c) future expansion and development.

(3) In his report under Article VIII, Section 15 of the Constitution of the Marshall Islands on the accounts and records of the Office, the Auditor-General shall certify as to the amount of profit(if any) for the year, without taking into account Subsection (2)(c) of this Section.

#### **§627. Investments of Fund.**

(1) The Board shall, subject to the direction of the Minister:

(a) invest excess funds in accordance with the provisions of any law relating to investment; or

(b) invest in any other security or any other loan specifically approved as an investment for the purposes of this Act; and

(c) may, subject to the approval of the Minister, acquiring shares or interests in or establishing any business or business entity that appears to the Board as likely to serve the purposes of this Act.

(2) The Office shall have the full power to manage the investments as in its considered judgment and seems most appropriate to the requirements and objectives of the Act, including but not limited to the power to hold, sell, purchase, convey, assign, transfer, dispose of, lease, subdivide, or partition any asset held or proceeds thereof; to execute or cause to be executed relevant documents; to enter into protective agreements, execute proxies, or grant consents; and to do all other things necessary or appropriate to its position as an owner or creditor.

(3) All proceeds and income from investments, of whatever nature, shall be credited to the account of the Fund. Transactions in marketable securities shall be carried out at the prevailing market prices.

(4) The Office may commingle securities and monies, subject to the crediting of receipts and earnings and charging of payments to the appropriate accounts established by this Chapter.

(5) No member of the Board, or employee of the Office, nor anyone in the immediate family of such member or employee, shall have any direct or indirect interest in the income, gains or profits of any investments made by the Office, nor shall any such person receive any pay or emolument for services in connection with any investment made by the Office. Participation in the Fund under the terms of this Chapter shall not be construed to include interest, pay or emolument within the meaning of this subsection.

(6) No member, employee or agent of the Office, nor any person in the immediate family of such member, employee or agent, shall become an endorser or surety or in any manner an obligator of investments made by the Office, nor shall any member, employee or agent be held liable for actions taken in good faith in performance of his duties.

(7) Investments may be held as physical securities in either bearer form or registered.

**§628. Taxation, etc.**

(1) Subject to Subsections (2) and (3) of this Section, the income, property and transactions of the Office are not subject to any tax, rate, charge or impost under any other law.

(2) Subsection (1) of this Section does not apply with respect to any licensing fee or similar fee that is reasonably in proportion to the administrative expense involved.

(3) Subsection (1) of this Section does not apply to any business enterprise referred to in Section 618(3) of this Chapter.

**PART V - MISCELLANEOUS**

**§629. Compliance with other laws.**

The Office, and any business or enterprise in which the Office is engaged, shall comply with all laws (including licensing laws) applicable to its operations.

**§630. Reports.**

(1) The Office shall, at least once a year and at such other times as the Nitijela or the Minister directs, make a report to the Minister on its operations and on the administration of this Chapter, and of any other Act with which the Office is concerned, with any comments and recommendations for improvement that it considers desirable.

(2) The Office may at any other time make a report to the Minister on any aspect of its operations or of the administration of this Chapter and of any other Act with which the Office is concerned.

(3) The Minister shall present any report made by the Office under Subsection (1) or (2) of this Section to the Nitijela, together with his comments.

**§631. Regulation.**

The Minister responsible shall make regulations, prescribing all matters that are necessary or convenient to be prescribed in the regulations for carrying this Chapter into effect pursuant to the Administration Procedures Act.



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