

TITLE 16.
LABOR AND INDUSTRIAL RELATIONS

CHAPTER 1.

LABOR (NON-RESIDENT WORKERS)

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SCHEDULES

Schedule 1. Provisions relating to the employment of third country nationals under Federal Program and Services Agreements (FPSA)

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An Act to reform the law relating to the employment of non-resident workers in the Republic of the Marshall Islands, in particular to streamline the procedures for obtaining work permits, stipulate criteria for the issuance, renewal and transfer of work permits, and to ensure the efficient administration and enforcement of the Act.

Commencement: December 5, 2006

Source: P.L. 2006-60

P.L. 2009-24

PART I – PRELIMINARY**§101. Short title and commencement.**

This Chapter may be cited as the Labor (Non-Resident Workers) Act, 2006.

§102. Interpretation.

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

(a) “Administrative error” for the purposes of section 127, a work permit was granted as a result of an administrative error if it was granted:

(i) to a person who is exempt under this Chapter from the requirement to hold a work permit; or

(ii) to a person to whom section 111 of this Chapter applies; or

(iii) in contravention of any special direction, or any instruction of any kind referred to in section 105 of this Chapter; or

(iv) contrary to Government policy applicable at the time; or

(v) for a period exceeding the period prescribed for permits of that type under this Chapter; or

(vi) the person granting it intended to grant a permit of some type other than the one that was granted.

(b) “Approved port of entry” means a port of entry designated as an approved port of entry under section 104 of the Immigration Act 2006; and sections 202(1) and 203 of the Ports of Entry Act;

(c) "Arrival hall" means any place or vehicle at an approved port of entry, used for the processing of persons arriving in the Republic of the Marshall Islands;

(d) "Bribe" means any money, valuable consideration, or any benefit, paid to or conferred on any Officer, whether directly or indirectly, in order to influence that person in any matter relating to this Chapter or regulations made under it;

(e) "Cabinet" means the Cabinet established under Article V, section 2(1) of the Constitution of the Republic of the Marshall Islands;

(f) "Certificate of Identity" means a document (other than a passport) issued by the Government of any country to any person for the purposes of facilitating that person's entry into or exit from any country, being a document that purports to establish the identity but not necessarily the nationality of that person and which confers on that person the right to enter a country the Government of which has issued the document, and includes any other document in a form approved for the purpose by the Minister;

(g) "Citizen of the Republic of the Marshall Islands" means a:

(i) citizen of the Republic at birth; or

(ii) an immigrant alien legally admitted to the Republic and is a naturalized citizen under the Citizenship Act 1984; or

(iii) a person that has acquired citizenship under Article XI of the Constitution of the Republic of the Marshall Islands;

and the term "Marshallese citizen" has a corresponding meaning as (i):

(h) "Constitution" means the Constitution of the Republic of the Marshall Islands;

(i) "Craft" means any form of aircraft, ship or other vehicle or vessel capable of being used to transport any person to or from the Republic of the Marshall Islands, from or to any country outside the Republic of the Marshall Islands;

(j) "dependent child" in relation to any person, means an unmarried child under 18 years of age who is dependent on that person, that person being a parent or legal guardian;

(k) "Deportation order" means a Deportation Order made under the Immigration Act 2006, and for the purposes of serving or executing any such order, includes any electronically produced copy thereof: "**Employer**" means any individual, partnership, association, or corporation employing non-resident workers in the Republic of the Marshall Islands, and includes any Ministry, branch or agency of the Government of the Republic of the Marshall Islands;

(l) "Employment" means any activity undertaken for gain or reward; but does not include:

(i) representation on an official trade mission recognized by the Government of the Republic of the Marshall Islands;

(ii) employment as a sales representative in the Republic of the Marshall Islands of an overseas company for a period or periods not exceeding in the aggregate three months in any calendar year;

(iii) activity in the Republic of the Marshall Islands as an overseas buyer of goods or services of the Republic for a period or periods not exceeding in the aggregate three months in any calendar year;

(iv) official business in the service of the Government of any country, or of any inter-governmental or international organization that is for the time being entitled to any privileges and immunities under the Diplomatic Privileges and Immunities Act 1988, or under any international convention entered into by the Government;

(v) business consultations or negotiations in the Republic of the Marshall Islands concerning the establishment, expansion or winding up of any business enterprise in the Republic or any matter relating thereto, for a period or periods

not exceeding in the aggregate three months in any calendar year, by any person engaged in business overseas with any person engaged in business in the Republic or with the Government;

(m) "Exemption" means an exemption under section 110(2) of this Chapter from the requirement to hold a work permit; and "**exempt**" has a corresponding meaning;

(n) "Government" means the Government of the Republic of the Marshall Islands;

(o) "Holder" in relation to a permit or visa referred to under this Chapter, means the person in respect of whom the permit or visa is granted for so long as the permit or visa is current;

(p) "Immigration Division" means the Immigration Division established under the Immigration Act 2006;

(q) "Labor Division" means the Division of Labor established under section 109(1) of the Act;

(r) "Labor Officer" means every officer of the Public Service of the Republic of the Marshall Islands designated by the Minister as a Labor Officer under this Chapter ;

(s) "Leave the Republic of the Marshall Islands" means, except in the circumstances specified in subsection (3) of this section, leave the Republic of the Marshall Islands for a destination in another country;

(t) "Minister" means the Minister of Foreign Affairs, and includes, in relation to the exercise or performance of any power or function of the Minister, any person for the time being authorized in accordance with section 104(1) of this Chapter to exercise or perform that power or function;

(u) "Notice to depart" means a Notice to Depart issued under the Immigration Act 2006;

(v) "Non-resident worker" means any natural person who is or intends to undertake employment in the Republic and is not a citizen of the Republic;

(w) "Official dependents" means spouses and dependents of United States contractor personnel or United States third country contractor personnel who are in the Republic of the Marshall Islands and are listed as dependents on official United States Government travel orders;

(x) "Passport" means a document that is issued by or on behalf of the Government of any country, being a document that purports to establish the identity and nationality of the holder and recognizes the right of the holder to enter and reside in the country the Government of which has issued the document;

(y) "Permit" means a work permit issued under this Chapter ;

(z) "Person" means any individual and includes any partnership, association or corporation employing non-resident workers;

(aa) "Police Officer" means a member of the Police Force established under section 503(2) of the Public Safety Act 1988;

(bb) "Public Service Commission" means the Public Service Commission established under the Constitution of the Republic of the Marshall Islands;

(cc) "Removal Order" means a removal order made under the Immigration Act, 2006, and for the purposes of serving or executing any such order, includes any electronically produced copy thereof;

(dd) "Republic of the Marshall Islands" or "the Republic" means any land territory within the territorial limits of the Republic of the Marshall Islands, and includes the internal waters and territorial sea of the Republic of the Marshall Islands;

(ee) "Resident worker" means any natural person who is or intends to undertake employment in the Republic and is also a citizen of the Republic;

(ff) "Secretary" means the Secretary of the Ministry of Foreign Affairs, and includes, in relation to the exercise or performance of any power or function of the Secretary, any person for the time being authorized in accordance with section 104(1) of this Chapter to exercise or perform that power or function;

(gg) "Special direction" means a direction given by the Minister in accordance with section 105 of the Chapter and relating to any matter for which a special direction is contemplated by any of the provisions of this Chapter or any of the regulations made under this Chapter ;

(hh) "Spouse" means one of a legally married couple;

(ii) "The Police Commissioner" means the Commissioner of Public Safety appointed under of the Public Safety Act 1988;

(jj) "United States contractor personnel" means a natural person who is a citizen, national or permanent resident alien of the United States and is working in the Republic as a contractor, officer or employee of the United States Government;

(kk) "United States third country contractor personnel" means a natural person who is not a citizen, national or permanent resident alien of the United States and is working in the Republic as a contractor, officer or employee of the United States Government;

(ll) "Work visa" means a visa issued under the Immigration Act 2006.

(2) For the purposes of this Chapter , every period of time prescribed by any of the provisions of this Chapter for the making of an application shall be reckoned exclusive of any week day that is a public holiday or a Government holiday.

(3) For the purposes of this Chapter , a person shall not have left the Republic if that person departed for another country on any craft and, before arriving in another country:

(a) is forced to return to the Republic by reason of any emergency affecting the craft; or

(b) returns to the Republic because of any other emergency or circumstances beyond that person's control. ["removal order" inserted by P.L. 2009-24; numbering modified during codification]

§103. Rights of citizens of the Republic of the Marshall Islands protected.

(1) For the purposes of this Chapter , every citizen of the Republic has, by virtue of that citizenship, the right to be employed in the Republic at any time.

(2) Nothing in this Chapter shall abrogate the right declared in subsection (1) and no provision of this Chapter that is inconsistent with that right shall apply to citizens of the Republic.

PART II – ADMINISTRATIVE ARRANGEMENTS

§104. Delegation of powers of Minister.

(1) The Minister may from time to time, by writing under the Minister's hand, delegate to the Secretary or any Labor Officer all or any of the powers conferred upon the Minister by this Chapter , except this power of delegation and the powers conferred by or referred to in any of sections 105, 106, 107, 153 and 157.

(2) Every such delegation shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Minister.

(3) Any such delegation may be made subject to such restrictions and conditions as the Minister thinks fit, and may be made either generally or in relation to any particular case.

(4) Any such delegation shall, until revoked, continue in force notwithstanding the fChapter that the Minister by whom it was made has ceased to hold office, and shall continue to have effect as if made by the successor in office of the Minister.

§105. Directions by the Minister.

The Minister may, from time to time in writing, give to the Secretary or any Labor Officer a special direction in respect of any person, work permit or document, in relation to any matter for which such a direction is contemplated by any of the provisions of this Chapter or by regulations made under this Chapter .

§106. Minister may approve forms.

(1) The Minister may from time to time approve and issue all such forms as the Minister considers necessary for the purposes of this Chapter .

(2) Every document purporting to be in a form approved and issued by the Minister under and for the purposes of this Chapter shall be deemed to have been so approved and issued, unless the Minister certifies otherwise.

§107. Designation of Labor Officers by Minister.

(1) The Minister shall from time to time, designate as Labor Officers such persons employed in the Public Service, including members of the Police, as the Minister considers necessary for the purposes of this Chapter , and every such officer shall be issued with a warrant of designation signed by the Minister.

(2) Any such designation continues in force until it is revoked, notwithstanding that the Minister by whom it was made has ceased to hold office.

(3) The Minister may, in writing, revoke a warrant of designation at any time.

§108. Functions of the Secretary.

(1) Without limiting the generality of powers vested in the Secretary by this Chapter or by regulations made under this Chapter , the Secretary shall:

(a) consider and determine all applications:

(b) issue work permits:

(c) ensure proper collection and accountability for all fees, charges and bonds:

(d) enter into written agreements with employers concerning the employment of non-resident workers:

(e) ensure strict enforcement of the Chapter and regulations:

identify and establish occupational categories in which there may be a need to recruit non-resident workers:

(e) establish and maintain registers for the collation of appropriate data and information required for the effective administration and enforcement of the Chapter and regulations:

(f) ensure the effective implementation of provisions of the Chapter and regulations.

§109. Functions of the Labor Division.

(1) There is hereby established in the Ministry of Foreign Affairs a Division of Labor (hereinafter "Labor Division").

(2) The Labor Division shall be comprised of a Chief of Labor and Labor Officers appointed by the Public Service Commission, in consultation with the Minister.

(3) All officers of the Division appointed under this Chapter shall be accountable to and report directly to the Secretary.

(4) Without limiting the generality of powers vested in the Labor Division by this Chapter , the Division shall:

(a) make recommendations to the Secretary on the issuance of work permits;

(b) perform investigatory functions as necessary for the effective enforcement of the Chapter and regulations;

(c) oversee, monitor and review the recruitment of non-resident workers and make recommendations to the Secretary as necessary;

(d) liaise with members of the Police, Immigration Division, Attorney General's Office, Ministry of Finance and other such other Government agencies for the effective implementation and enforcement of the Chapter and regulations.

PART III – REQUIREMENT TO HOLD A WORK PERMIT OR BE EXEMPT

§110. Requirement to a hold work permit, or be exempt from requirement.

- (1) Any person who is not a citizen of the Republic is prohibited from undertaking employment in the Republic unless that person is:
- (a) the holder of a work permit granted under this Chapter ; or
 - (b) exempt under this Chapter from the requirement to hold a work permit.
- (2) The following persons are exempt from the requirement to hold a work permit:
- (a) a person who is for the time being entitled to any immunity from jurisdiction by or under the Diplomatic Privileges and Immunities Act 1988;
 - (b) a person who is for the time being entitled to any immunity from jurisdiction by or under the International Organization Immunities Act 1974;
 - (c) a citizen of the United States;
 - (d) a citizen of Palau or the Federated States of Micronesia;
 - (e) United States contractor personnel and their official dependents;
 - (f) a member of the crew of any commercial aircraft flying between any foreign place and the Republic, for a period of fourteen (14) days commencing with the day on which the aircraft first arrives in the Republic; or
 - (g) a member of the crew of any ship fishing in the territorial waters of the Republic under a license from the Government;
 - (h) any person employed by a Government Ministry or Department.
- (2A) Notwithstanding the exceptions granted to persons in subsection (2), exempted persons are required to comply with registration requirements of the Labor Division in accordance with Regulations promulgated under the Chapter .
- (3) Notwithstanding any provisions under the Foreign Investment Business License Act 1990, any person who intends to work in the Republic must apply for and obtain a work permit.
- (4) A third country national employed by the United States Government under the Status of Forces Agreement or the Federal Programs and Services Agreement (pursuant to the Compact, as amended) must acquire a work permit in the manner set out in Schedule 1. [§2A inserted by P.L. 2009-24]

§111. Certain persons not eligible for exemption or work permit

- (1) Unless there is a special direction to the contrary, no exemption shall apply, and no work permit shall be issued to any person who at any time (whether before or after the commencement of this Chapter):
- (a) has been convicted of any offence; or
 - (b) against whom a removal or deportation order under this Chapter or the Immigration Act 2006 is in force; or
 - (c) has been deported from the Republic or any other country; or
 - (d) who the Minister or the Secretary has reason to believe:
 - (i) has engaged in, or claimed responsibility for, an act of terrorism in the Republic or any other country; or
 - (ii) is a member of or adheres to any organization that has engaged in, or has claimed responsibility for, an act of terrorism in the Republic or any other

country; or

(iii) is likely to engage in, or facilitate the commission of an offence under this Chapter or any other Act; or

(iv) is a member of or adheres to any organization which has criminal objectives or which has engaged in criminal activities, and whose presence in the Republic would, in the opinion of the Minister or the Secretary, constitute a threat to the public interest. ["removal" inserted by P.L.2009-24]

§112. Secretary to grant work permit.

(1) No person is entitled as of right to a work permit, and any question whether or not to:

- (a) grant; or
- (b) impose any condition; or
- (c) apply, vary or cancel any condition; or
- (d) revoke,

any work permit is a matter for the decision of the Secretary, in accordance with the provisions of this Chapter .

(2) The Secretary shall not grant a work permit to any person:

- (a) under section 112; or
- (b) within a period of three (03) years from the date at which a person has been repatriated, deported or removed from the Republic.

(3) A person may, in writing, appeal a decision of the Secretary under subsections (1) and (2) to the Minister. Procedures relating to appeals shall be set out in regulations under the Chapter .

§113. Time frame for submitting applications.

(1) Unless otherwise notified by the Labor Division, all applications for work permits must be submitted by prospective employers between 01 July and 01 September each year.

(2) An application submitted outside this prescribed period shall incur payment of the prescribed penalty fee.

(3) Upon receipt of an application, the Chief of the Labor Division shall at first instance review the application and any incomplete application must be returned to the prospective employer for completion and re-submission.

(4) Further payment of the application fee shall not be required, provided that the application is re-submitted within fourteen (14 days) of the date on which it was returned to the applicant.

(5) Upon receipt of a complete application, the Secretary shall, upon consideration of relevant criteria set out in this Chapter , determine whether or not to issue a work permit.

(6) The Secretary shall, within twenty one (21) days of the complete application being submitted, inform the employer in writing of the outcome of the application.

(7) All work permits must be issued by 01 October each year.

(8) Every work permit shall be valid from 01 October each year and shall expire on the date stated on each permit.

PART IV – TYPES OF WORK PERMITS

§114. Types of work permits.

(1) The following types of work permits may be issued under this Chapter :

- (a) Foreign Investor;
- (b) OSL Professionals;
- (c) General;
- (d) Family; and

(e) Temporary.

(2) A work permit issued under this Chapter shall be in the prescribed form.

(3) Except for work permits issued under sections 114(1)(a) or 114(1)(d), all applications for work permits must be submitted by the employer while the non-resident worker is outside the Republic.

(4) A work permit shall entitle the holder to work in the Republic during the period of validity of that permit.

§115. Foreign investor work permit.

(1) Every foreign investor who intends to live in the Republic in order to implement their investment must obtain a work permit.

(2) Work permits under this section will be granted on the basis that the proposed non-resident worker meets the following criteria:

(a) submission of a completed application form including a statutory declaration by the applicant;

(b) a valid Foreign Investment Business License in which the applicant is identified as the owner of the Foreign Investment Business License or in the incorporation documents, or they are able to provide documentation from the owners of the enterprise proving they legally represent the foreign investor;

(c) valid police and health clearance for the applicant (demonstrating that they have not been deported or removed from the country or any other country, have not been convicted of an offence punishable by the Courts to a term of imprisonment of twelve (12) months or more, and do not adhere to any organization or group that has engaged in, or claimed responsibility for, or is likely to engage in an act of terrorism in the country or any other country); and

(d) clearance from Finance, Marshall Islands Social Security Administration and the Local Government that the company has registered with them proof application fee has been paid.

(2) A bond will not be required as a precondition to the issuance of a work permit under this section.

§116. OSL Professional work permit.

(1) Any employer intending to apply for a work permit in relation to a professional occupation listed on the on the Occupational Shortages list, may apply for a work permit under this section.

(2) Work permits under this section will be granted on the basis that the proposed non-resident worker meets the following criteria:

(a) submission of a completed application form including a statutory declaration by the applicant and the non-resident worker;

(b) if the employer is a foreign investor, whether the foreign investment has been granted a Foreign Investment Business License;

(c) evidence that the proposed non-resident worker meets the requirements of the occupational category specified under the Occupational Shortages List;

(d) valid police and health clearance for the applicant; and

(e) proof that the application fee has been paid.

(2) A bond will be required as a pre-condition to the issuance of a work permit under this section.

§117. General work permit.

(1) Any employer intending to apply for a work permit for any other occupation not listed on the Occupational Shortages List may apply for a general work permit.

(2) Each application will be assessed on a case-by-case basis using the following criteria:

(a) submission of a completed application form including statutory declaration by the employer and the non-resident worker;

(b) if the employer is a foreign investor, whether the foreign investment has been granted a Foreign Investment Business License;

(c) proof the position has been advertised in local media for a specified period of time;

(d) proof that the search process was unable to yield a suitably qualified and available citizen worker;

(e) evidence that the proposed applicant meets the prescribed minimum level of education and experience;

(f) valid police and health clearance for the applicant; and

(g) proof that the application fee has been paid.

(5) Work permits issued under this section must be to facilitate the entry of people required to fill positions where citizens of the Republic are either not available or cannot be readily trained.

(6) A bond will be required as a pre-condition to the issuance of a work permit under this section.

§118. Temporary purpose work permit.

(1) Any employer intending to hire a non-resident worker for a period of up to six (06) months in any calendar year to:

(a) address emergencies if and when they arise;

(b) train local staff; or

(c) carry out short-term technical work for which suitably skilled labor is not readily available,

may apply for a work permit under this section.

(2) Applications will be assessed using the following criteria:

(a) if the employer is a foreign investor, whether the foreign investment has been granted a Foreign Investment Business License;

(b) a letter stating the reason the worker is required and the length of time they will be in the country;

(c) a copy of the employment contract between the employer and non-resident worker; and

(d) proof that application fee has been paid.

(3) Upon approval of the application, the Labor Division will issue a Letter of Authorization to the employer.

(4) On arrival in the Republic, the non-resident worker must present a valid return air ticket and a copy of the Letter of Authorization to Immigration officials at the point of entry.

(5) A bond will not be required as a pre-condition to the issuance of a work permit under this section.

§119. Family work permit.

(1) Any person who is legally married to a citizen of the Republic of the Marshall Islands and is lawfully in the Republic under the Immigration Act 2006, may apply for a work permit under this section.

(2) Applications will be assessed using the following criteria:

(a) submission of a completed application form including a statutory declaration by the employer and the spouse who is a Marshallese citizen;

(b) if the employer is a foreign investor, whether the foreign investment has been granted a Foreign Investor Business License;

(c) a certified copy of a marriage certificate indicating the applicant has been married to the Marshallese citizen for at least one year;

(d) if applicable, a valid residence or entry permit for the applicant issued by the Immigration Division;

(e) proof that the application fee has been paid.

(3) A bond will not be required as a pre-condition to the issuance of a work permit under this section.

PART V - APPLICATION FOR A WORK PERMIT AND WORK VISA

§120. Application for a work permit.

(1) An application for a work permit must be made in the manner prescribed by the Act and regulations under the Act.

(2) Except under those circumstances referred to in section 123, the Secretary shall not issue a work permit to a person who is already in the Republic.

§121. Application for a work visa.

(1) Upon approval of an application for a work permit, the Chief of the Labor Division shall make a request to the Immigration Division for the issuance of a work visa.

(2) The manner in which a work visa is issued shall be in accordance with the Immigration Act 2006 and regulations made under the Chapter .

(3) Enforcement of a work visa will be in accordance with the provisions of the Immigration Act 2006 and regulations made under the Chapter .

PART VI – GENERAL MATTERS RELATING TO APPLICATIONS

§122. Obligation to inform of all relevant facts, including changed circumstances.

(1) Every employer, non-resident worker or agent must inform the Secretary of any relevant fact, including any material change in circumstance that occurs after an application is made.

(2) The Secretary shall decline an application or revoke a work permit if satisfied that a person has, whether personally or through an agent:

(a) submitted false or misleading information; or

(b) withheld relevant information that was potentially prejudicial to the application or issuance of the permit; or

(c) failed to report a material change in circumstance between the time of making the application and the time of issuing the permit.

§123. Issuance of work permit to a person already in the Republic under exceptional circumstances.

(1) The Secretary may, under exceptional circumstances, grant a work permit to a person who is already in the Republic, provided that the person is:

- (a) not in the Republic unlawfully; and
- (b) not the subject of a removal or deportation order; and
- (c) not in breach of any visa or permit issued under the Immigration Act 2006; and
- (d) not convicted of any criminal offence; and
- (e) there is sufficient justification for the application not being submitted prior to the person's arrival in the Republic.

(2) Where any person applies for a work permit under subsection (1), the Secretary:

- (a) is not under any obligation to consider the application; and
- (b) is not obliged to give reasons for any decision relating to the application.

§124. Extension of a work permit.

(1) An employer may, in the manner prescribed by regulations, apply for an extension of a non-resident worker's permit.

(2) Criteria for the extension of a permit shall be prescribed by regulations.

§125. Transfer of employment.

(1) An employer may, in the manner prescribed by regulations, apply to transfer a non-resident worker to another employer in the Republic.

(2) An application for a transfer must only be in respect of a person who holds a valid work permit.

(3) A transfer shall be valid upon written authorization from the Secretary that the application to transfer has been approved.

(4) Any transfer that takes place without the written authorization of the Secretary may result in the forfeiture of the employer's bond to the Government and revocation of the non-resident worker's permit.

(5) Where a bond has been forfeited under subsection (4), it shall be used for the removal or deportation of the non-resident worker from the Republic. ["removal" inserted by P.L.2009-24]

§126. Requirement to exit every two years and repatriation the completion of the employment contract.

(1) An employer must ensure that every non-resident worker in his or her employment is repatriated to the point of hire at the end of the contract or upon termination or resignation of the non-resident worker.

(2) Failure to comply with the requirement to repatriate or exit may result in the forfeiture of the employer's bond to the Government, and the use of such bond to comply with the requirement under subsection (1).

(3) Notwithstanding the exemption provided under section 10(2) to Government Ministries and Departments, Heads of Government Ministries and Departments shall, in consultation with the Public Service Commission, ensure that non-resident workers are repatriated to the point of hire at the end of their contracts or upon termination. [subsection 1 amended; subsection 3 inserted by P.L. 2009-24]

PART VII - REVOCATION OF WORK PERMITS

§127. Revocation of a work permit as a result of an administrative error.

(1) Where the Minister or Secretary grants a work permit to any person as a result of an administrative error, the work permit (and any consequent work visa) may be revoked at any time and shall take effect immediately.

(2) Revocation of a work permit under this section may be written or oral.

§128. Revocation of a work permit in general.

(1) The Secretary may, in writing, revoke any work permit issued under this Chapter, by service of a Notice of Revocation on the employer of the non-resident worker.

(2) A Notice of Revocation shall:

- (a) state the reason for the revocation of the work permit; and
- (b) notify the employer that the revocation is effective immediately; and
- (c) specify the date by which the non-resident worker must leave the Republic.

PART VIII – QUOTA FOR THE RECRUITMENT OF NON-RESIDENT WORKERS**§129. Quota for the recruitment of non-resident workers.**

(1) Notwithstanding any other enactment to the contrary, all employers must, unless exempted by order of the Cabinet maintain at the commencement of the first year of operations and each subsequent year, a workforce of which at least fifty (50%) is comprised of Marshallese citizens.

(2) All employers must give first preference to the employment of Marshallese citizens in the Republic.

(3) Non-resident workers may only be recruited to supplement the local labor force of available and qualified workers as required from time to time and for positions in which there is a lack of suitably qualified resident workers.

PART IX – DEPORTATION OF PERSONS UNLAWFULLY IN THE REPUBLIC OF THE MARSHALL ISLANDS**§130. Initiation of deportation proceedings.**

(1) The Minister shall, in writing, request that the Attorney General initiate deportation proceedings in respect of a non-resident worker after being presented with evidence that:

- (a) a non-resident worker has been convicted of an offence under the Chapter or any other enactment; or
- (b) the employer has been convicted of an offence under the Chapter in respect of the employment of that non-resident worker; or
- (c) the employer or non-resident worker have breached a provision under the Chapter or regulations, the penalty for which is the deportation of the non-resident worker.

(2) Any matter related to the deportation of a non-resident worker shall be in accordance with the Immigration Act 2006.

(3) Nothing in this Part is to be construed as preventing voluntary departure of the non-resident worker from the Republic at any time before a deportation order is made and served.

§131. Work Permit cancelled where Deportation Order issued.

Where a Deportation Order is issued against the holder of any work permit, the work permit shall automatically be void.

PART X – OFFENCES AND PENALTIES**§132. Employment of a non-resident worker without a work permit.**

(1) Any employer who employs a person knowing that he or she does not have a work permit is guilty of an offence and is liable to imprisonment for a term not

exceeding five years, a fine not exceeding \$10,000 or both.

(2) An information alleging an offence against subsection (1) may specify any day on which it is alleged the person was in the employment of the employer, and it shall not be necessary to state the date on which that employment is alleged to have commenced.

§133. Working without a work permit.

Any person who works without a work permit, or continues to work knowing that his or her work permit is expired or cancelled, is guilty of an offence and is liable to imprisonment for a term not exceeding three years, a fine not exceeding \$5,000 or both.

§134. Knowingly making a false statement.

Every person who makes any statement or provides any information, written or otherwise, knowing that it is false or misleading in any material respect, is guilty of an offence and is liable to imprisonment for a term not exceeding three years, a fine not exceeding \$5,000 or both.

§135. Knowingly providing a forged, false or misleading document.

Any person who produces, supplies or surrenders any document knowing that it is forged, false or misleading in any material respect is guilty of an offence and is liable to imprisonment for a term not exceeding five years, a fine not exceeding \$7,000 or both.

§136. Obstructing a Labor Officer in the execution of his duties.

Any person who threatens, assaults, or intentionally obstructs or hinders a Labor Officer or any other designated officer in the exercise or performance of a function, power or duty under this Chapter is guilty of an offence and is liable to imprisonment for a term not exceeding three years, a fine not exceeding \$5,000, or both.

§137. Failure to surrender any document or supply information.

Any person who without reasonable excuse, fails to produce or surrender any document or refuses to supply any information when required to do so by a Labor Officer or any other designated officer, is guilty of an offence and is liable to imprisonment for a term not exceeding two years, a fine not exceeding \$3,000 or both.

§138. Offence to offer bribe.

Any person who corruptly offers, gives or agrees to give any bribe to any person while executing a function under this Chapter, with the intent to influence that person in respect of any act or omission by that person in his or her official capacity, is guilty of an offence and is liable to imprisonment for a term not exceeding five years, a fine not exceeding \$10,000 or both.

§139. Offence to accept bribe.

Any person who corruptly obtains, attempts to obtain, accepts or agrees to accept, any bribe for himself or any other person, in respect of any act done or omitted by him in his official capacity, is guilty of an offence and is liable to imprisonment for a term not exceeding five years, a fine not exceeding \$10,000 or both.

§140. Aiding and abetting.

Any person who for a material benefit, aids, abets, incites, counsels, or procures any other person to be employed in the Republic without a work permit, or to breach any condition of a permit granted to the other person, or to obtain a work permit fraudulently, is guilty of an offence and is liable to imprisonment for a term not exceeding three years, a fine not exceeding \$5,000 or both.

§141. General penalties.

(1) Every person who is convicted of an offence against this Chapter for which no penalty is provided other than in this subsection, shall be liable to imprisonment for a term not exceeding three years, a fine not exceeding \$5,000, or both.

(2) Every employer who is convicted of an offence under this Chapter shall, in addition to any penalty imposed, be disqualified from recruiting non-resident workers in the next calendar year.

§142. Deportation following conviction.

(1) Every non-resident worker who is convicted of an offence under this Chapter shall (in addition to any penalty imposed) be deported from the Republic in accordance with deportation proceedings under the Immigration Act 2006.

(2) Where a non-resident worker is to be deported from the Republic, a Judge may order that the non-resident worker or the employer pay the whole amount or any portion of the costs incurred or likely to be incurred in deporting that person from the Republic.

§143. Proceedings relating to offences.

(1) All offences under this Chapter shall be triable by the High Court.

(2) A prosecution for an offence against this Chapter or regulations shall be upon the information of the Attorney General or some other person authorized for that purpose.

(3) In any proceedings relating to any matter under this Chapter, a certificate signed by the Secretary and containing a statement in relation to any person to the effect that:

(a) the person holds or does not hold a work permit; or

(b) any work permit granted to the person was granted for a specified period or purpose; or

(c) the person is or was at any material time, exempt from the requirement to hold a permit; or

(d) the person, or any work permit or other document was or was not the subject of a special direction given under the Chapter; or

(e) for the purpose of obtaining a work permit, the person made any statement or supplied any information that was false or misleading in any material respect, or produced or surrendered to the Secretary or a Labor Officer any passport, certificate of identity or other document that was forged or obtained fraudulently; or

(g) the person has, or has not, left the Republic at any particular time or during any particular period,

shall, in the absence of proof to the contrary, be deemed to be proof of the truth of the content of the certificate.

(4) In any legal proceedings relating to any matter under this Chapter :

(a) a document purporting to be a special direction given under this Chapter shall be conclusive evidence of the fact that such a special direction was given;

(b) a document purporting to be a Deportation Order issued under the Immigration Act 2006, shall be conclusive evidence of the fact that such a Deportation Order was made in respect of the person named and on the date specified in the document;

(c) a certificate signed by the Minister charged with the administration of the Immigration Act 2006 stating that a particular place is or was an official port of entry or arrival hall shall be sufficient evidence of that fact.

§144. Service of Notices.

Where under any of the provisions of this Chapter, any notice or other document is to be

served on the holder of any work permit or employer, the document shall be deemed to have been given, served on or received by that person:

- (a) immediately on that person being served personally; or
- (b) immediately upon being served on the employer; or
- (c) within seven days of that document being sent by post.

PART XI – FUNCTIONS AND POWERS OF LABOR OFFICERS

§145. Power to require information.

(1) Where a Labor Officer has good cause to suspect that any person has or is committing an offence against this Chapter, a Labor Officer may require the person to do all or any of the following things:

- (a) supply the person's name and address;
- (b) produce for inspection documentary or other evidence as to the person's identity;
- (c) produce for inspection their passport or certificate of identity;
- (d) produce for inspection their work permit or visa;
- (e) take a photograph of that person;
- (f) answer preliminary questions relating that person's suspected employment at a particular place.

(2) If a person refuses or fails to comply with any requirement of a Labor Officer under this section, a Labor Officer may:

- (a) issue a Notice of Infringement as prescribed by regulations;
- (b) arrest and detain a person at a Police station for a period of up to twenty four (24) hours until proper documentation and details of that person's identity are provided.

(3) Where a person who is arrested and detained under subsection (2) fails to provide proper documentation after twenty four (24) hours, the Minister shall request that the Attorney General initiate deportation proceedings under section 130 or legal proceedings under section 143.

§146. Powers of entry and inspection.

Where the Secretary or a Labor Officer believes on reasonable grounds that:

- (a) the information contained on any register or list kept by any person on any premise might lead to the apprehension of any person who is working in the Republic unlawfully; or
- (b) any wages and time record kept by an employer on any business premise might contain information relating to any person who is working in the Republic unlawfully,

the Labor Officer may at any reasonable time with a search warrant, enter part of the premises in which he or she believes the register or record to be kept, and require any person to produce any part of that register, list or record.

§147. Powers of entry and search.

(1) Where the Secretary or a Labor Officer believes on reasonable grounds that a person is working in the Republic unlawfully and that person is:

- (a) hiding at a particular premise; or
- (b) living at a particular premise,

the Labor Officer shall at first instance request the consent of the lawful occupier to enter the premises for the purposes of carrying out the officer's functions under section 145.

(2) If the lawful occupier refuses to provide consent, the Labor Officer shall enter upon presentation of a valid search warrant obtained in accordance with Article II, section (1) of the Constitution of the Republic of the Marshall Islands.

§148. Complaints against officers performing functions under the Act

(1) Any person wishing to make a complaint in relation to any officer exercising functions or duties under this Chapter shall make that complaint, in writing, to the Minister.

(2) The Minister may discipline or request the Public Service Commission to discipline, or initiate any legal proceedings against any officer, after being presented with evidence that the officer:

- (a) accepted a bribe; or
- (b) induced any person to pay a sum of money, not prescribed by this Chapter, in respect of any function or duty performed by that or any other officer; or
- (c) assisted any person to obtain, extend or transfer a work permit or other document or certificate under this Chapter unlawfully; or
- (d) altered any record or register or any information relating to any person unlawfully.

PART XII – TRANSITIONAL PROVISIONS

§149. Persons working unlawfully in the Republic of the Marshall Islands as at date of enactment

As of the date of enactment, all persons already in the Republic and are working must be holders of valid work permits. Those people intending to apply for a work must exit the Republic before applying for a valid work permit in the prescribed manner.

§150. Persons holding a Foreign Investment Business License as at date of enactment.

Any person who is granted a valid Foreign Investment Business License after the date of enactment and intends to work in that business or company in the Republic shall apply, in the prescribed manner for a work permit.

PART XIII – LABOR (GENERAL) FUND

§151. Administration of Act.

(1) This Chapter shall be administered by the Ministry of Foreign Affairs.

(2) In this Part unless the context otherwise requires:

(a) “**Labor (General) Fund Account**” means the bank account held by the Ministry of Finance and administered by the Secretary of the Ministry of Foreign Affairs and the Secretary of the Ministry of Finance under section 152(2); and

(b) “**Labor (Bond) Fund Account**” means the bank account held by the Ministry of Finance and administered by the Secretary and the Secretary of the Ministry of Finance under section 152(2).

§152. Labor (General) Fund.

(1) There is hereby established a special revenue fund to be known as the Labor (General) Fund, which shall comprise of the sum of all fees and charges collected under the Chapter and regulations.

(2) All monies shall be paid to the Ministry of Finance and deposited into the Labor (General) Fund Account.

(3) The Labor (General) Fund Account shall be administered by the Secretary of the Ministry of Foreign Affairs and the Secretary of the Ministry of Finance for the purposes of funding of costs of the Labor Division, approved by the Cabinet, for the effective implementation and enforcement of the Chapter and regulations.

(4) The Secretary of the Ministry of Foreign Affairs shall, no later than 01 October each year, provide the Minister with a report setting out, in respect of the financial year preceding:

(a) the total amount collected and paid into the Labor (General) Fund Account;
and

(b) how the Labor (General) Fund Account was applied.

(5) The Minister must present the report to the Nitijela within 14 sitting days after its receipt.

§153. Minister to prescribe fees.

(1) The Minister shall, by regulations made under this Chapter, prescribe fees in relation to any matter or service under or arising from this Chapter.

(2) All fees prescribed under this Chapter must be paid to the Ministry of Finance and deposited into the Labor (General) Fund Account.

§154. Other charges.

(1) The Minister may, from time to time, prescribe fees for the following administrative matters:

(a) a telephone information service for which each caller pays according to their usage or on some averaged basis;

(b) the cost of mailing information;

(c) the cost of written material, unless required by regulations to be provided free of charge;

(d) access to any website operated by the Ministry;

(e) supply of forms to a person, where it is apparent that the forms are not for personal use.

§155. Fees and charges non-refundable.

All fees and charges paid under the Chapter and regulations shall be non-refundable.

PART XIV – LABOR (BOND) FUND

§156. Labor (Bond) Fund.

(1) There is hereby established a special revenue fund to be known as the Labor (Bond) Fund, which shall comprise of the sum of all bonds paid or forfeited by employers under the Chapter and regulations.

(2) Subject to section 158(1), cash bonds must be paid to the Ministry of Finance and deposited in the Labor (Bond) Fund Account. Any interest earned may be used to cover the cost of administering the bond system, and any surplus must be retained in the Labor (Bond) Fund Account.

(3) The Labor (Bond) Fund Account shall be administered by the Secretary of the Ministry of Foreign Affairs and the Secretary of Finance, and shall be applied for the purposes of funding the removal or deportation of any non-resident worker who has:

(a) unlawfully remained in the Republic after his or her work permit has expired;

or

(b) breached the conditions of his or her work permit; or

(c) been convicted of any offence under this Chapter; or

(d) whose employer has breached any of the conditions required by the Chapter or regulations.

(4) A bond must only be used for the removal or deportation of a non-resident worker to whom that bond attaches, and not in respect of any other person.

(5) The Secretary shall, no later than 01 October each year, provide the Minister with a report setting out:

(a) the amount collected for non-resident workers' bonds in the preceding year; and

(b) the total accumulated amount in the Labor (Bond) Fund Account; and

(c) how the Labor (Bond) Fund Account was applied in the preceding year; and

(d) the balance remaining in the Labor (Bond) Fund Account.

(6) The Minister must present the report to the Nitijela within 14 sitting days after its receipt. ["removal" inserted by P.L. 2009-24]

§157. Minister to prescribe bonds.

(1) The Minister shall, by regulations made under this Chapter, prescribe the amount of any bond to be paid as a pre-condition to the issuance of a work permit under this Chapter.

(2) Payment of a bond for a work permit shall be sufficient and a payment of a further bond shall not be required for a work visa.

(3) Procedures relating to the payment and refund of bonds shall be prescribed by regulations under this Chapter.

§158. Non-resident worker's bond.

(1) Every employer must pay a bond, whether in cash or evidenced by letter of insurance in respect of each non-resident worker employed.

(2) An employer who is entitled to a refund of a bond must within 12 months of the worker being repatriated, apply for a refund in the prescribed manner, or forfeit the bond to the Government.

(3) An employer entitled to a refund of a cash bond must be refunded by the Ministry of Finance within 30 days of the employer lodging proof that the non-resident worker has departed from the Republic.

PART XV – MISCELLANEOUS PROVISIONS

§159. Relationship between this Act and other applicable laws.

The Immigration Act 2006 shall govern the issuance of work visas and procedures for obtaining Removal or Deportation Orders referred to under this Chapter. Questions arising from or relating to these matters shall be governed by the provisions of that Act.

(2) Any non-resident worker in the Republic who intends to apply for a Foreign Investor Business License under the Foreign Investment Business License Act 1990 must either terminate or complete the term of their employment contract with the employer and exit the Republic before submitting an application for a Foreign Investment Business License.

(3) Employers must pay non-resident workers' fees in respect of all non-resident workers in their employment pursuant to the Non-resident Workers (Fee) Act 1987.

(4) Where applicable, financial matters in this Chapter shall be subject to the provisions of the Financial Management Act 1990 and Procurement Code 1988. ["removal" inserted by P.L. 2009-24]

§160. Regulations.

The Minister shall, with the approval of Cabinet, promulgate regulations as necessary to give effect to the provisions of this Chapter, for all or any of the following purposes:

- (a) prescribing matters of procedure in relation to any application under this Chapter ;
- (b) prescribing conditions attached to work permits;
- (c) prescribing fees and bonds in respect of any matters under this Chapter ;
- (d) prescribing forms for the purposes of this Chapter ;
- (e) prescribing Government work permit policy;
- (f) prescribing regulatory offences and penalties;
- (g) providing for such other matters as is contemplated by or necessary for giving full effect to the provisions of the Chapter and for its due administration.

§161. Repeal.

The Protection of Resident Workers Act (16 MIRC Chapter 1) is hereby repealed.

§162. Effective Date.

This Chapter shall take effect upon certification in accordance with Article IV Section 21 of the Constitution and in accordance with the Rules of Procedures of the Nitijela.

SCHEDULES

SCHEDULE 1

PROVISIONS RELATING TO THE EMPLOYMENT OF THIRD COUNTRY NATIONALS UNDER THE FEDERAL PROGRAMS AND SERVICES AGREEMENT(FPSA)

GENERAL GUIDELINES

In providing services and related programs in the Republic of the Marshall Islands pursuant to Article II of Title Two of the Compact, As Amended, any other provision of the Compact, As Amended or pursuant to any other provision of United States law, the Federal Agencies, United States contractors and local contractors shall give employment preference to citizens of the Republic of the Marshall Islands and citizens, nationals and lawful permanent residents of the United States.

Notification of intent to hire third country national.

1. The Government of the United States shall provide notification of the intent to hire a third country national, in writing, to the Government of the Republic of the Marshall Islands through the Ministry of Foreign Affairs.

2. The Government of the Republic of the Marshall Islands may expressly approve the employment of the third country national. Alternatively, the Ministry of Foreign Affairs may suggest that there are local hire personnel or qualified local contractors available with the requisite skills for the position.

Application for Labor Permit and Entry Visa.

3. Prior to the third country national entering the Republic of the Marshall Islands, the Government of the United States, U.S. Contractors and U.S. Federal Agencies responsible for

hiring that third country national shall submit an application for a work permit to the Labor Division of the Ministry of Foreign Affairs. A third country national will be required to undertake the necessary health immunization requirements and provide requested forms of health clearance.

4. Upon being issued with a labor permit, a third country national will also be issued with an entry permit, provided however that the work and entry permits shall be limited to employment by the Government of the United States, U.S. Contractors, or U.S. Federal Agencies.

5. A third country national shall not acquire any right to remain permanently in the Republic of the Marshall Islands solely as a result of being a third country contractor personnel. A third country national will, at all times, be subject to the laws of the Marshall Islands relating to the exclusion of individual, undesirable aliens.

Licenses, permits to carry out functions

6. While employed by the Government of the United States, a third country national shall not be required to obtain any license, permit or certificate or undergo any examination in connection with the performance of his or her duties while employed by the Government of the United States, provided that the third country national has the required license, permit or certification to exercise that function under United States law or professional standards.

Repatriation

7. The Government of the United States, U.S. Contractors, and U.S. Federal Agencies shall make provision to promptly repatriate third country nationals at the termination of their employment to their country of origin or elsewhere outside of the Republic of the Marshall Islands. Transportation costs attendant to the departure and removal of third country nationals shall be the responsibility of the Government of the United States.

Income and Social Security Taxes

8. Income received by third country nationals for services with or employment by Federal Agencies and income received by third country nationals from sources outside the territory of the Republic of the Marshall Islands shall be exempt from any tax, fee or other charge, including income and social security taxes imposed by the Government of the Republic of the Marshall Islands.

9. Third country contractor personnel including dependents, who are themselves third country contractor personnel, shall be subject to a personal income tax generally applicable within the Republic of the Marshall Islands up to a level of 5% of their annual income derived from their employment in the Republic of the Marshall Islands.

10. Income derived from and received by third country nationals for services rendered within the Republic of the Marshall Islands other than those specified in paragraph 9 shall be subject to the personal income tax (currently 8-12%) and social security taxes of the Republic of the Marshall Islands.

11. The Government of the United States shall be responsible for ensuring compliance with the foregoing provisions regarding any income earned by U.S. contractors or third country contractor personnel outside the scope of their employment by the United States.

SCHEDULE 2**PROVISIONS RELATING TO THE EMPLOYMENT OF THIRD COUNTRY NATIONALS UNDER THE STATUS OF FORCES AGREEMENT (SOFA)****GENERAL GUIDELINES**

Except for U.S. permanent resident aliens and U.S. nationals, all third country citizens or nationals residing in the Republic of the Marshall Islands are considered third country personnel for purposes of the SOFA.

Notification of intent to hire third country national

1. Prior to the employment of third country personnel or use of third country contractors, the Government of the United States shall notify the Government of the Republic of the Marshall Islands of the intent to hire a third country national and enquire as to the availability of local hire personnel or qualified local contractors. The Government of the United States shall provide notification, in writing, to the Government of the Republic of the Marshall Islands through the Ministry of Foreign Affairs.

2. Within 30 days, the Government of the Republic of the Marshall Islands shall, via the Ministry of Foreign Affairs, expressly approve the employment of a third country national or indicate the availability of local hire personnel or qualified local contractors. If no response is provided within 30 days, it shall be deemed that no local hire personnel or qualified local contractors are available.

3. Where the contract of employment is for a period of ninety (90) days or less within a year, the Government of the United States and U.S. Contractors are not required to notify the Government of the Republic of the Marshall Islands of the employment of a third country national. However, to enable the Ministry to maintain its records, the Government of the United States and U.S. Contractors shall notify the Ministry of Foreign Affairs of all third country personnel employed for a period of ninety days or less. Furthermore, they shall maintain written records of their efforts to seek qualified local hire personnel prior to invoking this provision, and make such records available to the Joint Labor Relations Authority and the Ministry of Foreign Affairs.

Application for labor permit and entry visa

4. Prior to a third country national entering the Republic of the Marshall Islands, the Government of the United States and U.S. Contractors responsible for hiring that third country national shall submit an application for a work permit to the Labor Division of the Ministry of Foreign Affairs. The third country national will be required to undertake the necessary health immunization requirements and provide requested forms of health clearance. Upon being issued with a work permit, the third country national will also be issued with an entry visa.

5. In application by a third country national for a work permit and entry permit shall be adjudicated expeditiously, provided however, that the work permit and entry permit shall be limited to employment at USAKA.

6. A third country national shall not acquire any right to remain permanently in the Republic of the Marshall Islands solely as a result of being a third country contractor personnel. A third country national will, at all times, be subject to the laws of the Marshall Islands relating to the exclusion of individual, undesirable aliens.

Repatriation

7. The Government of the United States and U.S. Contractors shall make provision to promptly repatriate all third country contractor personnel at the termination of their employment to their country of origin or elsewhere outside of the Republic of the Marshall Islands. Transportation costs attendant to the departure and removal of third country contractor personnel shall be the responsibility of the Government of the United States.

Income Tax

(8) Third country contractor personnel do not enjoy the tax privileges granted to U.S. personnel under paragraph 1 (c) of Article V of the SOFA.

9. Third country contractor personnel shall be subject to income tax generally applicable in the Republic of the Marshall Islands (currently 8-12%).

10. The Government of the United States shall take necessary measures to ensure that U.S. Contractors comply with the income tax laws of the Republic of the Marshall Islands with respect to the employment of third country contractor personnel.

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