REPUBLIC OF THE MARSHALL ISLANDS

NATIONAL INVESTMENT POLICY STATEMENT

2004/2005

1. Introduction

The Government of the Republic of the Marshall Islands wishes to encourage private sector development to help meet its development goals. These goals include employment generation, human resource development, generation of foreign exchange, and import substitution. It is particularly interested in encouraging private investment in its fisheries, tourism, manufacturing and agriculture sectors. The Government appreciates that the domestic private sector alone is not yet able to contribute sufficiently in this regard. It therefore is actively seeking direct foreign investment to assist the country meet its goals.

2. Investment Promotion and Facilitation

The Government understands that some investors, particularly non-citizen (i.e. foreign) investors, may need assistance to meet the requirements specified in different elements of our legislation. It established the Trade and Investment Services Division under the Ministry of Resources and Development to provide such assistance. The Division is responsible for investment promotion and the provision of investor facilitation services and policy advice to Government.

Any investor, non-citizen or citizen, may request assistance from the Trade and Investment Services Division for:

- obtaining information on
  - investment conditions and data on the cost of doing business in the country;
  - investment related authorization procedures.
- facilitation assistance in
  - arranging meetings with government officials;
  - identifying local private consulting, accounting and legal services to assist investors comply with the various approvals required in order to establish and operate their business activities;
  - following-up with government officials to ensure that investment related applications are processed efficiently.

3. Foreign Investment Registration

Foreign investment business license

The Government requires all non-citizen investments to obtain a Foreign Investment Business License (FIBL). A non-citizen investment is defined as having any level of its equity held by a non-citizen (i.e. foreign citizen, corporation, joint venture, partnership or other legal entity).

The FIBL can be obtained by making application to the Registrar of Foreign Investment in the Office of the Attorney General using a prescribed form. Where the proposed investment is not a Reserved Activity (i.e. not in an economic sector or business activity reserved solely for citizen investors), every effort is made to issue the FIBL within 7 working days of application. Where it is not clear that the proposed non-citizen investment is a Reserved Activity, the Registrar can request additional information from the applicant or the Registrar

shall clarify the position by seeking the written opinion of the Secretary of Resources and Development, who shall have sought the views of the appropriate Ministries and Agencies. If the Secretary is unable to clarify the position or form an opinion, the matter shall be finally determined or clarified by a Foreign Investment Panel composed of the Secretary of Resources and Development, the Attorney General, and a representative of the private sector appointed by the Cabinet/Majuro Chamber of Commerce. Decision as far as possible shall be taken within 15 days from the date the matter is referred to said Panel.

Once issued, the Registrar can only modify, suspend or revoke an FIBL under certain, specific circumstances e.g. the application is found to contain false or fraudulent information or the applicant bribed the Registrar or other government official.

The FIBL provides a non-citizen investor the right to invest in the Marshall Islands as long as the investment does stays within the scope of the business activity (or activities) for which it is granted. Once obtained, the non-citizen investor must comply with all the laws and regulations of the country, the same as any citizen investor.

Registration of business enterprise

The Government requires non-citizen investments to either incorporate as a domestic limited company in the Republic of the Marshall Islands, or register as a foreign entity.

Incorporating a domestic limited company can be completed at the same time as obtaining a FIBL. Instructions regarding the incorporation process are included in the FIBL application and are the same as those required of citizen investors. The application is submitted to the Registrar of Companies in the Office of the Attorney General.

Investors that do not wish to incorporate domestically are required to apply to the Registrar of Companies to register their enterprise as a foreign entity i.e. limited company, partnership, sole proprietorship. The application must be submitted using a prescribed form available from the Registrar of Companies.

The company and FIBL registers are administered for monitoring, planning and statistical purposes.

4. Foreign Investment Restrictions

In general, non-citizen investment from all countries is equally welcome and unrestricted in the Republic of the Marshall Islands. Certain sectors, however, have been reserved for citizen investment. These sectors are specified in the Reserved List attached to this statement. These exceptions mainly relate to small-scale retail and service activities, and agriculture and mariculture activities targeted at the domestic market.

5. Investment in the domestic-based fisheries sector

The Government is committed to maintaining its marine resources primarily to ensure food security. Tuna is the only resource for which industrial-scale fisheries is promoted. Priority is given to increasing the returns accruing from

this fishery by encouraging domestic-based production, processing and exports of tuna products. In coastal and lagoon areas, small-scale commercial opportunities may be supported as long as they do not jeopardize local food security. Because of the complex management issues facing both sectors the Government has introduced a range of specific strategies to regulate fisheries investment.

The Government manages its tuna fisheries in line with international, regional and sub-regional fishery management arrangements. Domestic-based fishing investments, both non-citizen and citizen owned, intending to fish for tuna in the Republic of the Marshall Islands' exclusive economic zone must negotiate a fishing license agreement with the Marshall Islands Marine Resources Authority (MIMRA). Each agreement includes a set of regionally agreed to operating requirements to ensure that fishing is done in a responsible and sustainable way. It also includes a license fee. Both the term of the agreement, and the license fee are negotiable. Most agreements are for a two-year period. License fees are negotiated based on current market prices and the extent to which investors make on-shore investments. All licenses are issued for a term of one year.

At the present time, the Government does not impose licensing requirements on processing facilities or export activities. It does, however, intend to introduce at some point in the future national seafood export regulations. The purpose of these regulations will be to ensure that domestically processed seafood products meet minimum international food safety standards.

The Government similarly requires any investor interested in exploiting or culturing marine resources in its coastal waters to obtain a license from MIMRA. Licenses are approved based on the quality of the submitted investment proposal. Proposals must demonstrate they will generate local net benefits while maintaining the health of the targeted resources and the surrounding marine environment. Because coastal resources also fall under local landowner and local government authority, approval generally requires agreement on the part of all three parties.

Guidelines are in place to regulate the culture and translocation of marine organisms. They cover the introduction of new marine species into the country, as well as, the exports of live marine organisms from the country.

6. Employment of Non-Residents

The Government has a primary objective of creating employment for, and enhancing the skill levels of, its citizens. All investments, non-citizen and citizen, are encouraged to employ citizens whenever possible. The Government is aware, however, that the citizen workforce does not necessarily include people with appropriate skills and experience in all the areas that investors may require. Consequently, the Government will grant work permits to non-resident workers to occupy highly skilled professional and technical positions.

A non-resident worker is defined as a person who is capable of performing services or labor and who is not a citizen of RMI or an immigrant alien admitted to the country for permanent residence.

Non-resident work permit

Work permits are required for non-resident workers regardless of the term of their employment contract. The Government requires investors to follow a three-step process in obtaining work permits for non-resident workers:

- First, they must notify the Chief of Labor in the Ministry of Foreign Affairs by letter of their desire to employ a non-resident worker for a particular position.
- Second, they must make an effort to hire a citizen for the position, including advertising the position in a local newspaper and on the radio.
- Third, if their efforts to hire a citizen worker are unsuccessful, they can apply, using a prescribed form, to the Chief of Labor requesting a specific non-resident worker to fill the position.

Submission of the application must wait at least 30 days following the initial advertisement for the position. In their application, the investor must show evidence of their efforts to hire a citizen worker. They also must demonstrate that the proposed non-resident worker has the skills and experience to effectively fill the position, does not possess any communicable diseases and does not have a police record. Every effort is made to provide the applicant with a decision regarding their application within 14 days of its submission.

A work permit is issued for a specific non-resident worker for a period of one year. The permit must be renewed at the end of the calendar year and can be renewed for a total of two years. It may be extended for a third year at the discretion of Cabinet.

Conditions imposed on investors employing non-resident workers

The Government requires all investors employing non-resident workers to agree in writing to:

- cover the cost of repatriating non-resident workers to the place from which they were hired;
- hire, or have already hired, and train one or more citizen workers to perform the work for which the non-resident worker is employed;
- pay a levy of US$ 0.25 per hour for every hour of work performed by the non-resident worker. The levy is paid to the Resident Workers Training Account for the purposes of training citizen workers, and repatriating non-resident workers should the need arise.

Work permit exemptions

Non-citizen investors issued with a foreign investment business license are exempted from having to obtain a work permit for themselves. Similarly, citizens of the United States, Federated States of Micronesia and Palau do not require work permits to be employed in the Marshall Islands. Non-citizen investors and nationals of the above-mentioned countries, however, are required to register with the Labor Office. The information is used solely for statistical reasons.

The Government may also issue investors work permit exemptions if they can demonstrate their investments will provide substantial economic benefits to the

country. Such exemptions are limited to export-oriented investments. Applications must be submitted to the Chief of Labor.

Entry permit and alien registration

The Government requires all non-citizen investors and non-resident workers, along with their immediate families, to obtain entry permits and alien registration cards. Entry permits and alien registration cards are issued for a period up to one year and must be renewed at the end of each calendar year.

Non-citizen investors are permitted to enter the Republic of the Marshall Islands under a 30-day visitors entry permit. They can then convert to a non-resident work permit and obtain an alien registration card once in the country. Entry permits, non-resident work permits and alien registration cards are obtained by applying to the Chief of Immigration in the Office of the Attorney General using a prescribed form. The application must include identification pages of the applicant's passport, and proof the applicant is free of AIDS, is medically fit and does not have a police record. Every effort is made to provide the applicant with a decision regarding their application within 7 days of its submission.

Non-resident workers must obtain entry permits and alien registration cards prior to their arrival in the country. Employers apply for this documentation on their behalf as part of the work permit authorization process.

7. Taxation

There are two levels of government within the Republic of the Marshall Islands with authority to impose taxes – the National Government and Local Governments. Taxes are used in both cases to raise revenues for government operations. For the purposes of taxation, both levels of government treat non-citizen investments and workers the same as their citizen counterparts.

National Government

The Government requires all investors to pay tax on the gross revenues they earn from their operations in the Republic of the Marshall Islands (Gross Revenue Tax). Investors are also required to make mandatory contributions on behalf of each worker they employ in order to support the country's social security and health insurance systems.

The Government requires investors to make application, using a prescribed form, to the Social Security Administration to register their business and obtain a Tax Identification Number. The register is used to monitor the payment of taxes.

The Government has not signed double taxation treaties with any countries. However, under the Compact of Free Association with the United States, United States citizens may be relieved of their liability to pay tax in the United States on income earned in the Republic of the Marshall Islands. To be eligible they must have resided in the Marshall Islands for at least 183 days of the taxation year.

Local Government

Local governments have the authority to levy sales taxes. They also issue business licenses for businesses operating in their areas of jurisdiction. Each

local government determines its own rates and administration procedures. Investors must contact the local government office to determine the sales tax and business licensing requirements in their area. Non-citizen investors are also required to obtain an FIBL before applying for a local government business license.

8. Investment Incentives

To help meet its private sector objectives, the Government offers investments in selected sectors exemptions from paying taxes and duties. The exemptions are equally available to both non-citizen and citizen investors and can be applied for by submitting a letter to the Minister of Finance.

Gross revenue tax exemption

Investors intending to establish in the following export-oriented sectors can be exempted from paying gross revenue tax for a five-year period:

- off-shore or deep sea fishing;
- manufacturing for export, or for both export and local use;
- agriculture;
- hotel and resort facilities.

In order to qualify for an exemption, the investor must make an investment of at least US$ 1.0 million, or provide employment and wages in excess of US$ 150,000 per annum to citizen workers.

Tax exemptions for seabed mining

The government also offers investments in seabed hard mineral mining in the country's exclusive economic zone an exemption from paying all taxes, duties and other charges except taxes on wages and salaries, individual income tax and social security contributions. In order to qualify for the exemption investors must pay the Government a royalty, production charge or combination of production charge and a share of net proceeds accruing from the mining activity.

9. Importation and Exportation

The Government applies duties on all imported goods as a mechanism for raising revenues. To minimize the burden of administering the import duty system, the Government maintains a tariff structure with a limited number of categories and relatively low rates. No duty exemptions are offered.

The Government supports and encourages all export-oriented investments. It does not apply any tax on the export of any goods or services from the Republic of the Marshall Islands. All exporters, however, are required to complete an export declaration form identifying the contents and destination of their export.

10. Finance

Investment borrowing

The Government does not impose any restrictions on non-citizen investors borrowing domestically, or on citizen investors borrowing from abroad.

Foreign exchange availability

The Republic of the Marshall Islands uses the US dollar as its currency. The Government does not impose any restrictions on domestically based banks making foreign exchange available to their customers.

Repatriation of funds

The Government encourages all investors to reinvest capital and profits in the country. It recognizes, however, that some investors may need to repatriate profits and capital to meet corporate goals. All investors, therefore, are free to repatriate profits, dividends and investment capital acquired through the operation or disposal of their investment.

The Government requires all banks in the Republic of the Marshall Islands to report transfers of funds from the country over a 24-hour period that are in excess of US$10,000. This requirement is a result of the Government's international money laundering commitments. The Banking Commission monitors this information and has the authority to investigate the financial records of individuals or businesses, as it considers necessary.

11. Land, Industrial Infrastructure and Transportation Services

Access to land

Land in the Republic of the Marshall Islands is limited in its extent and is almost entirely customarily owned. Non-citizen investors wishing to access land for development must negotiate lease agreements directly with customary groups, or in the case of alienated land, with Marshallese citizens that own the land. The Government does not impose any restrictions on the term of a lease. Annual lease rates are negotiated between the parties based on prevailing market conditions.

In recognition of the complexities of customary land ownership in the country and the difficulties for investors to acquire land for investment purposes, the Government established a Land Registration Authority in March 2003. The Authority will:

- create a voluntary register of customary land;
- establish an effective legal framework for recording all documents related to land, and registering ownership rights, leases, easements and mortgages;
- create a standard land lease agreement that can be used by interested parties.

In addition, the Government has expanded the land interests that may be mortgaged to include the ownership interest in land, as well leaseholds.

Opportunities to expand the amount of available land in the country also exist. This can be achieved through land reclamation. The Government is interested in pursuing this course of action and is exploring ways this can be done.

Access to infrastructure services

The Government is committed to providing the business community in all parts of the country with reliable telecommunications, electricity, and water and sewage services at a reasonable price. Private companies, majority-owned by government, currently have exclusive rights to provide these services. Where feasible, the Government intends to encourage competition and private investment in the provision of these services. Further liberalization in this sector will only occur as long as it does not jeopardize the current quality and extent of service.

Access to transportation services

The Government is also committed to enhancing the business community's access to frequent, reliable and affordable transportation services both within the country, and with the rest of the world.

The Republic of the Marshall Islands is a member of the Micronesian Shipping Commission. The Commission manages shipping within the Micronesian region as a whole. While the Government understands that increasing the number of shipping lines calling on the country will bring about competition, other important factors need to be carefully considered and weighed. One of such factor is the country's limited customer base. Being included with the other members of the Micronesian region increases the potential volume of cargo available to a company. The Micronesian Shipping Commission, therefore, ensures that shipping lines operating within the region are committed to meeting the interests of all its member countries.

The Government currently owns and operates most shipping and air services within the country. It encourages private investment and greater competition in these sectors where feasible.

12. Environmental Protection

The Government recognizes the unique and fragile nature of the country's terrestrial and marine environments. It is committed to ensuring that investment activities do not negatively affect their continued health.

Consequently, the Government requires environmental impact assessments (EIA) of all new development projects that may have a significant impact on the environment. This requirement applies equally to both citizen and non-citizen investors. All investors are required to notify the Environmental Protection Agency (EPA) prior to commencing any development to determine if an EIA is necessary.

The EPA is currently developing a process for reviewing development plans to determine when an EIA is required. In addition, it is developing an efficient system for conducting EIAs. The work is scheduled for completion by the end of 2004.

The EPA is also commencing work on coastal development plans that will provide a framework for environmental management within the country. These plans will organize coastal areas into zones. The zones will specify different types of development thresholds and management procedures.

The Government requires all investors to obtain permits to move earth and dispose of solid waste. In addition, investors are required to obtain approvals for how they intend to manage their trash. Both authorizations can be obtained by making application to the EPA.

13. Guarantees

The Government recognizes the investment risks taken by investors, particularly, non-citizen investors. It is for this reason that the Government guarantees that it will not expropriate non-citizen investments, or take measures that will have a similar effect, except for a public purpose and on a non-discriminatory basis and against the prompt payment of adequate and effective compensation. This guarantee for the protection of persons and their property is enshrined in the Constitution. It forms an integral part of the Government's assurance to all investors that their investments are protected within the limits of the laws of the country.

The Foreign Investment Business License Act also provides a guarantee where the activity for which the FIBL was issued is subsequently added to the Reserved List. Under these circumstances, the Registrar cannot revoke or cancel an existing FIBL if the non-citizen investment has already commenced.

Furthermore, the Government is committed to an independent and transparent judiciary system. The judiciary system is equally accessible to both non-citizen and citizen investors for the purpose of settling disputes or protecting their interests without state interference. Legislation, entitled the Arbitration Act (1980), is in place to provide a system for settling disputes.

Reserved List

The following economic sectors and business activities are reserved solely for citizen investors.

- Small scale agriculture for local markets
- Small scale mariculture for local markets
- Bakeries and pastry shops
- Motor garages and fuel filling stations
- Land Taxi Operations, not including airport taxis used by hotels
- Rental of all types of motor vehicles
- Small retail shops with a quarterly turnover of less than US$ 1,000.00 (including mobile retail shops and/or open-air vendors/take-outs)
- Laundromat and dry cleaning, other than service provided by hotels/motels
- Tailor / sewing shop
- Video rental
- Handicraft shop
- Delicatessen, Deli Shop or Food take-out