

conspiracy to commit the terrorist act. The financing of a terrorist organisation would amount to the offence of promoting, constituting, organising or financing an organisation with a view to commit criminal offences. For complicity the same punishment is due as for the perpetrator of the offence, while for conspiracy the same punishment is due as for the completed offence with a decrease of two or three degrees.

By Act III of 2002 the new offences of promoting, constituting, organising or financing an organisation of two or more persons with a view to committing criminal offences and of belonging to an organisation as aforesaid were introduced. The recruitment of members of terrorist groups and the collection of funds for such groups now constitute one of the said offences.

Territorial application

Not all the provisions of the Criminal Code apply to acts committed outside Malta by a citizen of or habitual resident in Malta or to acts committed outside Malta by a foreign national who is currently in Malta. The Maltese Courts, however, have jurisdiction over all terrorism-related offences, when, inter alia, these are committed outside Malta by a citizen of Malta or by a permanent resident in Malta as well as over the same offences when committed outside Malta by a foreigner currently in Malta.

LXVIII. MARSHALL ISLANDS²⁹

1. SUMMARY OF LEGISLATION OF THE MARSHALL ISLANDS RELATED TO TERRORISM

The Marshall Islands has enacted laws against terrorism of all kind and also established mechanisms that would counter terrorist acts all over its territory. These include legislation covering banking, money laundering, importation and exportation of weapons of mass destruction including small arms and light weapons. In particular, in 2002, the Parliament enacted the following legislations:

The Counter-Terrorism Act
The Proceed of Crimes Act
Amendinents to the Banking Act; re Money Laundering

²⁹ Transmitted to the Secretariat by that Government on 13 January 2003 (S/2003/145, enclosure) and 3 September 2003 (S/2003/1039, enclosure). Information was also provided in respect of the Marshall Islands Banking Act, 1987; the Mutual Assistance in Criminal Matters Act, 2002; the Controlled Substance Act, 2002; the Transnational Extradition and Transfer of Convicted Persons Act, 2002; the Foreign Evidence Act, 2002; the Banking Amendment Act, 2002; Public Law 2000-2, Public Law 2002-65. In addition, Bill 101 of 2002, containing the proposal for the Counter-Terrorism Act, 2002 was submitted on 28 May 2003.

Foreign Evidence Act
The Mutual Assistance in Criminal Matters Act
The Transnational Extradition and Transfer of Convicted Persons Act

2. COUNTER-TERRORISM ACT, 2002

Section 7

Unless otherwise provided, any person convicted of an offence against this Act shall where no other punishment is prescribed be punishable by a term of imprisonment of not less than 30 years and maximum term of life, or a fine of not more than USD\$1,000,000; or both such term of imprisonment and a fine; provided that any person convicted shall not be entitled to probation for an offence committed under this Act, and term of imprisonment imposed shall not run concurrently with any other term of imprisonment.

In lieu of the amount of the fine otherwise authorized by this Act, and in addition to any term of imprisonment, a defendant who derived profits or other proceeds from a crime established by this Act may be liable to fine of not more than twice the gross profits or other proceeds, where the profits or proceeds from the offence exceed the maximum assessable fine.

A person commits a crime, punishable under the subsection (1), if that person knowingly:

- (a) attempts, conspires, or threatens to commit;
- (b) participates as an accomplice in;
- (c) organizes or directs others to commit;
- (d) contributes to the commission of; any crime established by this Act.

Notwithstanding any provision of any other law, statute of limitation shall not apply in respect of a crime established under this Act.

Where there is reasonable ground to believe that detention of any person is necessary for the purpose of preventing such person from engaging in acts of terrorism; or to prevent any person from interfering with an investigation relating to suspected terrorism, any law enforcement officer, immigration officer, immigration officer, or customs official in the Marshall Islands shall have the powers to detain such person for a period of 48 hours for purposes of investigation; provided, however, such period of detention may be extended by court order for an additional 7 days, without the filing of criminal charges against such person.

The court, in imposing sentence on any person convicted of a terrorism offence, shall order, in addition to any other sentence imposed, that the person forfeit to the Marshall Islands all property described in section 8.

Section 8

Any person convicted of a terrorism offence shall be liable to forfeit to the Marshall Islands, irrespective of any other provision of law: (a) any property, real or personal, owned, possessed, or used by a person involved in the offence; (b) any property constituting, or derived from, and proceeds the person obtained, directly or indirectly, as the result of such offence; and (c) any of the property used in any matter or part, to commit, or to facilitate the commission of, such offence;

Weapons of mass destruction, plastic explosives, and nuclear material shall be seized, confiscated and forfeited to the Marshall Islands; and the Attorney General shall provide for their destruction for their destruction or other appropriate disposition.

For the purpose of forfeiture proceedings under this section, a temporary restraining order and seizure warrant may be entered upon application of the Attorney General without notice or opportunity for a hearing when an information or complaint has not yet been filed with respect to the property, where there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and exigent circumstances exist that place the life or health of any person in danger.

The provisions of this section shall be implemented without prejudice to the rights of third parties acting in good faith.

The owner or possessor of any property seized under this section shall be liable to the Marshall Islands for any expenses incurred incident to the seizure, including any expenses relating to the handling, storage, transportation, and destruction or other disposition of the seized property.

Section 15

The Attorney General may make a request on behalf of the Marshall Islands to the appropriate authority of a foreign State, or grant requests of a foreign State, for legal assistance in any investigation or proceeding relating to terrorism, or a terrorist organization. (II) Mutual legal assistance provided under this Act shall be carried-out pursuant to and in accordance with the Mutual Assistance in Criminal Matters Act, 2002.

Section 16

The Attorney General, and other law enforcement authorities and officers of the Marshall Islands designated by the Attorney General shall have the authority to share and disclose intelligence information relating to terrorism, terrorist organizations, transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical,

biological and other potentially deadly materials, and to provide early warning of such matters to the competent law enforcement authorities of:

- (1) any foreign State, that is a State Party to an international terrorism convention in respect of which the Marshall Islands is also a Party;
- (2) any foreign State that is a member of the Pacific Islands Forum;
- (3) the United States, in accordance with the duties and responsibilities of the Marshall Islands under the Compact of Free Association with the United States;
- (4) any other foreign State that is a member of the United Nations.

Section 17

The Republic of the Marshall Islands shall not grant refugee status or provide asylum or safe haven to any terrorist, or to any alleged offender.

Section 18, subsection 1

The Marshall Islands shall cooperate with the competent authorities of the United Nations and the Pacific Islands Forum in the prevention of terrorism by taking all practicable measures to prevent and counter preparations in the Marshall Islands for the perpetration of terrorism within or outside the territory of the Marshall Islands, including measures to prohibit illegal activities of persons and organizations that knowingly encourage, instigate, organize, finance, or engage terrorism.

Section 18, subsection 2c

The Marshall Islands shall cooperate in the prevention of terrorism by exchanging accurate and verified information to provide early warning of possible terrorism, in particular conducting inquiries, with respect to terrorists and members of terrorist organizations, concerning

- (a) the identity, whereabouts and activities of persons in respect of whom reasonable suspicion exists that they engage in terrorism or are members of a terrorist organization,
- (b) the movement of funds linked to persons who engage in terrorism or are members of a terrorist organization;” and

Section 18, subsection 2d

The Marshall Islands shall cooperate in the prevention of terrorism by exchanging accurate and verified information to provide early warning of possible terrorism, in particular conducting inquiries, with respect to terrorists and members

of terrorist organizations, concerning participation in research and development and exchange of information regarding methods of detection of cross border movement of terrorists and members of terrorist organizations, including detection of forged or falsified travel documents, traffic in arms, explosives, illicit drugs, contraband, or sensitive materials, and cross-border movement of nuclear, chemical, biological and other potentially deadly materials, or use of communications technologies by terrorist groups.

Section 23

The following persons shall be inadmissible to the Marshall Islands for purposes of immigration, or under a temporary visa of any kind, or otherwise, except for the purpose of the prosecution or extradition for a terrorist offense:

- (a) a foreign national
 - (i) convicted of a terrorism offense; or
 - (ii) who admits to having engaged in terrorism; or
 - (iii) as to whom there is probable cause to believe such person has engaged in terrorism;
 - (iv) who the Attorney General knows, or has reasonable ground to believe, is engaged in or is likely after entry, to engage in terrorism; or
 - (v) who has used his or her position of prominence within any country to endorse or espouse terrorism, or to persuade others to support terrorism or a terrorist organization, in a way that the Attorney General has determined undermines the efforts of the Marshall Islands to reduce or eliminate terrorism;
 - (vi) who is a representative of a terrorist organization, specified as such in regulations promulgated by the Minister or designated as a terrorist organization by the United Nations Security Council; or
 - (vii) who is a representative of a political, social, or other similar group whose public endorsement of terrorism, or terrorist organizations, the Attorney General has determined undermines the efforts of the Marshall Islands to reduce or eliminate terrorism;
- (b) A foreign who the Minister, after consultation with the Attorney General, determines has been associated with a terrorist organization or terrorism and intends while in the Marshall Islands to engage solely, principally, or incidentally in activities that could endanger the welfare, safety, or security of the Marshall Islands.

A person who is the spouse or the child of an foreign national who is inadmissible under subsection 1, shall also be inadmissible, if the activity causing the foreign national to be found inadmissible occurred within the last 5 years.

Except as otherwise provided in this section, foreign nationals who are inadmissible under this section, shall be inadmissible to be admitted to the Marshall Islands for any purpose, except, when necessary for the purposes of prosecution or extradition for a terrorism offense.

Section 24

All airlines, ships, and other entities that provide transportation, conveyance or freight services to and from the Marshall Islands shall be authorized and required to immediately report to the Attorney General through disclosure of passenger manifests and any other available means, the intended movement of suspected terrorists into or out of the Marshall Islands, and information regarding possible forged or falsified travel documents, traffic arms, explosives, illicit drugs, contraband, or sensitive materials, and cross-border movement of nuclear, chemical, biological and other potentially deadly materials.

Section 25

Except as authorized by the Cabinet, any person who knowingly, by any means, directly or indirectly, develops, produces, ships, transports, transfers, receives, acquires, retains, possesses, imports, exports, or manufactures a weapons of mass destruction, commits a crime punishable by the penalties established by section 7 of this Act; provided, however, where such was done with the intent to engage in terrorism or with knowledge that the weapon of mass destruction is intended to be used for terrorism, the maximum fine shall be fifty million United States dollar (US\$50,000,000) for natural persons and fifty million United States dollar (US\$50,000,000) for legal persons. Any person who, without lawful authority expressly given by the Cabinet of the Marshall Islands, uses or deploys a weapon of mass destruction, commits a crime punishable by the penalties established by section 7 of this Act; provided, however the maximum fine shall be increased to \$1,000,000,000 for natural persons and \$10,000,000,000 for legal persons.