

# **Wotje Atoll Development Authority Act 2002 [10 MIRC 16]**

**10 MIRC Ch. 16**

## **MARSHALL ISLANDS REVISED CODE 2004**

### **TITLE 10 - PLANNING AND ECONOMIC DEVELOPMENT**

#### **CHAPTER 16.**

#### **WOTJE ATOLL DEVELOPMENT AUTHORITY**

#### **ARRANGEMENT OF SECTIONS**

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An Act to establish the Wotje Atoll Development Authority and to provide all the powers necessary to plan for the development and implementation of all programs and projects for the social, economic and educational betterment of the people of Wotje Atoll, with responsible and appropriate review by the Government of the Republic of the Marshall Islands to ensure fiscal responsibility and consistency with the development policies of the Government of the Republic.

**[Section numbering style modified to conform to new code format]**

Commencement: October 7, 2002

Source: P.L. 2002-61

**§1601. Short Title.**

This Act may be cited as Wotje Atoll Development Authority Act, 2002. **[P.L. 2002-61, §1.]**

**§1602. Purpose.**

It is the intent of this legislation to create a vehicle by which the people of Wotje Atoll may themselves develop and implement programs and projects for the social, economic and educational betterment of the people of the Wotje Atoll, with responsible and appropriate review by the Government of the Republic of the Marshall Islands to ensure fiscal responsibility and consistency with the development policies of the Government of the Republic. **[P.L. 2002-61, §2.]**

**§1603. Interpretation.**

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

- (a) 'Government' means the Government of the Republic of the Marshall Islands;
- (b) 'Authority' means the Wotje Atoll Development Authority established under Section 1605 of this Act;
- (c) 'Board' means the Board of directors established under Section 1606 of this Act;
- (d) 'Government Agency' means any corporation or statutory body established by the Government for the purpose of development generally or with respect to any particular locality or subject;
- (e) 'a member of the Board' includes the chairman of the Board; and
- (f) 'the Republic of the Marshall Islands representative' (hereinafter referred as the 'RMI Representative') means the official to whom the subject of Wotje Atoll development has been delegated by the President of the Republic of the Marshall Islands. **[P.L. 2002-61, §3.]**

**§1604. Application of Article VII of the Constitution.**

Article VII of the Constitution shall not apply or relate to the Authority, its Board or employees. [P.L. 2002-61, §4.]

**§1605. Constitution of the Authority.**

(1) There is hereby established the Wotje Atoll Development Authority ('the Authority').

(2) The Authority:

- (a) is a body corporate with perpetual succession;
- (b) shall have a common seal;
- (c) may acquire, hold, charge, and dispose of property; and
- (d) may sue and be sued in its corporate name.

(3) Common Seal:

- (a) all courts, judges and persons acting judicially shall take judicial notice of the common seal of the Authority affixed to any document and shall presume that it was duly affixed;
- (b) the common seal of the Authority shall be in the custody of the Authority;
- (c) the common seal of the Authority may only be altered in such a manner as may be determined by the Authority;
- (d) the common seal of the Authority shall not be affixed to any document except in the presence of:
  - (i) the chairman of Board, or
  - (ii) a member of the board or an officer of the Authority authorized by the Board to act on behalf of the Chairman.

(4) The provisions of the Associations Law shall apply or relate to the Authority. [P.L. 2002-61, §5.]

**§1606. Organization and Management.**

(1) The powers and duties of the Authority are hereby vested in and shall be exercised by the Board. The Board shall consist of seven (7) members appointed by the President from the offices and nominations follows:

- (a) the RMI Representative who shall be the official representative of the Government;

- (b) the Senator representing Wotje Atoll in the Nitijela;
- (c) the Mayor of Wotje Atoll Local Government or a member of the Council [duly authorized] nominated by the Mayor;
- (d) a representative nominated by a consensus of the Wotje Atoll Local Government;
- (e) all Iroijs who are the principal landowners on Wotje Atoll;
- (f) two (2) members to be nominated by a majority of the Board appointed under Subsection 1 (a), (b), (c), (d), and (e) above. In the event the Board is unable to nominate such two (2) members, the President of the Marshall Islands shall appoint such members from among those person considered for nomination by the members. **[P.L. 2002-61, §6.]**

### **§1607. Compensation.**

- (1) Any member of the Board, other than a member appointed under Section 1606 (1)(a), (b) and (c) of this Act, or a member who otherwise hold a salaried Government office, shall be entitled to receive such compensation for his services as the Board may determine.
- (2) Any member of the Board shall be entitled to receive per diem and travel expense at such rates and upon such terms and conditions as may be determined by the Board; provided, however, that such rates shall in no event exceed the rare paid to Government employees.
- (3) The duly elected and acting Chairman of the Board shall serve without any compensation; provided, however, that the exceptions of Subsection (1) of this Section shall apply. **[P.L. 2002-61, §7.]**

### **§ 1608. Vacation of Office.**

- (1) A member of the Board vacates his office;
  - (a) upon death;
  - (b) by submitting a letter of resignation as provided for in Subsection (2) of this Section;
  - (c) by ceasing to hold that elective office which was the basis for his appointment; or
  - (d) by being removed from office as provided for in Subsection (3) of this Section.
- (2) A resignation under Subsection 1(b) of this Section shall take effect when it is received by the President or on such later date as may be agreed by the President and the member concerned.
- (3) The Board may, for cause, remove any member of the Board from office; provided, however, that in the event good cause exists, and the Board fails to take appropriate action, the President of the Marshall Islands shall remove such members.

(4)The Board, or President, in the event the Board does not take appropriate action, may suspend any member of the Board from office pending a decision for removal as provided herein above. In the event of the vacation of office by any member, the President may in accordance with Section 1605(1) of this Section, appoint another person in his place. Any person appointed in place of such member shall hold office during the period of the unexpired term of the member who he succeeds.

(5) If any member of the Board is temporarily unable to discharge the duties of his office on account of ill-health or absence from the country, or any other cause, the President may appoint another person to act in his place.

(6) Any appointment made by the President under this Section or Section 1605 of this Act, whether permanent, temporary, or following a vacation of office, shall be published in any newspaper within the Marshall Islands, including public announcement through the Government owned V7AB radio station. [P.L. 2002-61, §8.]

#### **§1609. Delegation by the Board.**

(1)The Board may, by written instrument, delegate any of its powers and functions except the power to make by-laws under Section 1612 of this Act, to any person.

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

(a) to the whole or any part of the Wotje Atoll specified in the instrument of delegation; or

(b) to all activities conducted by the Authority or in which the Authority is concerned, or to such of them as are specified in the instrument of delegation.

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

(4) A delegation under this Section shall be revocable at will by written instrument, and no such delegation shall prevent the exercise or performance or any power or function by the Board. [P.L. 2002-61, §9.]

#### **§1610. Procedures of the Board.**

Subject to this Act and to the by-laws made under Section 1613 of this Act, the Board shall determines its own procedures. [P.L. 2002-61, §10.]

#### **§1611. Disclosure of, and disqualification for, interest.**

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

(a) he shall disclose such interest at the meeting; and

(b) he shall not participate in the deliberations except as directed by the Board, or in the decision of the Board on the question.

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

(3) Unless the RMI Representative for cause otherwise directs, failure to comply with

the requirements of Subsection (1) or (2) of the Section shall not invalidate any act or proceeding of the Board. [P.L. 2002-61, §11.]

#### **§ 1612. Misconduct in Public Office.**

A failure to comply with Section 1610 of this Act shall be deemed to be misconduct in public office within the meaning of 31 MIRC, Chapter 1, Part XX, Section 146. [P.L. 2002-61, §12.]

#### **§ 1613. By-laws.**

(1) Subject to this Act, the Board shall adopt by-laws to govern and regulate the operations of the Authority and the Board.

(2) The by-laws shall provide for:

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

(b) appointment and duties of officers of the Board; and

(c) any other matters relating to the Board and the operations of the Authority which the Board may deem appropriate. [P.L. 2002-61, §13.]

#### **§1614. Staff of the Authority.**

(1) The Authority shall employ an executive officer who shall be a person with a sound knowledge and experience of commerce, industry administration, or business management; may employ such other employees, agents, consultants, attorneys, accountants or advisers as may be necessary to carry out the purpose of the Authority.

(2) Persons referred to in Subsection (1) of this Section shall be employed on such terms and conditions as may be determined by the rules and regulations of the Public Service Commission. [P.L. 2002-61, §14.]

#### **§1615. Application of Bribery Law.**

Every member of the Board and employee of the Authority shall be subject to the provisions of 31 MIRC, Chapter 1, Part VI, section 118, read mutatis mutandis with 8 MIRC, Chapter 2, Section 214, with respect to any act in the performance of his duties under the Authority, and any such act shall be deemed to be an official act within the meaning of the aforementioned provisions of the Marshall Islands Revised Code herein referred to. [P.L. 2002-61, §15.]

#### **§1616. Immunity for Official Acts.**

(1) No suit or prosecutions while lie:

- (a) against the Authority for any act which in good faith is done, or purported to be done, by the Authority under this Act, or any regulation made under this Act; or
- (b) against any member of the Board, officer, servant, or agent of the Authority for any act which in good faith is done, or purported to be done, by him under this Act, or any regulations made under this Act, or on the direction of the Authority.

(2) Any expenses incurred by the Authority in any suit or prosecution brought by or against the Authority before any court shall be paid out of the Fund of the Authority, and any cost paid to or recovered by the Authority in any such suit or prosecution shall be credited to the Fund of the Authority.

(3) Any expenses incurred by any such person as referred to in Subsection 1(b) of this Section in any suit or prosecution brought against him before any court in respect of any act which is done or purported to be done by him under this Act, or any regulations made under this Act or on the direction of Authority shall, if the court holds that such act was done in good faith be paid out of the Fund of the Authority unless such expenses are recovered by him in such suit or prosecution.

(4) No writ against person or property shall be issued against a member of the Board in any action brought against the Authority. [P.L. 2002-61, §16]

#### **§1617. Policies of the Authority.**

Subject to this Act, the Authority shall be responsible for determining its own policies for carrying out its functions; provided, however, that such policies shall be in conformity with the development policies of the Government. [P.L. 2002-61, §17.]

#### **§1618. Functions of the Authority.**

(1) The primary functions of the Authority under this Act shall be:

- (a) to investigate, study, develop, implement, and aid in the financing of social, economic, cultural and educational development programs and projects for the betterment of the inhabitants of Wotje Atoll by itself or jointly with other government or private organizations or agencies; and
- (b) to develop and implement a comprehensive Wotje Atoll Development Plan and to develop and improve the quality of life on all the inhabited islands in Wotje Atoll.

(2) For purposes stated in Subsection (1) of this Section, the Authority shall encourage or develop, and may conduct or manage activities of social, economic, cultural and educational importance to the inhabitants of the Wotje Atoll.

(3) In the conduct of any activity under Subsection (2) of this Section, the Authority shall comply with sound business and accounting practices. In the conduct of any activity authorized by this Act, the Authority shall not compete with the Government except with the approval of the Cabinet.

(4) The Authority shall also perform any other functions as required by law. [P.L. 2002-61,

**§18.]**

**§1619. Powers of the Authority.**

(1) Subject to this and any other law, the Authority shall have any powers as are necessary or convenient for carrying out its purposes.

(2) Without prejudice to the generality of the powers conferred by Subsection (1) of this Section, the Authority may:

(a) identify, promote, assist, or engage in any new or existing economic development projects designed to increase the economic welfare of the inhabitants of Wotje Atoll.

(b) acquire by lease, sublease, easement, or as otherwise allowed by law, any improved or unimproved land or interest in land, within Wotje Atoll, for purpose of development, conservation, or rehabilitation;

(c) acquire by purchase, lease sublease, easement, or as otherwise allowed by law, any improved or unimproved land or interest in land situated outside the Republic of the Marshall Islands for investment purposes;

(d) erect any building or structure required by the purposes of this Act on land belonging to or administered by the Authority;

(e) alter or reconstruct any building or property belonging to or administered by the Authority;

(f) construct any residential buildings on land belonging to or administered by the Authority;

(g) dispose of by sale, lease, sublease, or easement, any building or interest therein;

(h) dispose of by lease, sublease, or easement any land or interest therein;

(i) acquire by purchase, lease, or sublease any personal property or license which the Authority considers necessary or convenient for carrying out its purposes;

(j) dispose of by sale, or any other manner allowed by law, any personal property or license of the Authority;

(k) borrow money and accept advance, contributions, gifts, or other assistance in accordance with Section 1621 of this Act;

(l) lend money, invest or reinvest its finds from time to time and take and hold any property as security for the payment of funds loaned or invested;

(m) insure or provide for the insurance of any property, project, or operation against any or all risks;

(n) expend finds for the study and implementation of programs and projects determined by the Authority to be of social, economic, cultural and educational benefit to the inhabitants of the



Wotje Atoll;

(m) appoint agents, attorneys or accountants in the Islands or abroad; and

(n) make contracts and other instruments that the Board may consider necessary or convenient for the exercise and performance of the powers and duties of the Authority. [P.L. 2002-61, §19.]

**§1620. Wotje Atoll Development Authority Fund.**

(1) There shall be established the Wotje Atoll Development Authority Fund (in this Act also referred to as 'the Fund').

(2) The Fund shall be a fund other than the Marshall Islands General Fund, as same is defined in Article VII, Section 3, of the Constitution.

(3) The Fund shall be held in any bank or trust company as may be determined by the Board from time to time.

(4) Notwithstanding anything to the contrary, there shall be paid into the Fund:

(a) any money received by the Government in the form of foreign aid earmarked for economic, social, cultural and educational development at Wotje Atoll;

(b) any money appropriated by the Nitijela for the purposes of the Authority, either generally or relating to any particular purpose;

(c) any money received by the Authority through loans, advances, contribution, gifts, or assistance in accordance with Section 1622 of this Act;

(d) any money received by the Authority as profits, dividends or raised by the Authority through sale, mortgage, lease, sublease, easement, or otherwise from any other source, including repayment of loans and income from any business or other enterprise; and

(e) any other funding authorized by the Minister of Finance.

(5) The Authority shall separately account for each of the sources of money referred to in Subsection (4) of this Section. [P.L. 2002-61, §20.]

**§ 1621. Payments out of the Fund.**

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

(a) to carry out the purposes of the Authority;

(b) to pay the costs of any expenses of the Authority;

(c) to provide working capital, petty cash, and similar purposes; and

(d) to pay the costs of administering this Act and any other Act that confers any power or duty on the Authority.

(2) No money shall be withdrawn from the Fund except:

(a) in accordance with the law and duly adopted by-laws of the Authority; and

(b) with the approval of the Board which shall satisfy itself that the withdrawal is made in accordance with the law and the duly adopted by-laws of the Authority. [P.L. 2002-61, §21.]

### **§1622. Borrowing, etc.**

(1) With the approval of the Cabinet and subject to such conditions and within such limits as the Cabinet may impose, and subject to Subsections (3) and (4) of this Section, the Authority may borrow money from the government, a bank, or any other lending institution or individual necessary and convenient to carry out its purposes.

(2) Except as provided in Subsection (3) of this Section, the Authority may accept advances, grants, contributions, gifts, and other forms of financial assistance to carry out its purposes from any person or organization in the Marshall Islands and abroad.

(3) No money may be borrowed nor may any advance, grant, contributions, gift, and other assistance be accepted by the Authority from Government of the United States of the or any of its agencies, or from any other source outside the Marshall Islands except with the consent of the Government.

(4) Where any money is borrowed or any advance, grant, contribution, gift or assistance is received for a specific purpose, or subject to any conditions as to its use, it may be expended or used only for the purpose or subject to those conditions. [P.L. 2002-61, §22.]

### **§1623. Bank accounts.**

(1) The Authority shall open an account, or accounts with a banking institution, which is a member of the United States Federal Deposit Insurance Corporation or the United States Federal Saving & Loan Insurance Corporation.

(2) Separate accounts shall be maintained for each of the following:

(a) each business, enterprise, project, or program in which the Authority is actively engaged; and

(b) any other function which the Authority may perform and which involves expenditures by the Authority.

(3) Subject of Section 1621 (1)(c) of this Act, any money (other than petty cash withdrawn from the Fund and not immediately expended, shall be deposited in an account opened under Subsection (1) of this Section. [P.L. 2002-61, §23.]

**§1624. Accounts and Records.**

(1) The Authority shall maintain proper accounts and records, in a form satisfactory to the Secretary of Finance, for the following:

- (a) the Fund;
- (b) the expenditures of money from the Fund; and
- (c) the property and financial transactions of the Authority.

(2) The accounts which shall be submitted to the Nitijela by the Minister of Finance pursuant to Article VIII, Section 5(4), of the Constitution, shall include all accounts relating to the Authority.

(3) The accounts and records referred to in Section 1623 of this Act and subsection (1) of this Section shall be audited by the Auditor-General as provided for in Article VII, Section 15 of the Constitution. [P.L. 2002-61, §24.]

**§ 1625. Investment.**

(1) With the approval of the Board, money in the Fund, or withdrawn from the Fund in accordance with Section 1621(2) of this Act, and not immediately expended, may be invested as follows:

- (a) on deposits or on call with a bank or other financial institution as provided for in this Act; or
- (b) in any other manner authorized by the Constitution or law for investment of the Marshall Islands General Fund. [P.L. 2002-61, §25.]

**§ 1626. Reports.**

(1) The Board shall, as soon as practicable after each thirtieth day of June occurring after the commencement of this Act, prepare and furnish to the Cabinet a report on the operations of the Authority during the proceeding year, together with financial statements for that year in such form as the Secretary of Finance approves. The Authority shall also submit a copy of the report, referred to in Subsection (1) of this Section to the Auditor-General who shall report to the Cabinet as to:

- (a) whether the statements are based on proper accounts and records;

whether the statements are in agreement with the accounts and record and show fairly the financial operations and state of the affairs of the Authority;

(b) whether the receipts, expenditures, and investment of money, and the acquisition and disposal of assets by the Authority during the previous year have been in accordance with this Act; and

such other matters as the Auditor-General considers appropriate.

(2) The Cabinet shall cause the report and financial statements of the Board, together with the report of the Auditor-General, and its own comments to be submitted to the Nitijela within fifteen (15) session days of the Nitijela after receipt by the Cabinet. [P.L. 2002-61, §26.]

**§1627. Other Reports.**

Notwithstanding Section 1625 of this Act, the Cabinet may require the Authority to submit to it a report in such a form and as to such matter as the Cabinet deems appropriate. [P.L. 2002-61, §27.]

**§1628. Tax Exemption.**

(1) Subject to Subsection (2) of this Section, the income, property, and transactions of the Authority shall not be subject to any tax, rate, charge, or impost under any law.

(2) Subsection (1) of this Section shall not apply in respect to any licensing fee or similar fee that is reasonably in proportion to the administrative expenses involved. [P.L. 2002-61, §28]

**§1629. Compliance with Other Laws.**

The Authority, and any business or enterprise in which the authority is engaged, shall comply with all laws, including licensing, to be prescribed in the regulations for carrying this Act into effect. [P.L. 2002-61, §29.]

**§ 1630. Effective Date.**

This Act shall take effect on the date of certification in accordance with Article IV, Section 21 of the constitution.

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