

2012 Investment Climate Statement – Republic of the Marshall Islands

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Openness To, and Restrictions Upon, Foreign Investment

The economy of the Marshall Islands is closely linked to that of the United States. Through the Compact of Free Association, signed in 1986 and amended in 2003, the U.S. provides significant financial support and investment incentives to the country. The ultimate objective of the Compact is to promote economic self-sufficiency in the Marshall Islands, and current financial support is targeted towards strengthening health and education sectors. However, economic growth remains nominal, with government expenditures accounting for nearly 70% of the country's economy. Fisheries, ship registry services, limited small-scale agriculture, wholesale and retail services, and a limited services sector represent the majority of private sector enterprises. In 2010, the economy grew by 5.2%, driven largely by growth in the fisheries sector.

The Government of the Marshall Islands encourages foreign investment and recognizes its important role in encouraging private sector development. The government particularly encourages foreign investment in fisheries, tourism, and light manufacturing and provides certain investment incentives for foreign investors. Most local government officials encourage foreign investment, though attitudes may differ from island to island. Foreign investment in the Marshall Islands is complicated, however, by laws that prevent non-Marshallese from purchasing land. There is no public land in the country, and foreign businesses must lease land from private landowners in order to operate in the country.

Foreign investment is governed through the *Foreign Investment Business License (Amendment Act (2000))*, which established the Registrar of Foreign Investment and details restrictions on foreign investments. The Ministry of Resources and Development, Trade and Investment Division administers the law in coordination with the Office of the Attorney General.

The Republic of the Marshall Islands has a responsive judiciary that consistently upholds the sanctity of contracts. Land issues and disputes concerning leases are subject to customary law governing land tenure, and proceedings can take a protracted time to resolve.

Although the Marshall Islands generally encourages foreign investment, the *Foreign Investment Business License (Amendment) Act* established a Natural Reserved List, which restricts foreign investment in certain small-scale retail and service businesses. However, this law is not consistently enforced, and foreign investors may enter partnership agreements with local Marshallese businesses. Foreign investment is officially prohibited in the following business ventures:

- Small scale agriculture and marine culture 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 \$1,000 (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

All non-citizens wishing to invest in the Marshall Islands must obtain a Foreign Investment Business License (FIBL). The FIBL is obtained from the Registrar of Foreign Investment in the Ministry of Finance. In coordination with the Investment Promotion Unit at the Ministry of Resources and Development, the Ministry of Finance reviews the application and ensures that the business does not fall under the categories of the National Reserved List listed above. The application process usually takes 7-10 working days. The FIBL grants non-citizens the right to invest in the Marshall Islands, provided the investment remains within the scope of business activity for which the FIBL was granted.

Non-citizen business enterprises must further incorporate as a domestic limited company or register as a foreign entity. An application for a domestic limited company is submitted to the Registrar of Domestic Corporations in the Office of the Attorney General, and information regarding incorporation is included with the FIBL application.

The Marshall Islands operates the third largest ship registry in the world. Since 1990, Virginia-based International Registries, Inc., in affiliation with the Trust Company of the Marshall Islands, Inc. and Marshall Islands Maritime and Corporate Administrators, Inc., administers the

ship and corporate registry, per a joint venture agreement with the government of the Marshall Islands. Those wishing to register a vessel or incorporate a non-resident domestic corporation in the Marshall Islands should contact International Registries, Inc. directly, which maintains offices in 24 cities worldwide.

Non-citizens wishing to invest in the fisheries sector must negotiate a fishing license agreement with the Marshall Islands Marine Resources Authority (MIMRA). The agreement governs fishing and management practices to ensure sustainability and to ensure that the investment does not endanger local food security. Investors in other coastal maritime activities also require a license from MIMRA. The license application must demonstrate that the investment will lead to local net benefits while also ensuring sustainability and the preservation of environmental resources. The Marshall Islands is a party to the South Pacific Tuna Treaty, and any U.S. purse seiner operating within the Marshallese EEZ must comply with all terms of the treaty, including licensing and monitoring. The current treaty expires June 14, 2013 and negotiations to extend the treaty are ongoing.

All businesses must negotiate with local landowners and local government authorities regarding lease provisions and approval for the proposed business activities. In the case of land use and land tenure, foreign investors are not accorded the same treatment as Marshallese citizens. Non-Marshallese may not purchase land and local landowners possess full rights to their land at all times. Individual parcels of land may be owned by three or more different individuals simultaneously through the country's complex customary land-tenure system. Foreign investors are responsible to ensure that lease agreements include all relevant landowners; failure to include a landowner may result in judicial proceedings.

The Marshall Islands is in the early stages of privatizing state-owned enterprises. Currently, foreign investors are allowed to purchase shares in state-owned enterprises but may not own a majority of shares. Bidding criteria are not readily available, and the process remains largely controlled by the national government.

Measure	Year	Index/Ranking
TI Corruption Index	2011	n/a
Heritage Economic Freedom	2011	n/a
World Bank Doing Business	2012	106
MCC Gov't Effectiveness	2012	-0.81 (3%)
MCC Rule of Law	2012	0.20 (59%)
MCC Control of Corruption	2012	0.12 (55%)
MCC Fiscal Policy	2012	n/a
MCC Trade Policy	2012	n/a
MCC Regulatory Quality	2012	-0.46 (24%)
MCC Business Start Up	2012	0.972 (67%)
MCC Land Rights Access	2012	n/a
MCC Natural Resource Mgmt	2012	n/a

Conversion and Transfer Policies

The government does not impose any restrictions on converting or transferring funds associated with an investment. The Marshall Islands uses the U.S. dollar as its official currency, and there is no central bank. There are no official remittance policies and no restrictions on foreign exchange transactions. There have been no reported difficulties in obtaining foreign exchange as the vast majority of funds are denominated in U.S. dollars.

While the government encourages reinvestment of profits locally, there are no laws restricting repatriation of profits, dividends, or other investment capital acquired in the RMI. To comply with international money laundering commitments, cash transactions and transfers exceeding \$10,000 are reported by the banks to the Banking Commission, which monitors this information and has the authority to investigate financial records when necessary.

Expropriation and Compensation

All land is privately owned by Marshallese citizens through complex family lineages. Although the Government of the Marshall Islands may legally expropriate property under the country's constitution, the government has only exercised this right on one occasion. Given the importance of land ownership in customary law and practice, it is unlikely that the government will exercise this right in the foreseeable future. If a business activity is subsequently added to the reserved List, the Registrar of Foreign Investment may not cancel or revoke an existing Foreign Investment Business License if the investment has already commenced.

Dispute Settlement

The legal system in the Marshall Islands is patterned on common law proceedings as they exist in the United States. The country has a judicial branch composed of a Supreme Court, a High Court, a Traditional Rights Court, District Courts, and Community Courts. There is a full-time Supreme Court Justice, two High Court judges, three Traditional Rights Court judges, two District Court judges, and several Community Court judges serving the Marshall Islands. On certain occasions, as necessary, the Marshall Islands Judicial Service Commission recruits qualified judges on contract from the United States to serve with the Chief Justice on the Supreme Court and to temporarily fill vacancies on the High Court as there are few qualified and independent Marshallese who can fill these positions. Currently, the Chief Justice of the Supreme Court and both judges on the High Court are American citizens on limited-term contracts. The Traditional Rights Court deals with customary law and land disputes.

Both companies and individuals have access to the legal system through the High Court of the Marshall Islands. Laws patterned on U.S. laws govern most aspects of commercial transactions, and the courts have generally enforced these laws in a transparent and consistent manner. There is, however, no legal provision for bankruptcy in the Marshall Islands. A foreign investor has the right of recourse to the courts with respect to the settlement of disputes. Most investment disputes concern land issues, especially regarding lease payments. Land disputes can be very

protracted and are resolved through a combination of customary law arbitration and through the courts, per the Arbitration Act of 1980.

The Marshall Islands is not a member of, nor are there any current plans to become a Party to, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States or the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards.

Performance Requirements/Incentives

All imports are subject to import duties, and the only current duty exemptions are for renewable and alternative energy items. Import duties are generally low *ad valorem* rates on cost, insurance, and freight (CIF), and the number of tariff categories is small to facilitate administration. Goods in transit are exempt from the import tax, and the import tax on re-exported goods is refundable.

The Marshall Islands has no taxes on exports. Under the terms of the Compact of Free Association, as amended, all items grown, made or produced in the Marshall Islands are exempt from U.S. duties with the following exceptions:

- Watches, clocks and timing apparatus provided for in Chapter 91, excluding heading 9113, of the Harmonized Tariff Schedule of the United States;
- Buttons (whether finished or not finished) provided for in items 9606.21.40 and 9606.29.20 of such schedule;
- Textile and apparel articles which are subject to textile agreements; and
- Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible for the generalized system of preferences in the Trade Act of 1974.

Tuna in airtight containers exported to the U.S. is duty-free, provided it does not exceed 10 percent of total United States consumption of tuna during the previous calendar year. The Compact also stipulates that U.S. products imported to the Marshall Islands receive Most-Favorable Nation status, and the country must consult with the U.S. should they enter into a Free Trade Agreement with another country or customs territory.

The Marshall Islands offers tax and duty exemptions for investments in certain private sector industries. These investment incentives apply uniformly to both domestic and foreign investors through submission of a letter to the Minister of Finance. Tax incentives are specified by law, but have been rarely awarded, given the relative lack of large-scale investment.

Gross Revenue Tax Exemption

Investors who invest a minimum of \$1 million or provide employment and wages in excess of \$150,000 annually to Marshallese citizens are exempt from paying gross revenue tax for a five-year period in the following sectors:

- Off-shore or deep sea fishing
- Manufacturing for export, or for both export and local use
- Agriculture
- Hotel and resort facilities

Seabed Mining Tax Exemption

Investors in seabed hard mineral mining are exempt from paying all taxes, duties, and other charges (except taxes on wages and salaries, individual income tax, and social security contributions). In return, investors are required to pay the Government of the Marshall Islands a share of net proceeds accruing from the investment in the form of royalties, production charge, or some combination thereof as agreed to between the government and investor.

Right to Private Ownership and Establishment

Foreign and domestic private entities have the right to establish and own business enterprises and engage in all forms of remunerative activity. With the exception of land titles noted elsewhere in this report, private entities may freely establish, acquire, and dispose of interests in business enterprises.

Protection of Property Rights

Land Rights

Land rights are a highly complex and sometimes contentious issue in the Marshall Islands. Land ownership is through family lineage and according to social class. Paramount Chiefs (Iroij) have title to entire islands or portions of islands within an Atoll, clan elders (alaps) have title to several parcels of land under their Paramount Chiefs, and workers (dri-jerbal) have title to the parcel of land associated with their Paramount Chief on which they live. Each parcel of land is thus owned by at least three separate individual landowners, one each from the classes described above. Non-Marshallese may not purchase land, and land purchases by Marshallese are also very rare. Paramount Chiefs may grant land rights to Clan Elders and Workers, though they retain their share of ownership in all circumstances.

Available land for development is scarce, and non-citizen investors must negotiate lease agreements directly with customary groups of landowners. Land may be leased in perpetuity but no single lease agreement may exceed 50 years. Mortgages against the title of land are not permitted, but commercial lease agreements and land lease payments may be used as collateral. There is limited written documentation of titles to land in the Marshall Islands, although local citizens generally know who controls each parcel of land on their particular atoll. In 2003, the Government of the Marshall Islands established a Land Registration Authority to create a voluntary register of customary land and establish a legal framework for recording documents related to ownership rights. As of 2011, however, the Land Registration Authority has documented a very small percentage of total land titles in the country.

Intellectual Property

The Marshall Islands is not a member of the World Trade Organization, the World Intellectual Property Organization (WIPO), or any other international agreement on intellectual property rights. There is inadequate protection for intellectual property, patents, copyrights, and

trademarks. The only intellectual property-related legislation relates to locally produced music recordings.

Transparency of the Regulatory System

Regulatory and accounting systems are generally transparent and consistent with international norms. Bureaucratic procedures are generally transparent, although nepotism and customary hierarchical relationships play a role in government actions. Proposed laws and regulations are sometimes available in draft form for public comment. Generally, tax, labor, environment, health and safety, and other laws and policies do not impede investment.

Efficient Capital Markets and Portfolio Investment

The Marshall Islands is closely tied to U.S. financial markets, and foreign investors are generally able to obtain credit in U.S. dollars on the local market. However, the financial and banking sector in the country is very underdeveloped with few credit instruments and insufficient liquidity in the markets to enter and exit sizeable positions. Total bank assets in the country were estimated to be \$133 million in 2010.

There are currently two banks with branches in the Marshall Islands. The Bank of Guam is a publicly owned U.S. company with its headquarters in Guam. It complies with all U.S. regulations and is FDIC-insured. The Bank of the Marshall Islands is a privately-owned Marshallese company with headquarters in Majuro. There are no stock exchanges or financial institutions in the country. A growing number of unregulated financial service institutions have been reported, but little is known about their assets or available credit instruments.

Competition from State-Owned Enterprises (SOEs)

Nearly all major industries are controlled by state-owned enterprises (SOEs). Ministers and senators frequently serve on the boards of SOEs, and these enterprises are not subject to hard budget constraints. SOEs dominate the energy, utilities, air and sea transportation, communication, copra production, fishing sectors, and are active in hotel services. SOEs are informally obligated to consult with government officials before making business decisions, and most require substantial annual subsidies to maintain solvency. The Marshall Islands has pledged to privatize these sectors, but to date only limited privatization has occurred in the telecommunications sector although there is emerging evidence of improvements in the energy sector. Some, but not all, state-owned enterprises publish annual reports, but all SOEs are required to have their books independently audited as part of the government's overall audit.

The Marshall Islands has no sovereign wealth fund (SWF) or asset management bureau (AMB), but the Compact of Free Association established a Trust Fund for the Marshall Islands that is independently overseen by a committee composed of the United States, Taiwan, and RMI representatives.

Corporate Social Responsibility (CSR)

With the exception of some retail businesses, the banking sector, and ship registry, there is little general awareness of corporate social responsibilities among producers or consumers. Firms that pursue CSR are viewed neither favorably nor unfavorably.

Political Violence

There have been no reported incidents involving politically motivated damage to projects or installations.

Corruption

There are credible allegations regarding misuse of government funds and abuse of public office for private gain. Government procurement and transfers appear most vulnerable to corruption, and personal relationships at times play a role in government decisions. Government officials at all levels are permitted to invest in and own private businesses without regard for conflict-of-interest considerations. Foreign aid has been abused and recent audits report a number of financial irregularities connected to donor-funded activities. Bribery is a second-degree felony, whether to a domestic or foreign official, but the law has not been enforced.

The Office of the Attorney General is tasked with combating corruption and has recently begun prosecuting a number of individuals within the government for embezzlement and theft. One former Minister and several government employees have been charged in corruption-related cases, but lack of resources and political will have hampered the Office's efforts.

The RMI acceded to the UN Convention Against Corruption in September 2011. No international, regional, or local watchdog organizations operate in the country.

Bilateral Investment Agreements

The Marshall Islands has double taxation agreements with Australia and New Zealand and has an Air and Sea Transport Cooperation Agreement and Exchange of Information Agreement with the United States. The RMI also has several tax information sharing agreements, including with the United States and Australia.

The RMI does not have a bilateral investment treaty with any country.

OPIC and Other Investment Insurance Programs

The U.S. Overseas Private Investment Corporation (OPIC) provides investment insurance, financing, and loan guarantees in the RMI for qualified investors. Because the Marshall Islands uses the U.S. dollar as its national currency, there are no convertibility risks. The RMI is not a member of the Multilateral Investment Guarantee Agency.

Labor

The workforce in 2011 was estimated at 10,709, of which 44% worked in the public sector. Preliminary results from the 2010 RMI census indicate the country has a 31% unemployment rate, and a significant portion of the population remains underemployed as well. Unemployment rates among youth and young adults could be as high as 50–60%.

Under the Compact of Free Association, Marshallese citizens are entitled to live, attend school, and work in the United States visa-free as “nonimmigrant residents.” Accordingly, many skilled and professional workers migrate to the U.S. for its higher wages and standards of living. Professional, medical, management, and other special labor skills are in high demand in the Marshall Islands.

Given the lack of resident qualified workers, the Marshall Islands allows investors to employ non-resident workers provided they agree to cover the cost of repatriation, hire and train at least one citizen to perform the same work, and pay a fee of \$1,000. The National Training Council provides training resources for Marshallese workers however. The rules concerning non-resident workers do not apply to U.S. citizens and citizens of the Federated States of Micronesia, and Palau. While many consider the law discriminatory against foreign workers, employers are willing to pay the fee in order to hire technically skilled labor, which is not widely available in the country.

There is no legislation concerning collective bargaining or trade union organization. The country has a very limited history or culture of organized labor and to date. The only union, the Teachers’ Union, was formed several years ago. Since the death of the founder, the union is has become inactive. The Marshall Islands has been a member of the International Labor Organization (ILO) since 2007 but has only had limited engagement with the ILO.

Foreign Trade Zones/Free Ports

There are no geographic foreign trade zones or free ports in the RMI.

Foreign Direct Investment Statistics

The Marshall Islands has seen a significant increase in Foreign Direct Investment (FDI) during the past two years, due to increased investment in the fisheries sector, including the purchase of new purse seiners for operation in the RMI Exclusive Economic Zone. Total FDI flows, however, remain low relative to GDP. According to data from the Graduate School, total foreign direct investment was \$37.1 million in fiscal year 2010 (22% of GDP) and \$14.6 million in fiscal year 2009 (9.6% GDP). There are limited comparable data for RMI direct investments abroad, except for the RMI Compact Trust Fund which was valued at \$112.8 million in September 2010.

The major foreign direct investments are concentrated in the fisheries sector, including a tuna processing plant and fishing purse seiners, the majority of which are owned by investors from China and Taiwan.

Web Resources

Marshall Islands:

RMI Embassy to the United States: Economy and Investing:

<http://www.rmiembassyus.org/Economy.htm>

RMI Government: <http://www.rmigovernment.org/index.jsp>

U.S. Government:

U.S. Embassy Majuro, Marshall Islands: <http://majuro.usembassy.gov/>

U.S. Department of Commerce, International Trade Administration: <http://trade.gov>

OPIC: www.opic.gov

U.S. Trade & Development Agency: <http://ustda.gov>

USAID Pacific Islands Office, Port Moresby, Papua New Guinea: <http://pacificislands.usaid.gov>

Regional Organizations:

Asian Development Bank: <http://beta.adb.org/countries/marshall-islands/main>

UN International Labor Organization: <http://www.ilo.org/asia/lang--en/index.htm>