



# Marshall Islands Consolidated Legislation

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## Social Security Act of 1990 [49 MIRC Ch 1]

49 MIRC Ch 1

### MARSHALL ISLANDS REVISED CODE 2004

### TITLE 49.- SOCIAL SECURITY<sup>1</sup>

### CHAPTER 1.

### MARSHALL ISLANDS SOCIAL SECURITY ADMINISTRATION<sup>2</sup>

### ARRANGEMENT OF SECTIONS

#### Section.

#### **PART I – PRELIMINARY**

- §101. Short title.
- §102. Repeal and replacement.
- §103. Interpretation.
- §104. Coverage of this Chapter.

#### **PART II – ORGANIZATION**

- §105. Establishment of the Social Security Administration.
- §106. Incorporation of the Administration.
- §107. Board of Directors.
- §108. Management of the Administration.
- §109. Compensation.
- §110. Term of office.
- §111. Vacation of office.
- §112. Delegation of the Board.
- §113. Procedures.
- §114. Disclosure of and disqualification for interest.
- §115. Misconduct in public office.
- §116. By-laws.
- §117. Staff of the Administration.

#### **PART III -FUNCTIONS AND POWERS OF THE ADMINISTRATION**

- §118. Functions of the Administration.
- §119. Powers of the Administration.

## **PART IV - FINANCIAL MATTERS**

- §120. The Social Security Retirement Fund.
- §121. Payment into the Fund.
- §122. Payments out of the Fund.
- §123. Accounts and records.
- §124. Bank accounts.
- §125. Investments.
- §126. Actuary.
- §127. Bonding of employees.
- §128. Travel.

## **PART V - SOCIAL SECURITY**

- §129. Workers contributions.
- §130. Employers contributions.
- §131. Reports and payments of contributions.
- §132. Refunds.
- §133. The employer account number, worker social security account number and cards.

## **PART VI- BENEFIT**

- §134. Basic benefit formula.
- §135. Benefit.
- §136. Old age insurance benefits.
- §137. Disability insurance benefit.
- §138. Surviving spouse and parents insurance benefit.
- §139. The surviving child's insurance benefit.
- §140. The amount of survivors insurance benefit.
- §141. The lump sum benefit.

## **PART VIII - MISCELLANEOUS**

- §142. Payment to non-citizens overseas.
- §143. Over-payments and under-payments.
- §144. The earnings test.
- §145. Evidence of disability.
- §146. Evidence of entitlement generally.
- §147. Cost of living and wage index adjustments.
- §148. False statements and reports
- §149. Failure to report
- §150. Secrecy.
- §151. Examination and copying of records.
- §152. Mismanagement of Fund.
- §153. Penalties and interest; attorney and collection fees; and court costs.
- §154. Totalization agreements.
- §155. Taxation.
- §156. Susceptibility of benefits, contributions, and funds.
- §157. Service of process on the Administration.

§158. Lien for contributions.

§159. Retroactive benefit payments.

## **PART VII - OFFENSES AND PENALTIES**

§160. Information sharing.

§161. Regulations.

§162. Effective Date.

§163. Transitional provision.

<sup>1</sup> [With the repeal of the Health Fund Act, 1991 and the codification of the Health Care Rev. Fund Act under Title 7 MIRC Ch.3], the Heading of this Title is modified to correctly reflect the subject matter remaining under this Title (Rev.2003)]

<sup>2</sup> [see footnote 1 above (Rev.2003)]

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An Act to establish for the people of the Republic of the Marshall Islands a financially sound social security system with pension benefits and early retirement, whereby workers would be ensured a measure of security in their old age and during disability, and whereby surviving spouses and surviving children of deceased workers would be ensured support after the loss of the family's income, and for matters connected therewith and incidental thereto.

Commencement: 19 February 1990

Source: P.L. 1990-75

P.L. 1990-103

P.L. 1991-141

P.L. 1992-11

P.L. 1992-29

P.L. 1993-73

P.L. 1994-95

P.L. 1994-104

P.L. 1995-132

P.L. 1996-27

P.L. 1996-28

P.L. 1996-29

P.L. 1999-93

P.L. 2000-03

## **PART I – PRELIMINARY**

§101. Short title.

This Chapter is known and may be cited as the Social Security Act of 1990. [P.L. 1990-75, §1]

§102. Repeal and replacement.

The Social Security Act 1987, as amended, is repealed in its entirety and replaced by this Chapter. [P.L. 1990-75, §2.]

### §103. Interpretation.

In this Chapter, unless the context otherwise requires:

- (a) 'Actuary' means a member in good standing of any society, institute or organization of qualified actuaries recognized by the International Actuarial Association.
- (b) 'Administration' means the Marshall Islands Social Security Administration established under Section 105 of this Chapter.
- (c) 'Administrator' means the Social Security Administrator appointed under Section 117 of this Chapter.
- (d) 'Basic benefit' means the benefit established pursuant to Section 134 of this Chapter.
- (e) 'Bend point' means an amount, used in the basic benefit formula in Section 134 of this Chapter, at which the formula percentage for cumulative covered earnings above the amount is less than the formula percentage for cumulative covered earnings below the amount. As of the effective date of this Chapter, the bend points are eleven thousand dollars (US \$11,000) and forty-four thousand dollars (US \$44,000) of cumulative covered earnings. Thereafter, the bend points may be increased by the Board pursuant to Section 147 of this Chapter.
- (f) 'Beneficiary' means a person who is in receipt of a benefit under this Chapter.
- (g) 'Board' means the Social Security Board established under Section 107 of this Chapter;
- (h) 'Child' means a person's natural, legally adopted, customarily adopted or step child; provided the worker's parental rights with respect to the child have not been terminated by law or custom.
- (i) 'Consumer Price Index' means an index which measures on a periodic basis the cost of goods and services within the Republic. If no such formal index is available, then an index based on seventy-five (75) percent of the change in the government wage index shall be used until such formal index may be established.
- (j) 'Contributions' means those amounts of money paid into the Fund either by the worker, the self-employed worker or the employer pursuant to Sections 129 and 130 of this Chapter;
- (k) 'Covered Earnings' means the worker's or self-employed worker's gross earnings during any quarter subject to a maximum of five thousand dollars (US \$5,000) and is that amount of earnings upon which the worker, the worker's employer and the self-employed worker makes contributions to the Administration pursuant to Sections 129 and 130 of this Chapter. The maximum of five thousand dollars (US \$5,000) may be increased by the Board pursuant to Section 147 of this Chapter.
- (l) 'Cumulative Covered Earnings' means the sum of all of the covered earnings of a worker or of a self-employed worker.
- (m) 'Currently Insured' means a worker or a self-employed worker has earned at least six (6) quarters of coverage during the forty (40) quarter period ending with the quarter of retirement, disability or death, whichever first occurs.

(n) 'Custodian' means any person, firm, or corporation who is qualified and has assumed the responsibility for the possession of any or all of the Fund's assets pursuant to Section 125 of this Chapter.

(o) 'Deferred Retirement' means retirement when a worker or a self-employed worker elects to retire after meeting the requirements for normal retirement. A worker or self-employed worker must have attained or exceeded the age of sixty (60) years and one (1) month and be fully insured to be entitled to deferred retirement as set forth in Paragraph 136(1)(c) of this Chapter.

(p) 'Disability' means the inability of a person to engage in the continued performance of their duties by reason of any medically determinable physical or mental impairment.

(q) 'Early Retirement' means retirement when a worker or a self-employed worker elects to retire before meeting the requirements for normal retirement. A worker or self-employed worker must have attained the age of fifty-five (55) and be service insured to be entitled to early retirement as set forth in Paragraph 136(1)(a) of this Chapter.

(r) 'Earnings' means compensation of any kind, including without limitation any salary, wage, bonus, tip, stipend, allowance or fee, paid by the employer to or on behalf of the worker in cash or in any other form, but not including:

(i) payments made by the employer as a result of an accident or sickness of the worker (other than sick leave);

(ii) reimbursement of medical or hospitalization expenses;

(iii) payments made to or on behalf of the worker or his beneficiary from a trust or annuity; and

(iv) payments made in cash, or any form other than cash, for casual labor not exceeding one week in any month of a quarter if the work is not performed in the course of the employer's trade or business.

For purposes of this Chapter, earnings shall be computed to the nearest cent.

(s) 'Employee' means any natural person who, under the common law rules applicable in determining the employer-employee relationship, has entered into or works under a contract with an employer in any capacity, excluding that of an independent contractor, whether the contract is express or implied, oral or written, requiring the personal execution of any work or labor and includes all employees of the Government of the Republic of the Marshall Islands, Local Governments, any firm, company, partnership, corporation, association, joint venture, religious organization or other entity, and all elected officials and self-employed workers.

(t) 'Employer' means any natural person, self-employed worker, the Government of the Republic of the Marshall Islands, Local Governments, any firm, company, partnership, corporation, association, joint venture, religious organization or other entity that employs or on whose behalf are employed any employee.

(u) 'Fiscal year' means the twelve (12) calendar months ending September 30th.

(v) 'Fully Insured' means a worker or self-employed worker has earned at least one quarter of coverage for each year beginning with the later of June 30, 1968, or the year in which the worker or the self-employed worker attains the age of twenty-one (21) years and ending with the year before the year of death, attaining retirement age, or the year of becoming disabled, whichever first occurs; provided, however, that a worker or self-employed worker who dies, attains retirement age, or becomes disabled prior to October 1, 1983, must have no less than eight (8) quarters of coverage and a worker or self-employed worker who dies, attains retirement age, or becomes disabled after September 30, 1983, must have no less than twelve (12) quarters of coverage; provided, further, that the maximum number of quarters of coverage required shall be no more than thirty-eight (38) quarters.

(w) 'Fund' means the Social Security Retirement Fund established under Section 120 of this Chapter.

(x) 'Government' means the Government of the Republic of the Marshall Islands.

(y) 'Government Wage Index' means an index which measures on a periodic basis the change in the average wage of Government employees within the Republic.

(z) 'Indexed Covered Earnings' means the sum of all covered earnings for a worker or a self-employed worker increased by cost of living adjustments granted under Section 147 of this Chapter, subsequent to the date of said earnings.

(aa) 'Investment Advisor' means any person, firm or corporation who is qualified and has been engaged by the Board to manage some or all of the assets of the Fund pursuant to Section 125 of this Chapter.

(bb) 'Investment Consultant' means any person, firm or corporation who is qualified and has been engaged by the Board to provide investment advice pursuant to Section 125 of this Chapter.

(cc) 'Minimum Benefit' means the smallest monthly payment that shall be made as an old age insurance benefit, a disability insurance benefit, or a survivor's insurance benefit. As of the effective date of this Chapter, the minimum benefit shall be forty-seven dollars and fifty cents (US \$47.50) per month; provided, however, the Board may within twenty-four (24) months of the effective date of this Chapter increase the minimum benefit up to one hundred dollars (US \$ 100.00) per month upon an actuarial evaluation which states that the increase can be made without jeopardizing or impairing the financial soundness of the Fund with the benefits as set forth in this Chapter, including the early retirement, old age insurance benefits. Thereafter, the minimum benefit shall be automatically increased by the same percentage as any cost of living adjustment granted by the Board pursuant to Section 147 of this Chapter.

(dd) 'Minister' means the Minister responsible for health services.

(ee) 'Normal Retirement' means retirement when a worker or self-employed worker attains the age of sixty (60) years and is fully insured as set forth in Paragraph 136(1)(b) of this Chapter.

(ff) 'Parent' means a person's natural, legally adoptive, customarily adoptive or step parent; provided that parental rights have not been terminated by law or custom.

(gg) 'Pension Element' means 2% of indexed covered earnings, whereby lower-paid and higher-paid workers receive the same proportionate benefit.

(hh) 'Quarter' means any three calendar-month period ending on March 31st, June 30th, September 30th, or December 31st of any calendar year.

(ii) 'Quarter of Coverage' means a quarter in which:

(i) prior to the quarter preceding the effective date of this Chapter, the worker or self-employed worker receives fifty dollars (US \$50) or more in earnings and makes contributions to the Fund on those earnings pursuant to Section 129; or

(ii) on or after the effective date of this Chapter, the worker or self-employed worker receives two hundred and fifty dollars (US \$250) or more in earnings and makes contributions to the Fund on those earnings pursuant to Section 129 of this Chapter.

(jj) ' Republic' means the Republic of the Marshall Islands.

(kk) 'Self-Employed Worker' means a person who engages in any trade or business, and is deemed to have earned twice the amount of earnings paid to the highest paid worker reported by him within a quarter or the earnings he actually received, or, if there is no other worker, he shall be deemed to have earned within a quarter seventy-five (75) percent of his gross revenue for that quarter. A self-employed worker shall be deemed to be both his own employer and worker and, accordingly, is required to pay to the Fund for himself both the worker and employer contributions pursuant to Sections 129 and 130 of this Chapter respectively.

(ll) 'Service Insured' means a worker or a self-employed worker has earned at least 80 quarters of coverage.

(mm) 'Social Element' means that portion of the basic benefit formula described in Subsection 134(2) of this Chapter, whereby lower-paid workers receive a proportionately larger benefit than higher-paid workers.

(nn) 'Spouse' means a person to whom the worker or the self-employed worker is legally or customarily married.

(oo) 'United States' means the United States of America.

(pp) 'Worker' means an employee covered by this Chapter pursuant to Section 104. **[P.L. 1990-75 §3; amended by P.L. 1990-103, 2(1)-(8); P.L. 1991-141, §2(1) and 2(2); P.L. 1992-29, §2(1) and 2(2); P.L.1993-73, § 2(1)]**

#### **§104. Coverage of this Chapter.**

This Chapter applies to all employees who are citizens or nationals of the Republic and all other employees working in the Republic; provided, however, this Chapter does not apply to 'United States Personnel' which are exempt from taxes imposed by the Republic pursuant to the Compact of Free Association and its subsidiary agreements, nor does this Chapter apply to any other employees exempt from taxes imposed by the Republic pursuant to any other Act. **[P.L. 1990-75, §4; amended by P.L. 1990-103, § 2(9).]**

## **PART II- ORGANIZATION**

### **§105. Establishment of the Social Security Administration.**

The Marshall Islands Social Security Administration is hereby established. [P.L. 1990-75,§5.]

### **§106. Incorporation of the Administration.**

(1) The Administration:

- (a) is a corporation;
- (b) has perpetual succession;
- (c) may have a seal;
- (d) may enter into contracts;
- (e) may acquire, hold, charge, and dispose of property;
- (f) may sue and be sued in its corporate name; and
- (g) for the purposes of its functions, has all the powers, functions, duties and responsibilities of a corporation.

(2) The provisions of the Associations Law (52MIRC), do not apply to or in relation to the Administration. [P.L. 1990-75 §6. Subsection (2) revised to reflect the enactment of the Associations Law.]

### **§107. Board of Directors.**

(1) There shall be a Board of Directors of the Administration.

(2) The Board shall consist of a Chairman and six other members appointed by the Cabinet from among persons who are not members of the Nitijela. The composition of the Board shall be as follows:

- (a) one (1) person who is a retiree;
- (b) One (1) worker; and
- (c) Five other persons

(3) In the event of the absence or inability to act, or of the suspension under Section 111(4) of a member of the Board, the Minister may appoint a person to act as a member of the Board during the absence, inability or suspension.

(4) In making appointments to the Board, consideration shall be given to the adequacy of geographical representation and representation of employers and workers from both the public and private sectors. [P.L. 1990-75, §7][further amended by P.L. 2000-03]

### **§108. Management of the Administration.**



(1) Subject to this Chapter, the business of the Administration shall be controlled and managed by the Board.

(2) The Board has and may exercise and perform all the powers and functions of the Administration under this Chapter or any other Act giving the Administration powers or functions. **[P.L. 1990-75, §8]**

### **§109. Compensation.**

(1) Members of the Board, as such, shall not receive any stated salary for their services, but subject to Subsection (2) of this Section, members by resolution of the Board may receive a fixed sum and expense of attendance at each regular and special meeting of the Board; provided that nothing herein contained shall be construed to preclude any member from serving the Administration in any other capacity and receiving compensation therefore.

(2) A member who is an officer or employee of the Government or of the Administration is not entitled to any compensation for his services, as a member, beyond his entitlement as an officer or an employee of the Government or of the Administration. **[P.L. 1990-75 § 9 Subsection (1) amended by P.L. 1994-104, §2(1)]**

### **§110. Term of Office.**

(1) Subject to Subsection (2) of this Section and Section 112 of this Chapter, the term of office of a member of the Board is three (3) years.

(2) Notwithstanding the provisions of Subsection 107(2) of this Chapter, the members of the Board immediately prior to the effective date of this Chapter, shall, subject to the other provisions of this Chapter, serve as the Board until their terms expire on October 31, 1990. Of the members of the first Board appointed under this Chapter:

(a) two (2) shall be appointed for terms of two (2) years; and

(b) three (3) shall be appointed for terms of three (3) years.

(3) A member shall be eligible for reappointment.

(4) When an appointment is made in accordance with Section 111(5) of this Chapter to fill a vacancy, the appointment is for the unexpired portion of the term of office of the member to whose place the appointment is made. **[P.L. 1990-75, §10.]**

### **§111. Vacation of office.**

(1) A member of the Board vacates his office:

(a) On death

(b) subject to Subsection (2) of this Section, if he submits to the Cabinet his resignation from office in writing; or

(c) if he is removed from office under Subsection (3) of this Section.

(2) A resignation under Paragraph (I)(b) of this Section takes effect when it is received by the Minister, or on such later date as is agreed between the Cabinet and the member of the Board concerned.

(3) A member of the Board may be removed from office, for cause, by the Cabinet.

(4) The Cabinet may suspend a member of the Board from office pending a decision under Subsection (3) of this Section.

(5) If a vacancy occurs in the office of a member of the Board, the Cabinet may appoint a person to fill the vacancy. [P.L. 1990-75, §11.][P.L. 2000-3]

### **§112. Delegation of the Board.**

(1) The Board may by written instrument only delegate to any person any of its powers and functions except the power to make bylaws under Section 116 of this Chapter.

(2) A delegation under this Section may be made subject to limitations and conditions.

(3) A delegation under this Section is revocable by written instrument at will, and no such delegation prevents the exercise or performance of a power or function by the Board.

(4) No delegation made under this Section shall have the effect of diminishing the responsibility of the Board and of each member for the management of the Administration. [P.L. 1990-75, §12; amended by P.L. 1990-103 § 2(I0). ]

### **§113. Procedures.**

(1) Subject to this Chapter and to the bylaws made under Section 116 of this Chapter, the Board shall determine its own procedures.

(2) Without limiting the generality of Subsection (1) of this Section, the Administration shall have the authority to establish procedures consistent with the Marshall Islands Administrative Procedure Act 1979 (6 MIRC 1), for hearings before the Board to determine the legal rights of persons who assert that their rights have been directly and adversely affected by an Administration rule or action. Judicial review shall be governed by Section 117 of the Administrative Procedure Act (6 MIRC 1), as in force on the effective date of this Chapter. [P.L. 1990-75, §13.]

### **§114. Disclosure of and disqualification for interest.**

(1) If a member of the Board has a personal interest, whether pecuniary, familial, or social, in the subject matter of any question before a meeting of the Board:

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

(b) he shall take no part in the deliberations (except as directed by the Board), or in the decision, of the Board in question.

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

(3) Until the Cabinet directs otherwise, failure to comply with the requirements of

Subsections (1) and (2) of this Section does not invalidate any proceedings of the Board. [P.L. 1990-75, §14.]

### **§115. Misconduct in public office.**

A member's failure to comply with Section 114 of this Chapter, constitutes misconduct in public office for purposes of Section 146 of the Criminal Code (31 MIRC 1). [P.L. 1990-75, §15]

### **§116. Bylaws.**

(1) Subject to and consistent with the provisions of this Chapter, the Board shall make by-laws to govern and regulate the operation of the Administration and the Board.

(2) The by-laws shall provide for:

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

(b) any other matters relating to the Board and the operation of the Administration that the Board believes appropriate. [P.L. 1990-75, §16, amended by P.L. 1990-103, §2(12)]

### **§117. Staff of the Administration.**

(1) Subject to this Chapter, the Administration:

(a) shall, with the concurrence of the Cabinet, employ an Administrator; and

(b) may employ a deputy administrator, branch managers, and such other employees, attorneys, actuaries, auditors, fund advisors or managers, fund custodians, investment consultants, and other advisors and consultants as the Administration believes necessary for the performance of the functions of the Administration.

(2) Persons referred to in Subsection (1) of this Section, shall be employed on such terms and conditions as the Administration determines consistent with the laws and policies of the Government.

(3) Article VII of the Constitution of the Republic of the Marshall Islands, concerning the Public Service, shall not apply to the Administration or its employees.

(4) The Administrator shall be the chief executive officer of the Administration and, subject to the control of the Board, shall have general supervision, direction, and control of the business, officers and employees of the Administration; shall have general powers and duties of management usually vested in the office of the chief executive officer of a corporation; and shall have such other powers and duties as may be prescribed by the board or the by-laws. Without limiting the generality of the foregoing, the Administrator shall:

(a) serve as secretary to the Board;

(b) attend, unless excused by the Board, all meetings of the Board and shall submit reports on the affairs of the Administration as required by the Board;

(c) keep and maintain all books, records, files and accounts of the Administration and receive and act on all applications for benefits;

(d) prepare periodic reports relative to the operation of the Administration and an annual report as of the close of each fiscal year reflecting the results of the financial operations of the Administration and embodying all important financial and statistical data pertinent

to its operations;

(e) see that all rules and regulations of the Administration are enforced;

(f) keep the Board advised on the needs of the Administration and approve demands for payments of obligations within the purposes and amounts authorized by the Board;

(g) employ administrative, clerical, medical, or other personnel necessary for the proper operation of the Administration, and engage actuarial or other professional services to assist in the preparation of the annual reports, to advise in matters of policy and to make periodic actuarial surveys; and

(h) at such time and in such manner as the Board may direct, submit to the Board detailed estimates of the budget for the Administration for the next fiscal year. Such estimates shall include:

(i) audited accounts of the Fund for the last fiscal year;

(ii) a statement showing the estimates of income and expenditures for the current fiscal year together with any summaries, schedules and supporting data that the Administrator may deem necessary; and

(iii) a budget showing the estimated income and expenditures for the next fiscal year.

(5) The Administrator may, by written instrument, delegate to any employee any of his, powers and functions under this Chapter, the by-laws or directions from the Board, with any limitations, restrictions or conditions as the Administrator deems necessary. A delegation under this Subsection is revocable by written instrument at will, and no such delegation prevents the exercise or performance of a power or function by the Administrator. [P.L. 1990-75, §17.]

### **PART III - FUNCTIONS AND POWERS OF THE ADMINISTRATION**

#### **§118. Functions of the Administration.**

The function and duty of the Administration is to maintain and operate for the people of the Republic a financially sound social security system with social and pension benefits, whereby workers and self-employed workers will be ensured a measure of security in their old age and during disability, and whereby surviving spouses and surviving children of deceased workers or self-employed workers will be ensured support after the loss of the family's income. [P.L. 1990-75, §18.]

#### **§119. Powers of the Administration.**

(1) Subject to this Chapter and any other law, the Administration shall have, in addition to any other powers conferred by this Chapter and any other law, all powers that are necessary or convenient for carrying out its functions.

(2) Without limiting the generality of Subsection (1) of this Section, but subject to this Chapter and any other law, the Administration may:

(a) transact all business and enter into contracts and other instruments;

(b) authorize the expenditure and investment of funds;

(c) accept any gift, grant, or bequest of any money or property of any kind for the purposes designated by the grantor, if the purposes are specified as providing cash

benefits to some or all of the beneficiaries; if no such purposes are designated, the money or property is to be designated as income from investment;

(d) retain on a fee basis accountants, actuaries, attorneys, and other advisors and consultants to assist the Administration in the performance of its functions;

(e) examine and copy all books, accounts and records of all employers or self-employed workers for the purpose of ascertaining their liability to pay contributions under this Chapter; and obtain from participating employers, self-employed workers, and workers, such other information as is necessary for the proper operation of the Administration;

(f) maintain a bank overdraft account for the normal operation of the Administration;

(g) provide technical and administrative assistance to the Government with respect to the distribution of monies other than the Fund on a reimbursable or non-reimbursable basis;

(h) issue subpoenas and administer oaths as necessary and appropriate for the administration of this Chapter; and

(i) may file a quarterly report for any employer who fails to file the prescribed report within thirty (30) days after the Administration has notified him of his failure to file and may levy and assess on the employer the appropriate amount of contributions due; such assessment shall be presumed correct until it is proven incorrect by the employer; and such assessments may be amended by the Administration to correct any error. **[P.L. 1994-104, §2(2).]**

#### **PART IV - FINANCIAL MATTERS**

##### **§120. The Social Security Retirement Fund.**

(1) The Social Security Retirement Fund is hereby established.

(2) The Fund is a fund other than the Marshall Islands General Fund, within the meaning and for the purposes of Article VIII, Section 3(2) of the Constitution of the Republic of the Marshall Islands. **[P.L. 1990-75, §20.]**

##### **§121. Payment into the Fund.**

(1) There shall be paid into the Fund:

(a) any money appropriated by the Nitijela for the purposes of the Administration, either generally or in relation to any particular purpose;

(b) any money received by the Administration from the Trust Territory Social Security Retirement Fund or the Prior Service Trust Fund; and

(c) any amounts received by the Administration under or for the purposes of this Chapter or any other law, including without limitation:

(i) contribution of workers, self-employed workers, and employers;

(ii) penalties and interest

(iii) proceeds from the investments of funds; and

(iv) grants, bequests, devises, contributions and gifts.

(2) Separate accounts shall be kept within the Fund with respect to:

(a) each particular purpose for which money is appropriated; and

(b) the purposes of the Administration under this Chapter and any other acts which confer purposes and functions on the Administration. [P.L. 1990-75, § 2; amended by P.L. 1990103 §2(15).]

### **§122. Payments out of the Fund.**

(1) Payments may be made out of the Fund only for the purposes of the Administration including without limitation:

(a) payment of benefits;

(b) the costs and expenses of the Administration; and

(c) the costs of administration of the Chapter and any other Act that confers functions on the Administration.

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

(a) pursuant to budgets and procedures approved by the Board consistent with Subsection (3) of this Section; and

(b) with the authority of the Administrator who shall satisfy himself that the withdrawal is made in accordance with this Chapter, the by-laws, and any other applicable law.

(3) Except with the approval of the Nitijela, the budget for the Administration for any fiscal year shall not exceed twenty percent (20%) of the estimated income from contributions, penalties and interest, plus interest, dividends, and other income from the investments of the Fund for said fiscal year.

(4) For purposes of Article VIII, Section 5(1), of the Constitution of the Republic of the Marshall Islands, a delegation to expend money out of the Fund is given to the Administrator. [P.L. 1990-75, §22.]

### **§123. Accounts and records.**

(1) The Administration shall maintain accounts and records in accordance with generally accepted accounting principles for similar entities, as such principles are defined and occasionally modified by the Government Accounting Standards Board of:

(a) the Fund;

(b) the disposition of money paid out of the Fund; and

(c) the property and financial transactions of the Administration generally.

(2) The Auditor-General shall audit the accounts and records of the Administration within ninety (90) days after the end of each fiscal year.

(3) The Administration shall, as soon as practicable after the close of the fiscal year, submit the financial reports of the Administration and the auditor's report to the Cabinet for presentation to the Nitijela. Said accounts and records shall be made available to the public for inspection. [P.L. 1990-75 §23; amended by P.L. 1990-103, § 2(16)] [Subsection (2) amended by P.L. 1999-94]

#### **§124. Bank accounts.**

- (1) The Administration shall open and maintain as few bank accounts as is necessary for the efficient operation of the Administration's activities.
- (2) Separate accounts shall be maintained for the functions of the Administration under this Chapter or any other Act which confers functions on the Administration.
- (3) Subject to Section 125 of this Chapter, any money, other than petty cash, withdrawn from the Fund and not immediately required, shall be kept in an account opened under Subsection (1) of this Section. [P.L. 1990-75, §24.]

#### **§125. Investments.**

##### **(1) Investments of Fund.**

- (a) The reserves of the Fund in excess of the requirements for the current operations shall be invested and reinvested by or under the Authority of the Administration. The Administration shall invest its reserves to ensure the greatest return commensurate with sound financial policies.
- (b) The Administration shall have the full power to manage the investments as in its considered judgment seems most appropriate to the requirements and objectives of the Administration, including but not limited to the power to hold, sell, purchase, convey, assign, transfer, dispose of, lease, subdivide, or partition any asset held or proceeds thereof; to execute or cause to be executed relevant documents; to enter into protective agreements, execute proxies, or grant consents; and to do all other things necessary or appropriate to its position as an owner or creditor.
- (c) All proceeds and income from investments, of whatever nature, shall be credited to the account of the Fund. Transactions in marketable securities shall be carried out at the prevailing market prices.
- (d) The Administration may commingle securities and monies, subject to the crediting of receipts and earnings and charging of payments to the appropriate accounts established by this Chapter.
- (e) No member of the Board, or employee of the Administration, nor anyone in the immediate family of such member or employee, shall have any direct or indirect interest in the income, gains or profits of any investments made by the Administration, nor shall any such person receive any pay or emolument for services in connection with any investment made by the Administration. Participation in the Fund under the terms of this Chapter shall not be construed to include interest, pay or emolument within the meaning of this Paragraph.
- (f) No member, employee or agent of the Administration, nor any person in the immediate family of such member, employee or agent, shall become an endorser or surety or in any manner an obligator of investments made by the Administration, nor shall any member, employee or agent be held liable for actions taken in good faith in

performance of his duties.

(g) Investments may be held as physical securities in either bearer form or registered in the name of the Administration or the nominee of the custodian. Non-physical securities may be held on book entry at a depository institution selected by the custodian, or at one of the twelve (12) United States Federal Reserve Banks.

(h) Due bills may be accepted from brokers against payment for securities purchased, pending delivery within a reasonable period of time, of certificates representing such investments.

## **(2) Fund Custodian.**

(a) The Administration shall engage one or more fund custodians to assume responsibility for the physical possession of the Administration's assets or evidences of assets. The terms of engagement shall require that the custodian submit such reports, accountings and other information on such form and at such time as requested by the Administration; hold all assets for the account of the Administration; and act only upon the instructions of the Administration, the investment committee, or the investment consultants so authorized by the Administration.

(b) No fund custodian shall be engaged unless it:

(i) is a bank or trust company regulated by the United States Federal Reserve Board, a state authority of a state of the United States, or the United States Federal Comptroller of the Currency, as is appropriate;

(ii) has a net worth in excess of ten million dollars (US \$10,000,000),

(iii) has the capability to clear securities transactions through the United States Depository Trust Company I.D. System;

(iv) has at least ten (10) years experience as a custodian of financial assets; and

(v) has at least one billion dollars (US \$1,000,000,000) in custodial assets.

(c) The contract between the Board and the fund custodian shall be of no specific duration and may be terminated at any time by either party after thirty (30) days notice is given.

(d) the costs of services rendered under this Subsection shall be paid out of the Fund.

## **(3) Investment Advisor or Manager.**

(a) The Administration shall engage one or more investment advisors or managers to assume the responsibility and direction for the purchase and sale decisions of all assets or evidences of assets charged to them.

(b) No person, firm or corporation shall be engaged as investment advisor or manager



unless:

(i) the person, firm or corporation is a registered investment advisor or manager with the United States Securities and Exchange Commission in accordance with the United States Investment Advisors Act of 1940;

(ii) the principal business of the person, firm or corporation is of rendering investment management supervisory services;

(iii) the person, firm or corporation must have been in business for a minimum of ten (10) full years as an active advisor or manager of security portfolios; and

(iv) the person, firm or corporation certifies in writing that the assets under his/its direct investment supervision are in excess of two hundred million dollars (US \$200,000,000).

(c) The Administration, in consultation with the investment consultant, may from time to time change the operation arrangements with the investment advisors or managers in order to facilitate efficient management and timely investment actions.

(d) The contract between the Administration and the investment advisors or managers shall be of no specific duration and may be terminated at any time by either party after thirty (30) days notice is given.

(e) All costs incurred for the services provided under this Subsection shall be paid out of the Fund.

#### **(4) The Investment Consultant.**

(a) The Administration shall engage one or more investment consultants to provide ongoing assistance to the Administration in:

(i) the screening, selection, supervision, retention and termination of the investment advisors or managers, the maintenance and updating of the dynamic investment policy, asset allocation decisions, and any other matters involving the investment of the assets which the Administration may desire;

(ii) providing quarterly reports of the performance of the investment advisors or managers which must provide time weighted rates of return for a minimum of five (5) years in each asset category:

(iii) providing comparisons of the Fund's performance with that of the markets as well as comparisons with other investment advisors or managers managing similar types of assets; and

(iv) is required to make at least one report annually in person.

(b) No investment shall be made unless in the opinion of the investment consultant it is an appropriate investment for the Fund and is an authorized investment under the

provisions of this Chapter or, in the absence of such opinion, unless preceded by a resolution of the Board directing such investment.

(c) The Administration may from time to time change the operation arrangements with the investment consultant or consultants in order to facilitate efficient management and timely investment actions.

(d) The contract between the Administration and the investment consultant or consultants shall be of no specific duration and may be terminated at any time by either party after thirty (30) days notice is given.

(e) All costs incurred for the services provided under this Subsection shall be paid out of the Fund.

**(5) Authorized Investments of the Fund may be made in:**

(a) Obligations issued or guaranteed as to the principal and interest by the Government of the Republic or by the Government of the United States provided that the total market value of the investment in obligations guaranteed by the Government of the Republic shall at the time of purchase not exceed twenty-five percent (25%) of the total market value of all investments of the Administration, and further provided that the principal and interest on each obligation are payable in the currency of the United States.

(b) Obligations of any public or private entity or corporation created or existing under the laws of the Republic or of the United States or any state, territory or commonwealth thereof, or obligations of any other government or economic community which are payable in United States Dollars, or pass through and other mortgage backed securities; provided, that:

(i) the obligation is of an agency of the United States Government;  
or

(ii) the obligation is rated in one (1) of the four (4) highest categories by two (2) rating agencies nationally recognized in the United States;  
and

(iii) no investment under this heading exceeds five percent (5%) of the market value of the Fund or ten percent (10%) of the outstanding value of the issue at the time of purchase.

(c) Shares of preferred or common stocks of any corporation created or existing under the laws of the Republic or under the laws of the United States or any state, territory or commonwealth thereof: provided, that:

(i) the purchase of such shares shall be considered reasonable and prudent by the investment advisor at the time of purchase;

(ii) not more than fifteen percent (15%) of the market value of the Fund would be invested in the stock of any one corporation; and

(iii) not more than twenty-five percent (25%) of the market value of the Fund would be invested in any one industry group.

(d) Contracts and agreements supplemental thereto providing for participation in one (1)

or more accounts of a life insurance company authorized to do business in any state, territory or commonwealth of the United States, including its separate accounts, and whether the investments allocated thereto are comprised of stocks or other securities or of real or personal property or interest therein.

(e) Interests in improved or productive real property in which, in the informed opinion of the Board, it is prudent to invest funds of the Administration; provided that the total market value of these investments at no time shall exceed twenty-five percent (25%) of the total market value of all investments of the Administration. For the purpose of this Subsection, 'real property' includes any property treated as real property by law, including any improvements thereto. The investments in improved or productive real property may be made directly or through pooled funds, including common or collective trust funds of banks or trusts, or other pooled funds invested on behalf of the Administration by the investment advisors or managers retained by the Administration.

(f) Other obligations and securities in which in the informed opinion of the Administration it is prudent to invest funds of the Administration, whether or not the securities or stocks are expressly authorized by or qualified under the foregoing Paragraphs; provided that the total market value of the investments under this Paragraph shall at no time exceed ten percent (10%) of the total market value of all the investments of the Administration. **[P.L. 1990-75, §25 Paragraph numbering modified for consistency with the Code. Amended by P.L. 1990-103, § 2(17)-(22); P.L. 1991-141, §2(3).]**

#### **§126. Actuary.**

(1) The Administration shall as it deems appropriate and necessary, engage on such terms and conditions as the Administration may deem fit, an actuary to examine and advise the Administration.

(2) The Actuary shall make actuarial valuations of the Administration not less frequently than once every three (3) years after the effective date of this Chapter.

(3) The Actuary shall prepare and submit to the Administration a report on the actuarial valuation. The Administration shall, in turn, submit the report to the Cabinet for presentation to the Nitijela, along with any recommendations for changes within any of the provisions of this Chapter. **[P.L. 1990-75, §26.]**

#### **§127. Bonding of employees.**

The Administration shall bond its directors, officers and employees in such cases and in such amounts as is deemed prudent by the Administration. **[P.L. 1990-75, §27.]**

#### **§128. Travel.**

The Administration shall adopt procedures for compensating its officers, employees, and agents for travel expenses which are consistent with the law and policies of the Government. **[P.L. 1990-75, §28.]**

### **PART V - SOCIAL SECURITY CONTRIBUTIONS**

#### **§129. Worker's contributions.**

(1) A worker or a self-employed worker shall contribute to the Administration an amount equal to the following percentage of such worker's covered earnings:

(a) from the effective date of this Act up to June 30, 1995 - 5%;

(b) from July 1, 1995 up to June 30, 2000 6%. The one percent (1%) increase shall be transferred to the Social Security Health Fund; and

(c) from July 1, 2000, and thereafter - 7%.

(2) The worker's contributions to the Fund shall be collected by the employer of the worker, by deducting the amount of the contributions due from the worker's earnings, and the employer shall remit the same to the Administration along with the employer's contributions.

(3) Every employer who is required to deduct the worker's contributions is liable for their payment to the Administration and shall be indemnified by the Administration against any claim or demand by any worker for the amount of such payment. **[P.L. 1990-75, §29; Subsection (1) amended by P.L. 1996-27, §2.]**

### **§130. Employer's contributions.**

Every employer and self-employed worker shall contribute to the Fund, out of his own funds, an amount equal to the following percentages of his worker's covered earnings:

(a) from the effective date of this Act up to June 30, 1995-5%;

(b) from July 1, 1995 up to June 30, 2000 6%. The one percent (1%) increase shall be transferred to the Social Security Health Fund; and

(c) from July 1, 2000, and thereafter - 7% **[P.L. 1990- 75, §30; amended by P.L. 1996-27, §2.]**

### **§131. Reports and payments of contributions.**

No later than the tenth (10th) day after the end of each quarter, every employer, including every self-employed worker, shall:

(a) submit to the Administrator a report of the wages and salaries paid by him and the contributions due from him under Sections 129 and 130 of this Chapter; and

(b) pay into the Fund the contributions due. **[P.L. 1990-75, §31; amended by P.L. 1990-103, §2(23).]**

### **§132. Refunds.**

(1) If a worker contributes on earnings in excess of the covered earnings, whether from one (1) or more employers, and his contributions are withheld and paid to the Administration, the excess of the workers' contributions during the four (4) quarters ending December 31st shall be refunded by the Administration to the worker within ninety (90) days after that date.

(2) No refund shall be made to any worker of any amount less than five dollars (US \$5.00).

(3) No refund shall be granted to the employers of workers or self-employed workers referred to in Subsection (1) of this Section, in respect of contributions paid by such employers or self-employed workers on account of wages paid by them to the workers, other than to correct an error. **[P.L. 1990-75, §32.]**

### **§133. The employer account number, worker social security account number, and cards.**

(1) The Administration shall assign to each employer and self-employed worker an identification account number, and to each worker and self-employed worker a social security account number, and cards bearing both names and the numbers of each employer, worker and self-employed worker. The Administration may assign and issue to each citizen and legal resident a social security account number and card.

(2) The Administration shall maintain permanent registers of employers' and workers' account numbers with necessary particulars. [P.L. 1990-75, §33; amended by P.L. 1991-141, §2(4).]

## PART VI - BENEFITS

### §134. Basic benefit formula.

With respect to a worker or a self-employed worker, 'basic benefit' means one twelfth (1/12) of the sum of the pension element and the social element calculated as follows:

(a) pension element: two percent (2%) of indexed covered earnings, plus

(b) social element: fourteen and five tenths percent (14.5%) of the first eleven thousand dollars (US \$ 11,000) of cumulative covered earnings, plus seven-tenths percent (0.7%) of cumulative covered earnings in excess of eleven thousand dollars (US \$11,000) but not in excess of forty-four thousand dollars (US \$44,000). The \$11,000 and \$44,000 bend points may be increased from time to time by wage index adjustments granted by the Board pursuant to Section 147 of this Chapter. [P.L. 1990-75, §34; amended by P.L. 1991-141, §2(5).]

### §135. Benefit.

(1) No person shall receive at the same time more than one (1) type of benefit as specified in Sections 136 through 139 of this Chapter, and no person shall receive at the same time more than one benefit of any type. Every person shall, by written notice to the Administrator, elect the benefit he wishes to receive.

(2) If no election is made or until an election is made under Subsection (1) of this Section, the beneficiary shall receive the benefit that receives the highest return subject to the earnings test. [P.L. 1990-75, §35.]

### §136. Old Age Insurance Benefits.

(1) Entitlement to Old Age Insurance Benefits.

(a) A service insured worker or self-employed worker, on or after his attainment of fifty-five (55) years of age, and after filing an application, shall be entitled to an early retirement, old age insurance benefit payable every month beginning with the month those conditions were satisfied and ending with the month preceding the month of death.

(b) A fully insured worker or self-employed worker, upon his attainment of sixty (60) years of age, and after filing an application, shall be entitled to a normal retirement, old age insurance benefit payable every month beginning with the month of his attainment of sixty (60) years of age and ending with the month preceding the month of death; provided, the worker or self-employed worker has not applied for and received early retirement, old age insurance benefits.

(c) A fully insured worker or self-employed worker, on or after his attainment of sixty (60) years and one (1) month of age, and after filing an application, shall be entitled to a deferred retirement, old age insurance benefit, payable every month beginning with the

month those conditions were satisfied and ending with the month preceding the month of death; provided, the worker or self-employed worker has not applied for and received early retirement old age insurance benefits or normal retirement old age insurance benefits.

(2) Subject to Section 144 of this Chapter, the amount of old age insurance benefits shall be as set forth in this Subsection.

(a) The monthly amount of the early retirement, old age insurance benefit shall be the basic benefit reduced by one-half (1/2) percent for each complete month that the date of early retirement precedes the date the worker or the self-employed worker attains the age of sixty (60) years, but not less than the minimum benefit.

(b) The monthly amount of the normal retirement, old age insurance benefit shall be the basic benefit, but not less than the minimum benefit.

(c) The monthly amount of the deferred retirement, old age insurance benefit shall be the basic benefit increased by one-half (1/2) percent for each complete month that the date of deferred retirement follows the date the worker or the self-employed worker attains the age of sixty (60) years, but not less than the minimum benefit.

(3) If a person who is receiving an old age insurance benefit accepts covered employment, the benefit shall be recomputed at the end of the calendar year and the recomputed benefit shall be paid beginning with the first month of the subsequent calendar year.

(4) It shall be the duty of such a beneficiary to notify the Administrator immediately after he accepts covered employment, of the fact of such employment. [P.L. 1990-75, §36; amended by P.L. 1990-103]

### **§137. Disability insurance benefit.**

(1) A worker or a self-employed worker who is currently and fully insured and becomes disabled, and after filing an application, shall be entitled to receive a monthly disability insurance benefit beginning with the first month of such disability, and ending with the month preceding the month of his recovery or his death, whichever first occurs.

(2) Subject to Sections 144 and 145 of this Chapter, and subject to Subsections (3) and (4) of this Section, the monthly benefit shall be the basic benefit, but not less than the minimum benefit.

(3) If the disabled worker or self-employed worker is receiving a periodic workmen's compensation benefit, the disability insurance benefit shall be reduced, in any month, by the amount that the sum of the workmen's compensation benefit for that month plus the basic benefit exceeds eighty percent (80%) of 1/12 of the highest annual earnings on which contributions were made in the period consisting of the year in which the disability occurred and the preceding five (5) years.

(4) If a workmen's compensation benefit was commuted to a lump sum, it shall be treated as if the periodic benefit which was originally payable was in fact paid. [P.L. 1990-75, §37.]

### **§138. Surviving spouses insurance and parent's benefit.**

(1) The surviving spouse and the surviving parents of a worker or a self-employed worker who is fully insured or currently insured at the time of death, shall, after filing an application, be entitled to a surviving spouse's or parent's, as the case may be, insurance benefit payable every month beginning with the month of death of the deceased worker and ending, in the case of a surviving spouse, with the

month preceding the month of death or remarriage of the surviving spouse, and in the case of surviving parents, ending with the month preceding the month of death of the last surviving parent, whichever first occurs.

(2) **[deleted by P.L. 1995-132.][P.L. 1990-75, §38; amended by P.L. 1991-141, § 2(6), P.L. 1993-73, §2(2)-(4); amended in its entirety by P.L. 1995-132, § 2. See Appendix B, Known Drafting Errors.]**

### **§139. The surviving child's insurance benefit.**

(1) Every surviving child of a worker or a self-employed worker who is fully or currently insured at the time of death, shall, after filing an application, be entitled to a monthly surviving children's insurance benefit beginning with the month of the death of the worker or the self-employed worker and ending with the month preceding the month of the child attaining eighteen (18) years of age, the child's marriage, or the child's adoption by another parent, except for adoption subsequent to the death of the worker or self-employed worker by an aunt, uncle stepparent, or grandparent; provided, that the child was dependent upon the worker or self-employed worker.

(2) Notwithstanding the attainment of eighteen (18) years of age as referred to in Subsection (1) of this Section, the child shall be entitled to the benefit under this Section until he attains the age of twenty-two (22) years if he is a bona fide student; or, if he is disabled before the age of twenty-two (22) years the benefit shall be payable during the period of such disability up to the month preceding the month of recovery or death, whichever first occurs.

(3) Subject to Sections 140 and 144 of this Chapter, the monthly amount of the benefit a surviving child is entitled to receive shall be twenty-five percent (25%) of the amount of the basic benefit computed on the earnings of the deceased worker or self-employed worker.

(4) For purposes of this Section, a child shall be deemed to be or have been, at any relevant time, dependent upon a worker or self-employed worker if the worker or self-employed worker provided regular and substantial support to or on behalf of the child. A natural or legally adopted child is presumed to be dependent upon the worker parent, absent evidence to the contrary. A customarily adopted child or a stepchild is dependent upon the worker or self-employed worker only if at the time of the worker's death the child had lived in the worker's home continuously for one year and during that time the customarily adopting parent or step-parent was contributing at least one-half of the child's support.

(5) A child's benefits shall be paid to the individual upon whom the child is currently dependent. **[P.L. 1990-75, §39; amended by P.L. 1991-141, §2(7); P.L. 1994-104, §2(3).]**

### **§140. The amount of survivor's insurance benefit.**

(1) Prior to the application of Section 144 of this Chapter and subject to Subsection (3) of this Section, the total monthly survivor's insurance benefit payable to both the surviving spouse and parents (if so designated in accordance with Section 138(1)) and the surviving children of the deceased worker or self-employed worker shall not exceed the basic benefit applicable to the worker or the self-employed worker.

(2) Prior to the application of Section 144 of this Chapter, the combined monthly survivor's insurance benefit shall not be less than the minimum benefit.

(3) Where more than one person is entitled to the survivor's insurance benefit, the payments shall be made to all such beneficiaries proportionately to the amount of the total benefits due. **[P.L. 1990-75, §40; amended by P.L. 1993-73, §2(5).]**

### **§141. The lump sum benefit.**

(1) If a worker or self-employed worker permanently ceases to work for reason of old age, illness, physical disability or any other reason which has an adverse effect on the ability of such person to perform his or her duties, and rights to insurance benefits under Sections 36 through 39 of this Act with respect to the worker or self-employed worker have not otherwise accrued, a lump sum benefit equal to four percent (4%) of his or her cumulative covered earnings the ('Lump Sum Benefit') shall be paid to such worker in a lump sum payment.

(2) If after a worker or a self-employed worker dies and all rights to survivor's insurance benefits with respect to the worker or the self-employed worker have ceased, a lump sum benefit equal to four percent (4%) of his cumulative covered earnings, less the amount of the benefits actually received by the worker or the self-employed worker, or his survivors, if any, shall be paid as set forth in Subsections (3) and (4) of this Section.

(3) The lump sum benefit payable under Subsection (2) shall be paid to the spouse, and in the absence of the spouse, shall be paid to the children in equal shares, or guardian, if such children are minors, and in the absence of both, shall be paid to the parents in equal shares.

(4) In the absence of any of the persons referred to in Subsection (3), the lump sum benefit shall be paid to the persons specified under the prevailing laws and customs with respect to intestate secession in the domicile of the deceased worker's or the deceased self-employed worker's at his death. **[P.L. 1990-75, §41; repealed and replaced by each of P.L. 1994-95, §2, and P.L. 1994-104, §2(4); Subsection (1) amended by P.L. 1996-28, §2.]**

#### **§142. Payment to non-citizens overseas.**

(1) Unless modified by a totalization or bilateral agreement, no more than six (6) months of benefit payments under this Chapter shall be paid to any beneficiary who is not a citizen or national of the Republic while the beneficiary has been outside of the Republic; provided, however, payments shall be made to citizens and nationals of the Federated States of Micronesia, the Republic of Palau, and the United States as if they were citizens or nationals of the Republic, if the Federated States of Micronesia, Republic of Palau, and the United States, respectively, extend reciprocal benefits to citizens of the Marshall Islands.

(2) Notwithstanding any other provisions of this Chapter, this Chapter shall not operate to reduce or otherwise impair the benefits being paid to the beneficiaries on the day before the effective date of this Chapter. **[P.L. 1990-75, §42; amended by the P.L.1990-103, §2(25).]**

#### **§143. Over-payments and under-payments.**

(1) Subject to Subsections (2) and (3) of this Section, any over-payment or underpayment of benefit to a beneficiary shall be deducted from or added to any subsequent payment of benefit to or in respect of such beneficiary, and in any event it shall, if necessary, be deducted from or added to any subsequent payment of lump sum benefit.

(2) If there are, at the time of deduction or addition, more persons than one whose survivor's benefit may be affected by reason of the over-payment or under-payment, the necessary adjustment shall be made to all such benefits proportionally to the amount of the total benefits.

(3) No deduction shall be made when the adjustment would be against equity and good conscience.

(4) A deduction under Subsection (1) of this Section may be made by installments, and in such an event the provisions of Subsection (1) of this Section shall apply as if each installment related to a separate over-payment.

(5) Nothing in this Section affects the liability or the right of a worker or a self-employed worker, or



his estate, to any amount of an over-payment or under-payment that is not adjusted in accordance with the Section. **[P.L. 1990-75, §43.]**

#### **§144. The earnings test.**

Where any of the provision of this Part provides that a benefit is subject to this Section, a worker or a self-employed worker who is in receipt of that benefit and at the same time is in covered employment, shall have his quarterly benefit reduced by one dollar (US \$1.00) for every three dollars (US \$3.00) earned during that quarter in excess of fifteen hundred dollars (\$1,500). The reduction shall be made as soon as practicable after the quarter in which the earnings were earned. Notwithstanding the foregoing, the earnings test is not applicable in the quarter in which the worker or the self-employed worker who is receiving the benefit attains sixty-two (62) years of age, or in any subsequent quarter thereafter. **[P.L. 1990-75, §44 amended by P.L. 1991-141, § 2(8); P.L. 1996-29, §2.]**

#### **§145. Evidence of disability.**

- (1) The Administrator may, at any time, require a beneficiary who is receiving a disability insurance benefit under this Chapter to provide evidence necessary to confirm his entitlement to that benefit.
- (2) Unless otherwise waived by the Administrator, at least once in every three (3) year period the Administrator shall require the beneficiary to undergo a medical examination by a physician or physicians selected by the Administrator. If the examination indicates that the beneficiary is no longer disabled as defined in this Chapter, payment of the disability insurance benefit shall be discontinued.
- (3) For purposes of this Section, recovery from disability shall mean the beneficiary may once again engage in the performance of the duties performed prior to the determination of the disability.
- (4) If the beneficiary refuses to submit to a medical examination or provide other evidence as required by the Administrator, the disability insurance benefit shall be discontinued. If the refusal continues for two (2) years, all rights to the disability insurance benefit shall be permanently revoked.
- (5) In the case of a beneficiary who is below the age of eighteen (18) years, a requirement under Subsection (1) of this Section, may be addressed to a parent or guardian of the said minor beneficiary.
- (6) Absent evidence of fraud or other wrong doing, a disability insurance benefit shall not be discontinued retroactively.
- (7) With respect to applicants residing within the Republic, all medical examinations shall be performed within the Republic by a physician or physicians engaged and compensated by the Social Security Administration for such duties.
- (8) A final determination must be made on each complete application for disability coverage within six months or the application shall be deemed approved. With respect to applicants residing within the Republic, all questions relating to review and determination upon the application shall be made within the Republic, no recommendations from off-island sources may be considered.
- (9) Any regulations or rules not in conformance with the provisions of this Chapter shall be considered null and void. **[P.L. 1990-75, § 45; amended by P.L. 1992-29, §3.]**

#### **§146. Evidence of entitlement generally.**

- (1) The Administrator may, at any time, require a person receiving any benefit under this Chapter to provide evidence to the satisfaction of the Administration of his entitlement to such benefit.
- (2) If the evidence required under Subsection (1) of this Section, is not produced within the time fixed by the Administrator, he may suspend payment of the benefit until such time as the required evidence

is produced.

(3) In the case of a beneficiary who is below the age of eighteen (18) years, a requirement under Subsection (1) of this Section, may be addressed to a parent or guardian of the said minor beneficiary. **[P.L. 1990-75, §46.]**

#### **§147. Cost of living and wage index adjustments.**

(1) Once every two (2) years after the effective date of this Chapter, the Administration shall review changes in the consumer price index and, based on the Administration's informed opinion, grant a cost of living adjustment, provided that in no event shall the cost of living adjustment so granted exceed the increase in the consumer price index over the previous two (2) year period. The cost of living adjustment so granted shall be used to increase the indexed covered earnings and the minimum benefit for all workers.

(2) On a periodic basis to be determined by the Administration, the Administration shall review the changes in the government wage index and, based on the Administration's informed opinion, grant a wage index adjustment, provided that in no event shall the wage index adjustment so granted exceed the increase in the government wage index since the later of the effective date of this Chapter or the date the previous wage index adjustment was granted. The wage index adjustment shall be used to increase the basic benefit formula bend points and/or the maximum amount of covered earnings for the Administration. **[P.L. 1990-75, §47.]**

### **PART VII - OFFENSES AND PENALTIES**

#### **§148. False statements and reports.**

Any person who knowingly makes a false statement or declaration, or falsifies any report to or record of the Administration in an attempt to defraud the Administration, is guilty of an offense and shall upon conviction be liable to imprisonment for a period of not more than one year or to a fine of not more than two thousand dollars (US \$2,000), or both. **[P.L. 1990-75, § 48.]**

#### **§149. Failure to report.**

(1) Any employer, or self-employed worker, who fails to report any amount of earnings paid or fails to pay any amount of contributions due to the Administration is, at the discretion of the Administration, liable for a penalty of not more than one hundred percent (100%) of the total amount of the contributions withheld, including worker's and employer's shares, or two hundred and fifty dollars (US \$250), whichever is greater.

(2) Any employer or self-employed worker who knowingly fails to report any amount of earnings paid or knowingly fails to pay any amount of contributions due, including penalties and interest to the Administration is, in addition, guilty of an offense and shall upon conviction be liable for a fine of not more than five thousand dollars (US \$5,000).

(3) For purposes of this Section, the terms 'employer' and 'self-employed worker' include any director, member, officer, employee, or agent of an employer or self-employed worker who as such is responsible for seeing that quarterly reports are filed or contributions are paid. **[P.L. 1 990-75, §49 amended by P.L.1990-103, §2(26), deleting the last comma in Subsection (2); Subsection (3) added by P.L 1994-104, §2(5).]**

#### **§150. Secrecy.**

If a member of the Board or any employee of the Administration, provides information concerning a worker, self-employed worker, employer, or person receiving benefits under this Chapter that has come to his knowledge by virtue of his office or employment to any one other than the worker,

self-employed worker, employer, or beneficiary, he is guilty of an offense, unless such information is provided:

- (a) for the purposes and functions of this Chapter;
- (b) as required by an order of a court;
- (c) as authorized by the Board; or
- (d) pursuant to Section 160 of this Chapter.

A person guilty of an offense under this Section shall upon conviction be liable to imprisonment for a period of not more than one year, or a fine of not more than two thousand dollars (US \$2,000), or both. [P.L. 1990-75, §50.]

#### **§151. Examination and copying of records.**

Any person who willfully fails to allow the Administration to examine and copy books, accounts, records and other information pursuant to its authority under Section 119(2)(e) of this Chapter, shall be guilty of an offense and shall upon conviction be liable to a term of imprisonment not exceeding one year, or to a fine of not more than five thousand dollars (US \$5,000), or both. [P.L. 1990-75, §51.]

#### **§152. Mismanagement of Fund.**

Any person who has a fiduciary relationship with the Fund and who is found to have mismanaged the Fund, whether by malfeasance or misfeasance, shall be guilty of an offense and shall upon conviction be liable to a term of imprisonment not exceeding fifteen (15) years, or to a fine of not more than one hundred thousand dollars (US \$100,000), or both. [P.L. 1990-75, §52.]

#### **§153. Penalties and interest; attorney and collection fees; and court costs.**

(1) If the contributions or the penalty imposed by this Chapter are not paid on or before the date prescribed for such payment, there shall be collected, in addition to such contributions and penalties, interest levied on the unpaid balance of the contributions and/or penalties at the rate of twelve percent (12%) per annum from its due date until the date it is fully paid. In the event that the unpaid balance of contributions, penalties, or interest due under this Chapter is referred to an attorney for collection, whether or not suit is brought for the collection thereof, the employer or the self-employed worker shall additionally be liable for all reasonable attorney's fees and costs of collection, plus court costs.

(2) The amount of any penalties, interest, attorney's fees or costs of collection of the delinquent contributions due shall be paid into the Fund. [P.L. 1990-75, §53.]

### **PART VIII- MISCELLANEOUS**

#### **§154. Totalization agreements.**

(1) The Administration shall prepare for the Cabinet recommendations of the countries with which totalization agreements should be obtained. The Administration shall provide the technical assistance necessary to prepare such agreements with those countries.

(2) The totalization agreements may be concluded by the Cabinet and shall have the full force and effect of law. All such agreements shall be implemented by the Administration under the provisions of this Chapter.

(3) The Administration shall issue rules and regulations necessary to administer the totalization agreements. [P.L. 1990-75, §54.]

**§ 155. Taxation.**

The Fund, income, property and all transactions of the Administration shall not be subject to any tax, rates, charges, or impost under any law of the Republic or its subdivisions. [P.L 1990-75, §55 amended by P.L. 1990-103, §2(27).]

**§156. Susceptibility of benefits, contributions, and funds to legal process or assignment.**

(1) The benefits, the worker, self-employed worker, and employer contributions, and the Fund, shall not be subject to execution, attachment, lien or garnishment and shall not be assignable except as specifically provided in this Chapter.

(2) A beneficiary may assign his benefits in a manner prescribed by the Administrator. [P.L 1990-75 §56, amended by P.L. 1992-11, §2.]

**§157. Service of process on the Administration.**

Any process or other notice required or permitted by this Chapter, or any other law to be served upon, or given to the Administration, shall be served, or given, by the delivery of it to the Administrator, who is the secretary of the Board. [P.L 1990-75, §57]

**§158. Lien for Contributions.**

All contributions, including penalties, interest accrued, and attorney's fees imposed or authorized under this Chapter, shall be a lien upon any property of any delinquent employer, including a self-employed worker, having priority over all other claims and liens including liens for other taxes, and may be collected by levy upon such property in the same manner as the levy of an execution. [P.L. 1990-75, §58, amended by P.L. 1990-103, §2(28).]

**§159. Retroactive benefit payments.**

Notwithstanding any other provisions of this Chapter, in the event that a worker or a self-employed worker, or his survivors, are eligible for disability or survivor's insurance benefits, but do not apply for those benefits or otherwise inform the Administrator that they are eligible for those benefits, the maximum period for which such benefits shall be paid retroactively preceding the date of application for those benefits shall be eighteen (18) months during the first two (2) years subsequent to the effective date of this Chapter and shall be twelve (12) months thereafter. In no event shall old age insurance benefits be paid retroactively prior to the date of application for those benefits. [P.L. 1990-75, §59.]

**§160. Information sharing with the Division of Revenue and Taxation.**

(1) Upon request of the Administrator, the Chief of the Division of Revenue and Taxation shall provide wage records and/or other documents and information to the Administrator for the use of determining compliance with the provisions of this Chapter. The Administrator shall maintain the strictest security with these records and/or other documents and information and shall not release them to anyone else other than to the employees of the Administration under any circumstances.

(2) Upon request of the Chief of the Division of Revenue and Taxation, the Administrator shall provide wage records and/or other documents and information to the Chief of the Division of Revenue and Taxation for the use of determining compliance with the provisions of the Income Tax Act of 1989 (49 MIRC 1). The Chief of the Division of Revenue and Taxation shall maintain the strictest security of these records and/or documents and information and shall not release them to anyone else other than to the employees of the Division of Revenue and Taxation under any circumstances. [P.L. 1990-75, §60.]

### § 161. Regulations.

The Administration shall have the authority to promulgate such rules and regulations as it deems necessary or convenient for the administration of this Chapter and such rules and regulations shall have the force of law. **[P.L 1990-75, § 61.]**

### §162. Effective date.

This Chapter shall become effective on October 1, 1990. **[P.L. 1990-75, §62.]**

### §163. Transitional provision.

(1) All acts, transactions, matters, and things done, determined, or entered into by the Social Security System (the 'System') established under the Social Security Act 1987 shall be deemed to have been done, determined, and entered into by the Administration.

(2) All assets, liabilities, rights, and obligations of the System and existing immediately before the effective date of this Chapter, including claims for contributions, penalties and interest and causes of action, are transferred to and are assets, liabilities, rights, and obligations of the Administration.

(3) The Board of Directors and officers of the System immediately before the effective date of this Chapter shall be the initial Board and officers of the Administration.

(4) The acts, transactions, matters, and things done, determined, or entered into by the Government of the Republic of the Marshall Islands, with respect to the System shall be deemed to have been done, determined and entered into by the Government with respect to the Administration. **[P.L. 1990-103, §2(29), adding this Section.]**

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