

TITLE 4 – LOCAL GOVERNMENT AFFAIRS
CHAPTER 1 - LOCAL GOVERNMENTS



Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

LOCAL GOVERNMENT ACT 1980

Arrangement of Sections

| Section | Page |
|--|-----------|
| PART I - PRELIMINARY | 5 |
| §101. Short title. | 5 |
| §102. Interpretation. | 5 |
| §103. Reserved. | 7 |
| PART II- NATIONAL CONSTITUTIONAL PROVISIONS | 7 |
| §104. Saving of existing Municipal Councils. | 7 |
| §105. Right to a system of Local Government. | 7 |
| §106. Power to make ordinances. | 7 |
| §107. Local Government Areas. | 8 |
| PART III - LEGAL STATUS OF LOCAL GOVERNMENTS | 9 |
| §108. Incorporation of Local Governments. | 9 |
| PART IV - CONSTITUTIONS OF LOCAL GOVERNMENTS | 9 |
| DIVISION 1 - GENERAL | 9 |
| §109. Requirement of Written Constitution. | 9 |
| §110. Former Unchartered Municipal Counties. | 10 |
| §111. Former unchartered Municipal Councils. | 10 |
| DIVISION 2 - MINIMUM REQUIREMENTS OF THE CONSTITUTION | 11 |
| §112. Application of Division 2. | 11 |
| §113. The legislature. | 11 |
| §114. The executive. | 12 |
| §115. The head of the Local Government. | 12 |

| | | |
|-------|-------------------------------------|----|
| §116. | Staff | 12 |
| §117. | Meetings of Councils. | 13 |
| §118. | Budget and accounts. | 14 |
| §119. | Wards..... | 14 |
| §120. | Amendment of the constitution. | 14 |

PART V - AMALGAMATION AND TRANSFER OF TERRITORY **15**

| | | |
|-------|----------------------------|----|
| §121. | Amalgamation..... | 15 |
| §122. | Transfer of property. | 16 |

PART VI- ELECTIONS **17**

| | | |
|-------|------------------------------|----|
| §123. | Electoral methods. | 17 |
| §124. | Elections by ballot. | 17 |
| §125. | Elections by consensus. | 17 |

DIVISION 2 - ELECTION BY CONSENSUS **17**

| | | |
|-------|---|----|
| §126. | Certifying officers. | 17 |
| §127. | Announcement of election..... | 17 |
| §128. | Election meetings. | 18 |
| §129. | Declaration of result of election. | 19 |

DIVISION 3 - MISCELLANEOUS **19**

| | | |
|-------|--|----|
| §130. | Unmanageable electorates..... | 19 |
| §131. | Administrative instructions by Chief Electoral Officer. | 19 |
| §132. | Offenses in relation to elections by consensus..... | 19 |

PART VII- GRANTS TO LOCAL GOVERNMENTS **20**

| | | |
|-------|-------------------------------|----|
| §133. | The Fund. | 20 |
| §134. | Payments into the Fund. | 20 |
| §135. | Payments out of the Fund..... | 20 |
| §136. | Withdrawals, etc. | 21 |
| §137. | Accounts, etc..... | 21 |

PART VIII- RELATIONS WITH CENTRAL GOVERNMENT **21**

| | | |
|-------|---|----|
| §138. | Functions of Secretary. | 21 |
| §139. | Local Government Advisor. | 22 |
| §140. | Audit..... | 22 |
| §141. | Inquiries..... | 23 |
| §142. | Suspension of local government..... | 25 |
| §143. | National budget consultation..... | 26 |
| §144. | Order of collection of taxes..... | 26 |
| §145. | Vesting of certain Central Government functions in local governments..... | 26 |
| §146. | Administrative memoranda by Minister..... | 27 |

| | | |
|-------|--------------------------|----|
| §147. | Reports by Minister..... | 27 |
|-------|--------------------------|----|

PART IX - MISCELLANEOUS **28**

| | | |
|-------|--------------------------------------|----|
| §148. | Inter-governmental arrangements..... | 28 |
| §149. | Joint committees..... | 28 |
| §150. | Loans..... | 28 |
| §151. | Peace Officers..... | 29 |
| §152. | Service on Local Government..... | 29 |
| §153. | Regulations..... | 29 |
| §154. | Reserved..... | 30 |

PART X - TRANSITIONAL PROVISIONS **30**

| | | |
|-------|---|----|
| §155. | Saving of existing local governments..... | 30 |
|-------|---|----|

SCHEDULE **31**

DEFAULT CONSTITUTION **31**

| | | |
|------|--|----|
| § 1. | Name of the local government..... | 31 |
| § 2. | Local government area..... | 31 |
| § 3. | Capitol..... | 31 |
| § 4. | Division of the local government area into wards..... | 31 |
| § 5. | Establishment of the legislature..... | 32 |
| § 6. | Membership and elections..... | 32 |
| §7. | Qualifications..... | 32 |
| §8. | Term of office..... | 32 |
| §9. | Vacation of seats..... | 33 |
| §10. | Casual vacancies..... | 33 |
| §11. | Meetings..... | 34 |
| §12. | Procedures..... | 34 |
| §13. | Committees..... | 35 |
| §14. | Office of the head of the local government..... | 35 |
| §15. | Qualifications..... | 35 |
| §16. | Election..... | 35 |
| §17. | Vacation of office..... | 35 |
| §18. | Acting head of the local government..... | 36 |
| §19. | Functions of the head of the local government..... | 36 |
| §20. | Establishment of the executive..... | 37 |
| §21. | Composition..... | 37 |
| §22. | Vacation office..... | 37 |
| §23. | Acting appointments..... | 38 |
| §24. | Allocation of responsibilities to Executive Members..... | 38 |
| §25. | Functions of the Executive Committee..... | 39 |
| §26. | Advice to the Council, etc., of certain matters..... | 39 |

| | | |
|---|---|-----------|
| §27. | Control of revenue and expenditure..... | 40 |
| §28. | Financial responsibility of the Executive Committee. | 40 |
| §29. | Budgets and appropriations..... | 41 |
| §30. | Loans..... | 42 |
| §31. | Accounts..... | 42 |
| §32. | Audit..... | 42 |
| §33. | Financial Memoranda..... | 43 |
| §34. | Employment of staff. | 43 |
| §35. | Secondment, etc., of public servants. | 43 |
| §36. | Method of amendment..... | 44 |
| §37. | Central Government recommendations as to ordinances, etc..... | 44 |
| §38. | Advice as to validity of ordinance, etc..... | 44 |
| §39. | Vacancies..... | 45 |
| §40. | Service..... | 45 |
| §41. | Effective date. | 45 |
| SCHEDULE I | | 45 |
| REFERENCE SECTION: 2 - DEFAULT CONSTITUTION | | 45 |
| SCHEDULE 2 | | 45 |
| REFERENCE SECTION: 4, DEFAULT CONSTITUTION | | 45 |
| ENDNOTES | | 46 |

TITLE 4 – LOCAL GOVERNMENT AFFAIRS

CHAPTER 1 - LOCAL GOVERNMENTS



Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

LOCAL GOVERNMENT ACT 1980

AN ACT to provide for the implementation of Article IX, and Article XIII, Section 2 of the Constitution of the Marshall Islands by providing for the manner of operation of the system of local government.

Commencement: 18 February, 1981

Source: M.I. Code (1975)

Amended By: P. L. 1981-2 P. L. 1981-16 P. L. 1986-37
P. L. 1991-114 P. L. 1994-99 P. L. 2003- 80 P. L. 2006-67
P.L. 2013-12 P.L 2017-32

PART I - PRELIMINARY

§101. Short title.

This Chapter may be cited as the “Local Government Act 1980”. [P.L. 1981-2, §1.]

§102. Interpretation.

- (1) In this Chapter:
 - (a) “**amend**”, in relation to the constitution of a local government, includes repeal and replace;
 - (b) “**Central Government law**” means the Constitution of the Marshall Islands, an Act or, to the extent that it has the force of law in the Republic, any other legislative or executive instrument (other than an ordinance), or a provision of any of those laws;

- (c) **“Central Government tax”** means a tax of any kind that is imposed under a Central Government law;
- (d) **“Council”** means the legislative arm of a local government, by whatever name it is known;
- (e) **“eligible voter”** means, in relation to an election or a referendum, a person who is entitled, in accordance with the *Elections and Referenda Act 1980* (2 MIRC 1), to vote in the election or referendum;
- (f) **“executive committee”** means the executive arm of a local government, by whatever name it is known;
- (g) **“head of a local government”** means a person in the office provided for by Section 115 of this Chapter, by whatever name that office is known;
- (h) **“local government area”** means the area of jurisdiction of a local government, as described in Section 107 of this Chapter;
- (i) **“Minister”** means the Minister responsible for local government matters;
- (j) **“municipal ordinance”** means any ordinance duly enacted before the effective date of the Constitution of the Marshall Islands by any municipality in the exercise of the powers granted under any law of the Trust Territory of the Pacific Islands;
- (k) **“ordinance”** means an ordinance that is in force, and includes a subordinate instrument made under any such ordinance, (1) **“referendum”** means a referendum conducted under the *Elections and Referenda Act 1980* (2 MIRC 1);
- (m) **“registered voter”** means, in relation to an election or a referendum, a person who would be a registered voter, for the purpose of that election or referendum, under the *Elections and Referenda Act 1980* (2 MIRC 1) if, in the case of an election by consensus, the election were conducted under that Chapter;
- (n) **“Secretary”** means the Department head of the Department of the Minister’s Ministry, or a member of that Department nominated by the Minister for that purpose;

- (o) “**ward**” means one of the areas into which, for electoral purposes, a local government area may be divided, as provided for in Section 119 of this Chapter.
- (2) In this Chapter, a reference to consensus is a reference to agreement by the great majority of the people concerned, to such an extent that a head count would be clearly superfluous
- (3) In this Chapter, a reference to an election “**by ballot**” is a reference to an election under Part VIII of the *Election and Referenda Act 1980* (2 MIRC 1). [P.L. 1981-2, §2.]

§103. Reserved.

PART II- NATIONAL CONSTITUTIONAL PROVISIONS

§104. Saving of existing Municipal Councils.

Article XIII, Section 2 of the Constitution of the Marshall Islands provides as follows:

“Every Municipal Council, whether chartered or not, existing immediately before the effective date of this Constitution shall be a local government for the purposes of Article IX.” [P.L. 1981-2, §4.]

§105. Right to a system of Local Government.

Article IX, Section 1(1) of the Constitution of the Marshall Islands provides as follows:

“the people of every populated atoll or island that is not part of an atoll shall have the right to a system of local government which shall operate in accordance with any applicable law.” [P.L. 1981-2, §5.]

§106. Power to make ordinances.

Article IX, Section 2 of the Constitution of the Marshall Islands provides that:

- (a) “A local government may make ordinances for the area in respect of which it has jurisdiction, provided that such ordinances are not inconsistent with any Act”; and

- (b) “an ordinance may provide for the levying of taxes and for the appropriation of funds for local purposes”. [P.L. 1981-2, §6.]

§107. Local Government Areas.

- (1) Article IX, Section 1(2) and (3) of the Constitution of the Marshall Islands provides as follows:
- “(2) The system of local government shall in each case extend to the sea and the seabed of the internal waters of the atoll or island and to the surrounding sea and seabed to a distance of 5 miles from the baselines from which the territorial sea of that atoll or island is measured.”
- “(3) The whole of the land and sea areas to which any system of local government extends shall lie within the jurisdiction of a local government: and, where there is more than one local government, the land and sea boundaries of their respective jurisdictions shall be as defined by law.”
- (2) Any amendment to the constitution of a local government that involves an alteration to the boundaries of a local government area requires the approval of the Minister unless he certifies that the alteration does not affect and is not likely to affect any other local government.
- (3) The principles to be applied in granting or withholding approval are:
- (a) as to land boundaries, that they should:
- (i) as far as practicable, follow natural features;
- (ii) not unduly cut across the boundaries of land holdings; and
- (iii) not unduly fragment social groups; and
- (b) as to seabed boundaries, that they should comply with the median line principle except to the extent that this would involve cutting across the boundaries of rights in the seabed in which case those boundaries should, if practicable, be followed.
- (4) Unless the Minister is satisfied that any of the principles set out in subsection (3) of this section would be contravened to a serious extent he shall not withhold his approval under subsection (2) of this

section, except that he may make it a condition of his approval that the alteration to the boundaries be approved in a referendum held among such persons as he determines to be likely to be affected by the alteration.

- (5) For the purposes of this section, the amalgamation of two or more local government areas shall not be taken to involve an alteration to boundaries. [P.L. 1981-2, §7.]

PART III - LEGAL STATUS OF LOCAL GOVERNMENTS

§108. Incorporation of Local Governments.

For the purposes of the performances of its functions under Article IX of the Constitution of the Marshall Islands, this Chapter, or any other law, a local government:

- (a) is a corporation with perpetual succession;
- (b) shall have a seal;
- (c) may acquire, hold charge, and dispose of property;
- (d) may sue and be sued in its corporate name;
- (e) may do and suffer any thing that a corporation may do and suffer, but as provided by Article I Section (4)(c) of the Constitution of the Marshall Islands, no property or assets of a local government shall be seized or attached to satisfy any judgment. [P.L. 1981-2, §8.]

PART IV - CONSTITUTIONS OF LOCAL GOVERNMENTS

DIVISION 1 - GENERAL

§109. Requirement of Written Constitution.

- (1) All Local Governments must, subject to section 111 of this chapter, have written constitutions in accordance with this chapter.
- (2) Subject to sections 110(2) and 111(3) of this Chapter, if a local government does not have a written constitution that complies with this chapter the provisions of the schedule appearing at the end of this chapter shall be deemed to be the constitution of such local

government, subject to such modifications to meet local requirements as the Minister, after consultation with the Attorney-General, by order, determines. [P.L. 1981-2, §9.]

§110. Former Unchartered Municipal Counties.

- (1) As of the effective date of this chapter, the constitution of a local government that was a chartered municipal Council to which Article III Section 2 of the Constitution of the Marshall Islands applies is its charter as in force immediately before that date.
- (2) If any provision of a constitution established by Subsection (1) of this section is inconsistent with any provision of this chapter other than the schedule appearing at the end of this chapter, then:
 - (a) until the end of the period of six (6) months or such longer period as the Minister allows, after the effective date of this Chapter, or until the Constitution is amended to remove the inconsistency, whichever occurs first, the provisions of the Constitution prevails over the provisions of this chapter;
 - (b) if at the end of that period of six months, or such longer period as the Minister allows, after the effective date of this Chapter the constitution has not been amended to remove the inconsistency, the Minister, may by order amend the constitution in such a way as to remove the inconsistency.
[P.L. 1981-2, §10.]

§111. Former unchartered Municipal Councils.

- (1) A local government that was an unchartered Municipal Council to which Article XIII, Section 2 of the Constitution of the Marshall Islands applies shall, within the period of six (6) months, or such longer period as the Minister allows, after the effective date of this Chapter adopt a constitution that is in accordance with this Chapter.
- (2) The constitution shall be adopted by resolution of the Council subject to approval in a referendum in the local government area.
- (3) If at the end of the period of six (6) months, or such longer period as the Minister allows, after the effective date of this Chapter a constitution has not been adopted and approved in accordance with Subsections (1) and (2) of this Section, the provisions of the Schedule appearing at the end of this Chapter shall be deemed to be the

constitution, subject to such modifications to meet local requirements as the Minister, after consultation with the Attorney-General, by order determines. [P.L. 1981-2, §11.]

DIVISION 2-MINIMUM REQUIREMENTS OF THE CONSTITUTION

§112. Application of Division 2.

The constitution of every local government shall comply with this Division, but may contain other provisions not inconsistent with this Chapter or any other Central Government law. [P.L. 1981-2, §12.]

§113. The legislature.

- (1) The constitution of every local government shall provide for a Council, in which the ordinance-making powers of the local government under Article IX, Section 2 of the Constitution of the Marshall Islands, shall be vested
- (2) The Council shall consist of such number of members as the constitution provides, but not less than two-thirds (2/3), or such lesser number exceeding one-half ($\frac{1}{2}$) as the Minister in special circumstances approves, shall be elected by eligible voters.
- (3) The Constitution of every Local Government shall provide that elections to the Council shall be conducted once in every fourth calendar year, and the term of office of any elected member shall not exceed four (4) calendar years, as follows:
 - (a) if the general election is by ballot, the election shall, beginning in the year 1995, be conducted in every fourth calendar year on the third Monday in November in accordance with Section 140 of the *Elections and Referenda Act 1980* (2 MIRC 1); or
 - (b) if the general election is by consensus, the first election meeting of the general election shall, beginning in the year 1995, be conducted in every fourth calendar year on the third Monday in November in accordance with Part VI, Division 2 of this Chapter. [P.L. 1981-2, §13, amended by P.L. 1991-2, §2(1), deleting subsection (3) and substituting new subsection (3).]

§114. The executive.

- (1) The constitution of every local government shall provide for an executive committee, which shall be the principal executive arm of local government and shall have such powers, functions, duties and responsibilities as are conferred or imposed on it by this or any other Act, the constitution of the local government or an ordinance.
- (2) The executive committee shall consist of the head of the local government, a member of the Nitijela representing the local government area, and such other members of the Council selected in such manner as the constitution provides.
- (3) Nothing in Subsection (2) of this Section prevents:
 - (a) persons other than members of the Council being nonvoting members of the executive committee; or
 - (b) the executive committee including all members of the Council.

[P.L. 1981-2, §14.][Subsection (2) amended by P.L.2013-12 to include a Member of the Nitijela]

§115. The head of the Local Government.

- (1) The constitution of every local government shall provide for an office of head of the local government, and for the manner of election or appointment to it.
- (2) Unless the appointment is an ex officio one, the term of office of the head of a local government shall not exceed four (4) years.
- (3) The head of a local government:
 - (a) is the chairman of the executive committee;
 - (b) if he is not already a member of the Council, is ex officio a member of it; and
 - (c) has such powers, function, duties and responsibilities as are conferred or imposed on him by this or any other Act, the constitution of the local government or an ordinance.

[P.L. 1981-2, §15.]

§116. Staff.

- (1) The constitution of every local government shall make provision for the staff of the local government.

- (2) The staff of a local government are not members of the Public Service, and Article VII of the Constitution of the Marshall Islands does not apply to them.
- (3) Nothing in this Section prevents the Minister from making arrangements for the secondment to a local government of a member of the Public Service, or from making available to a local government the services of a member of the Public Service. [P.L. 1981-2, §16.]

§117. Meetings of Councils.

- (1) The constitution of every local government shall provide for a meeting of the Council at least once every three (3) months, provided however, where it is impracticable to hold council meeting every three (3) months, it shall be held twice annually or three times annually.
- (2) Unless the constitution of a local government provides for a quorum that is different (not being less than one-half ($\frac{1}{2}$) of the total membership), the quorum for a meeting of the Council shall be one-half ($\frac{1}{2}$) of the total membership.
- (3) Unless this Chapter or the constitution of the local government requires a greater majority for a particular purpose, all questions at a meeting of a Council shall be decided according to the majority of the votes of those present and voting.
- (4) Unless the constitution of a local government provides otherwise:
 - (a) the head of the local government shall preside at all meetings of the Council when he is present, and in his absence a member of the Council elected by the members present shall preside;
 - (b) the member presiding has a deliberative vote but not a casting vote; and
 - (c) no decision shall be made on an evenly divided vote.
- (5) Subject to this Chapter and the constitution of the local government, a Council shall make its own rules of procedure. [P.L. 1981-2, §17; amended by P.L. 1981-J6, §2, amending Subsection (1) to change the meeting from once every month to once every three months.][§1 amended by P.L. 2016-32.][§1 amended by P.L. 2017-32].

§118. Budget and accounts.

- (1) The constitution of a local government shall provide for the executive committee to introduce into the Council at least one set of budget estimates of revenues and expenditures and at least one Appropriation Ordinance with respect to each financial year, and shall further provide that no money of the Council shall be expended unless appropriated by ordinance for the purpose, or for a purpose that includes the purpose, for which it is to be expended.
- (2) Subject to any instructions issued under Section 146(2) of this Chapter, the constitution of a local government shall make provision, to the satisfaction of the Minister, for the keeping of proper accounts and records of revenue, expenditure, assets and liabilities. [P.L. 1981-2, §18.]

§119. Wards.

- (1) The constitution of a local government may provide for the division of the local government area into areas to be known as wards, each returning one or more members to the Council.
- (2) Nothing in Subsection (1) of this Section prevents:
 - (a) the whole of a local government area being declared to be a single ward for all or any purposes; or
 - (b) a ward consisting of a number of other wards. [P.L. 1981-2, §19.]

§120. Amendment of the constitution.

- (1) The constitution of a local government shall provide for its amendment either:
 - (a) by ordinance approved by a two thirds (2/3) majority of the total membership of the Council;
 - (b) by ordinance ratified by referendum of all eligible voters in the local government area; or
 - (c) by both such procedures.
- (2) The constitution may prescribe additional requirements (such as special notice) for its amendment. [P.L. 1981-2, §20.]

PART V - AMALGAMATION AND TRANSFER OF TERRITORY

§121. Amalgamation.

- (1) With the approval of the Minister (which approval shall not be unreasonably withheld), any two or more local governments may, by resolution, decide to amalgamate.
- (2) On the passing of the resolutions, the local governments concerned may, by agreement, establish a constitutional convention consisting of some or all of their members and such other persons (if any) as are agreed.
- (3) The constitutional convention may adopt a constitution in accordance with this Chapter for the combined area of the local governments.
- (4) The constitution so adopted shall be subject to:
 - (a) ratification:
 - (i) by resolution of each Council; and
 - (ii) by a majority of the eligible voters in each of the local government areas in a referendum in the combined area of the local governments; and
 - (b) approval by the Minister.
- (5) The Minister shall not withhold his approval under Subsection (4)(b) of this Section unless he is satisfied, after consultation with the Attorney-General, that the constitution is inconsistent with this Chapter.
- (6) If the Minister withholds his approval in accordance with Subsection (5) of this Section, he may suggest amendments to remove the inconsistency, and if those amendments are agreed to by a two-thirds (2/3) majority of the total membership of each Council, or a majority of the eligible voters in each of the local government areas in a referendum in the combined area of the local governments, the constitution, as amended accordingly, shall be deemed to have been ratified and approved in accordance with Subsection (4) of this Section.
- (7) Where there is more than one local government on an atoll or island, the Cabinet may, by written order to each of them, require them to amalgamate, in accordance with this Section, within a period, not

being less than six (6) months, fixed by the Cabinet or such longer period as the Minister allows.

- (8) If at the end of the period referred to in Subsection (7) of this Section, the local governments have not amalgamated, the Cabinet may, by order to each of them, declare that the provisions of the Schedule appearing at the end of this Chapter, apply with respect to the atoll or island, with such modifications to meet local requirements as the Minister may, after consultation with the Attorney General, by order determine.
- (9) In a case to which Subsection (8) of this Section applies, on the effective date of the new constitution:
 - (a) the former local governments are abolished; and
 - (b) all property, assets and liabilities of the former local governments rest in the new local government for the atoll or island in such manner and on such conditions as the Minister, after consultation with the Attorney-General, by order determines. [P.L. 1981-2, §21.]

§122. Transfer of property.

- (1) Two local governments may agree on the transfer of part of the area of one into the area of the other, or for the exchange of areas.
- (2) The transfer or exchange shall not take effect unless and until:
 - (a) it is approved by the Minister (which approval shall not be unreasonably withheld);
 - (b) the agreement has been ratified by a majority of the eligible voters in each of the local government areas, and a majority of the eligible voters in the area to be transferred (or in each of the areas to be exchanged) in referendum in the combined area of the local agreements; and
 - (c) the constitution of each local government has been amended, conditioned on the agreement taking effect, to make adjustments to take account of the transfer or exchange. [P.L. 1981-2, §22.]

PART VI- ELECTIONS

DIVISION - 1

§123. Electoral methods.

- (1) Elections for the purposes of this Chapter shall be either by ballot, or by consensus, and where provision is made in the constitution of a local government for an election the constitution may specify which method shall be used.
- (2) If a constitution does not so specify, elections shall be by ballot. [P.L. 1981-2, §23.]

§124. Elections by ballot.

An election that is to be conducted by ballot shall be conducted in accordance with the *Elections and Referenda Act 1980* (2 MIRC 1). [P.L. 1981-2, §24.]

§125. Elections by consensus.

An election that is to be conducted by consensus shall be conducted in accordance with Division 2 of this Part. [P.L. 1981-2, §25.]

DIVISION 2- ELECTION BY CONSENSUS

§126. Certifying officers.

- (1) The Chief Electoral Officer shall appoint for each local government area one or more responsible and impartial persons to be the certifying officer or officers for the area.
- (2) The head of the local government, a member of the Council, or a candidate, is not eligible to be a certifying officer. [P.L. 1981-2, §26.]

§127. Announcement of election.

When an election is to be held, a certifying officer shall, in whatever manner is customary in the area concerned for the announcement of important news, announce two election meetings, on dates approximately one week apart. [P.L. 1981-2, §27.]

§128. Election meetings.

- (1) At the first election meeting, a certifying officer shall:
 - (a) carefully explain the purpose of the meeting;
 - (b) exclude, to the best of his ability, all persons who are not eligible voters;
 - (c) attempt to get a decision by the consensus as to the person or persons to be elected, or as to acceptable candidates; and
 - (d) immediately before closing the meeting, publicly announce his findings (if any), the date of the next meeting, and the fact that the purpose of the meeting will be to make a final decision.
- (2) At the second election meeting, a certifying officer shall:
 - (a) carefully explain the result (if any) of the previous meeting and the purpose of the present meeting;
 - (b) exclude, to the best of his ability, all persons who are not eligible voters;
 - (c) attempt to get a decision, or a confirmation of the previous decision, by consensus as to the person or persons to be elected; and
 - (d) if he gets a decision:
 - (i) announce the fact and close the meeting; and
 - (ii) certify the result to the local government and to the Chief Electoral Officer; or
 - (e) if he does not get a decision, proceed in accordance with Subsection (1)(d) of this Section and hold a further meeting or further meetings until either:
 - (i) a decision is arrived at (in which case he shall proceed in accordance with Paragraph (d) of this Subsection); or
 - (ii) he decides that a decision by consensus is not likely to be arrived at within a reasonable time.
- (3) If the certifying officer decides that a decision by consensus is not likely to be arrived at within a reasonable time, he shall certify accordingly to the local government and to the Chief Electoral Officer, and an election by ballot shall be held as soon as practicable.

[P.L. 1981-2, §28.]

§129. Declaration of result of election.

The result of the election shall be announced in the same manner as the result of an election by ballot, under Section 185 of the *Elections and Referenda Act 1980* (2 MIRC 1). [P.L. 1981-2, §29.]

DIVISION 3- MISCELLANEOUS

§130. Unmanageable electorates.

Where in the opinion of the Chief Electoral Officer an electorate is such (whether because of area, number of electors, geography or otherwise) that the holding of a single meeting for the purposes of an election would be impracticable, or would be ineffective to properly ascertain public opinion, he may, by written order to the local government, so declare, either generally or in a particular case, and all elections, or the particular election, as the case may be, in that electorate shall be by ballot. [P.L. 1981-2, §30.]

§131. Administrative instructions by Chief Electoral Officer.

- (1) The Chief Electoral Officer may issue administrative instructions, not inconsistent with this Chapter, for the guidance of certifying officers and others in the conduct of elections by consensus.
- (2) Failure to comply with any provision of any instruction issued under Subsection (1) of this Section does not of itself invalidate an election. [P.L. 1981-2, §31.]

§132. Offenses in relation to elections by consensus.

- (1) The following provisions of the Elections Offenses Act (2 MIRC 2), with the necessary modifications, apply to and with respect to elections by consensus in the same way that they apply to and with respect to elections by ballot:
 - (a) Section 205 (double voting);
 - (b) Section 206 (personation);
 - (c) Section 207 (voting while not entitled);
 - (d) Section 210 (radio campaigning on polling day);
 - (e) Section 211 (Bribery);
 - (f) Section 212 (intimidating Voters and candidates);

- (g) Section 214 (interference with election or referendum);
- (h) Section 215 (false and misleading information);
- (i) Section 216 (gambling on polling
- (j) Section 217 (alcoholic beverages on polling day);
- (k) Section 218 (general penalty); and
- (1) Section 219 (attempts).
- (2) For the purposes of the application to elections by consensus of the provisions of the *Elections and Referenda Act 1980* (2 MIRC I) referred to in Subsection (1) of this Section, references in those provisions to the day of an election shall be read as references to the day of any meeting held under Section 128 of this Chapter. [P.L. 1 981-2, §32.][Offenses in §211 and 212 modified by P.L. 2003-80].

PART VII- GRANTS TO LOCAL GOVERNMENTS

§133. The Fund.

- (1) A Local Government Fund is hereby established, for the specific purpose of acting as a channel through which monies may be granted by the Government of the Marshall Islands to local governments.
- (2) The Local Government Fund is a [trust and agency] fund within the National Treasury and under the control and supervision of the Ministry of Finance, which shall provide for its administration in accordance with the Financial Management Act of 1990, as amended, 11 MIRC 1. [P.L. 1981-2, §33; amended by P.L. 1981-16, §3, replacing "Local Government Fund" amended by P.L. 1994-99, §3(2).]

§134. Payments into the Fund.

There shall be paid into the local Government Fund any amounts appropriated by the Nitijela for the purposes of the Fund, and any other amounts payable by or under any other law into the Fund. [P.L. 1 981-2, §34; amended by P.L. 1981-16, §4, substituting new Section 34.]

§135. Payments out of the Fund.

Monies may be paid out of the Local Government Fund only to or on behalf of local governments. [P.L. 1981-2, §35; amended by P.L. 1981-16, §5, replacing "Local Government Trust Fund" with "Local Government Fund".]

§136. Withdrawals, etc.

- (1) No money may be withdrawn from the Local Government Fund except with the authority of the Secretary of Finance, who shall satisfy himself that the withdrawal is made in accordance with this Chapter, and any other applicable law.
- (2) A delegation under Article VIII, Section 5(1) of the Constitution of the Marshall Islands to expend monies out of the Local Government Fund is given to the Secretary of Finance. [P.L. 1981-2, §36; amended by P.L. 1981-16, §6, adding "and any other applicable law" to Subsection (1) and replacing "Local Government Trust Fund" with "Local Government Fund"]

§137. Accounts, etc.

- (1) The Secretary of Finance shall maintain proper accounts and records of the Local Government Fund, and the accounts to be laid before the Nitijela by the Minister of Finance under Article VIII, Section 5(4) of the Constitution of the Marshall Islands shall include amounts relating to the Fund.
- (2) The accounts and records maintained under Subsection (1) of this Section are subject to audit under Article VIII, Section 15 of the Constitution of the Marshall Islands. [P.L. 1981-2, §37; amended by P.L. 1981-16, §7, replacing "Local Government Trust Fund" with "Local Government Fund"]

PART VIII- RELATIONS WITH CENTRAL GOVERNMENT**§138. Functions of Secretary.**

The Secretary shall maintain a continuing general oversight of the operation of the system of local government and of the individual local governments, and in particular shall:

- (a) coordinate relations between each local government and the Government of the Marshall Islands;
- (b) arrange periodic seminars and workshops for the purpose of training and informing members of the staffs of local governments;
- (c) supervise the Local Government Advisor referred to in Section 139 of this Chapter; and

- (d) at least one in each period of twelve (12) months, at such time or times as is or are directed by the Minister, submit to the Minister a report summarizing the needs, problems and achievements of each local government and of the system of local government, with appropriate recommendations.
[P.L. 1981-2, §38.]

§139. Local Government Advisor.

- (1) Within the Ministry there shall be a Local Government Advisor.
- (2) The function of the Local Government Advisor is to maintain personal and regular contact with the local governments so as:
 - (a) to expedite the exchange of information between the local governments and the Secretary;
 - (b) to assist in identifying the needs of each local government area for effective and efficient self-government;
 - (c) to check that the procedures and practices of each local government comply with the law; and
 - (d) generally to assist local governments. [P.L. 1981-2, §39.]

§140. Audit.

- (1) The Minister may arrange for an audit inspection of the funds and accounts of a local government to be carried out by the Auditor-General or a person authorized by him in the following circumstances:
 - (a) on the petition of not less than twenty-five percent (25%) of the registered voters in the local government area; or
 - (b) of his own motion, if he has reason to suspect any fiscal irregularity in the conduct of the affairs and operations of the local government.
- (2) For the purpose of an audit inspection under Subsection (1) of this Section, the Auditor-General or authorized person has the powers and rights specified in Article VIII, Section 15 of the Constitution of the Marshall Islands.
- (3) The report on the audit inspection shall be sent to the Minister (who may, if he thinks it proper to do so, publish it), and to the local government. [P.L. 1981-2, §40.]

- (4) Where the Minister has been provided with evidence that any member of a Local Government has committed or is committing illegal activities, the Minister shall refer the matter to the Attorney General's office for further investigation or prosecution
- (5) For the purposes of subsection (4), evidence provided to the Minister may include:
 - (a) findings of the Auditor-General in the report provided under subsection (3); or
 - (b) reliable evidence from any other source.
- (6) Any member of a Local Government who is convicted of an offense under this Chapter or any other enactment of the Marshall Islands or under the Constitution of Local Government shall:
 - (a) if convicted of a misdemeanor offense, be suspended; or
 - (b) if convicted of a felony, be terminated from employment.
- (7) Where an elected official has been required to stand down from office under subsection 6(b), a new officer shall be elected or appointed in accordance with the provisions of the Constitution of that Local Government. [P.L. 1981-2, §40.][Amended by P.L. 2006-67]

§141. Inquiries.

- (1) The Minister may appoint, in writing, a person to inspect the affairs of a local government under the following circumstances:
 - (a) on the petition of not less than twenty-five percent (25%) of the registered voters in the local government area; or
 - (b) of his own motion, if he has reason to suspect any irregularity, mismanagement or failure to comply with the law in the conduct of the affairs and operations of the local government.
- (2) An inspector:
 - (a) shall be allowed, by the local government and other persons, full and free access to all records of or relating to the local government, (b) may take evidence, orally or in writing, from any person, on oath or affirmation;
 - (c) may require any person to attend and give evidence, or to produce any document; and

- (d) generally, shall make full and impartial inquiry into the affairs and operations of the local government.
- (3) For the purposes of his inquiry an inspector may administer oaths and affirmations.
- (4) A person who hinders or obstructs an inspector in the performance of his functions, or subject to Subsection (5) of this Section, fails to comply with a requirement under Subsection (2)(c) of this Section, shall be guilty of a misdemeanor and shall upon conviction be liable to a fine not exceeding \$500 or to a term of imprisonment not exceeding six (6) months, or both.
- (5) It is a defense to a charge of an offense against Subsection (4) of this Section if the accused person proves that the evidence or document was not relevant to the inquiry.
- (6) The report of the inquiry shall be sent to the local government and to the Minister who may, if he thinks it proper to do so, publish it.
- (7) Where the Minister has been provided with evidence that any member of a Local Government has committed or is committing illegal activities, the Minister shall refer the matter to the Attorney General's office for further investigation or prosecution.
- (8) For the purposes of subsection (7), evidence provided to the Minister may include-
 - (a) findings of the inspector in the report provided under subsection (6); or
 - (b) reliable evidence from any other source.
- (9) Any member of a Local Government who is convicted of an offense under this Chapter or any other enactment of the Marshall Islands or under the Constitution of a Government, shall:
 - (a) if convicted of a misdemeanor offense, be suspended; or
 - (b) if convicted of a felony, be terminated from employment.
- (10) Where an elected official has been required to stand down from office under subsection 9(b), a new officer shall be elected or appointed in accordance with the provisions of the Constitution of that Local Government. [P.L. 1981-2, §41.][Amended by P.L. 2006-67].

§142. Suspension of local government.

- (1) If the operation, administration or financial condition of a local government endangers the health, safety or economic well being of a local government area, or if suspension is recommended in a report under Section 140 or 141 of this Chapter, the Cabinet may, by written order served on the local government:
 - (a) suspend the operation of a local government; and
 - (b) appoint an Administrator-Receiver for the local government and vest in him some or all of the powers and functions of the local government.
- (2) In relation to powers and functions vested in him under Subsection (1)(b) of this Section, the Administrator-Receiver shall be deemed to be, and shall act in the name of, the local government.
- (3) The suspension and the appointment of an Administrator-Receiver shall be immediately communicated to the local government and promulgated in the local government area.
- (4) Nothing prevents an action for declaratory judgment in the High Court or other remedy by any member of the Council arising out of the same issues, or out of the suspension or of the appointment or actions of the Administrator Receiver.
- (5) The suspension of a local government and the appointment of an Administrator Receiver terminates automatically upon the occurrence of either of the following, but in any case upon termination by the Cabinet:
 - (a) if the High Court advises or declares that the appointment was not justified;
 - (b) at the end of the period of one year;
 - (c) immediately after the next general election to the Council; or
 - (d) when the Administrator-Receiver advises the Minister, in writing, that the danger is past or the other cause of the suspension has been eliminated.
- (6) An Administrator-Receiver may, by notice in writing to the Minister, resign his office, and the Cabinet may terminate his appointment at any time without terminating the suspension.

- (7) Prior to the end of the term of appointment of the Administrator-Receiver, or in the case of a termination under Subsections (5) or (6), on the termination of his or her appointment, an Administrator-Receiver shall account to:
- (a) the Minister; and
 - (b) through the Minister, to the Cabinet and the local government - for his activities (including his financial and property operations). [P.L. 1981-2, §42.][Amended by P.L. 2006-67].

§143. National budget consultation.

Before allocating in the budget estimates finance to and as between local governments, the Cabinet shall consult with the heads of all local governments. [P.L. 1981-2, §43.]

§144. Order of collection of taxes.

Without prejudice to the generality of the provisions in Article IX, Section 2(2) of the Constitution of the Marshall Islands:

- (a) A local government Council may impose and collect tax on the consumption of beer and liquor; and
- (b) If a local government tax is of the same kind as a Central Government tax liability to the latter has priority over liability to the former. [MI. Code (1975) if 4.201-4.203; amended by P.L. 1981-2, §44.]

§145. Vesting of certain Central Government functions in local governments.

- (1) With the agreement of the local government, where the Cabinet is of the opinion that, because of its being of essentially local concern a Central Government law would more appropriately be administered, or a function vested by a Central Government law in a member of the Public Service would more appropriately be performed (in relation to the area of a local government) by the local government, the Cabinet may, by order, vest the administration of that law, or the performance of that function, in the local government in relation to that area.

- (2) An ordinance may make provision for the more effective implementation of an order under Subsection (1) of this Section. [P.L. 1981-2, §45.]

§146. Administrative memoranda by Minister.

- (1) The Minister may issue instructions (to be known as “Local Government Administrative Memoranda”), not inconsistent with this Chapter, relating to matters of administration and procedures in the system of local government, and in particular with respect to:
- (a) the format and publication of ordinances; and
 - (b) collaboration and the coordination of activities between local governments and between local governments and the Government of the Marshall Islands
- (2) The Minister, after consultation with the Minister of Finance, may issue instructions (to be known as “Local Government Financial Memoranda”), not inconsistent with this Chapter, relating to matters of financial administration in the system of local government, and in particular with respect to:
- (a) accounts and accounting;
 - (b) the maintenance of proper records of the financial transaction of local governments and of dealings with their property or property in their possession or control; and
 - (c) the duties and responsibilities of members of the staffs of local governments in these regards.
- (4) Failure to comply with any instruction issued under Subsection (1) or (2) of this Section does not of itself invalidate or make ineffective any act of a local government acting on its behalf, but such a failure may be a ground for disciplinary or other proceedings against a person if an Act or an ordinance so provides. [P.L. 1981-2, §46.]

§147. Reports by Minister.

- (1) The Minister shall, at least one in every period of twelve (12) months present to the Nitijela a report on the operation of this Chapter and of the system of local government.
- (2) At the first appropriate opportunity, the Minister shall report to the Nitijela the suspension under Section 142 of this Chapter of the

operation of a local government, or the termination of a suspension.
[P.L. 1981-2, §47.]

PART IX - MISCELLANEOUS

§148. Inter-governmental arrangements.

- (1) Two or more local governments, or the Minister on behalf of the Government of the Marshall Islands and one or more local governments, may agree as to the performance of any work or service by one party on behalf of another party, on such terms and conditions as are agreed on.
- (2) Subsection (1) of this Section extends to the collection of taxes and tax-sharing arrangements.
- (3) An agreement under Subsection (1) of this Section is of no force or effect until ratified by ordinance by each of the local governments involved. [P.L. 1981-2, §48]

§149. Joint committees.

- (1) Two or more local governments may agree on the establishment of a joint committee to perform any function (other than the power to make laws) which can more effectively be performed jointly.
- (2) An agreement under Subsection (1) of this Section is of no force or effect until ratified by ordinance by each of the local governments involved. [P.L. 1981-2, §49.]

§150. Loans.

- (1) A loan made to a local government, or a charge against the future revenue of a local government, is void and unenforceable unless authorized or ratified by ordinance.
- (2) Unless authorized by the Minister a local government shall not incur indebtedness chargeable to future revenue which extends beyond the next five (5) full financial years, and a local government shall not in any financial year incur any indebtedness or grant any charge against future revenue such that the total liability of the local government in

that year for debt services exceeds fifteen percent (15%) of the estimated revenue for that year.

- (3) Subsections (1) and (2) of this Section do not apply to the acceptance of loans from, or the granting of charges to, the Government of the Marshall Islands.
- (4) In this Section, “debt service” means payment of the interest on a loan, loan charges and such installments of principal as are or become legally due. [P.L. 1981-2, §50; amended by P.L. 1986-37, §2, including the words “unless authorized by the Minister” in Subsection (2).]

§151. Peace Officers.

- (1) A local government may, by ordinance, provide for the appointment and powers of peace officers.
- (2) The powers conferred under Subsection (1) of this Section may include power to enforce all or any ordinances, but unless deputized by the Chief of Police for the purpose, no peace officer may enforce any Central Government law.
- (3) Nothing in Subsection (1) of this Section prevents persons other than peace officers from being empowered by law to enforce particular ordinances. [P.L. 1981-2, §51.]

§152. Service on Local Government.

Where any document or thing is to be given to, served on or communicated to a local government, it may be given to, served on or communicated to the head of the local government. [P.L. 1981-2, §52.]

§153. Regulations.

The Cabinet may make regulations, not inconsistent with this Chapter, prescribing all matters that are necessary or convenient to be prescribed for carrying out or giving effect to this Chapter and in particular with regard to the exercise of the powers and the performance of the functions, duties and responsibilities of an Administrator-Receiver. [P.L. 1981-2, §53.]

§154. Reserved.

PART X - TRANSITIONAL PROVISIONS

§155. Saving of existing local governments.

- (1) For the avoidance of doubt it is hereby declared that, subject to Subsection (2) of this Section and to Section 108 of this Chapter, nothing in this Chapter affects the status or identity of any local government, or of the Council, executive committee or head of any local government, in existence immediately before the effective date, or any act done or suffered by or in relation to any local government before that date.
- (2) An ordinance in force immediately before the effective date of this Chapter continues in force as of that date except to the extent that it is inconsistent with this Chapter or the constitution of the local government. [P.L. 1981-2, §55.]

SCHEDULE**DEFAULT CONSTITUTION****CONSTITUTION OF THE LOCAL GOVERNMENT****PART I - PRELIMINARY****§ 1. Name of the local government**

The name of the local government is _____ local government.

§ 2. Local government area.¹

The area of jurisdiction of the local government is an atoll/Island² and, in accordance with Article IX, Section 1(2) and (3) of the Constitution of the Marshall Islands, extends to the sea and the seabed of the internal waters of that atoll/island and to the surrounding sea and seabed to a distance of 5 miles from the baselines from which the territorial sea of that atoll/island is measured, as more particularly described in Schedule 1 attached hereto.

§ 3. Capitol.

The principal office of the local government shall be located at, or at such other place in the local government area as the Council by resolution declares.

PART II- WARDS³**§ 4. Division of the local government area into wards.**

In accordance with Section 119 of the Local Government Act 1980 (4 MIRC 1), the local government area is divided into the following wards, as more particularly described in Schedule 2 attached hereto, each electing the number of members of the Council set out against its name:

- (a) _____ Ward, returning _____ members;
- (b) _____ Ward, returning _____ members;

and etc.

PART III- THE LEGISLATURE

§ 5. Establishment of the legislature.

A legislature, to be known as the _____ Council, is hereby established for the local government, and in accordance with Section 113(1) of the Local Government Act 1980 (4 MIRC 1) the ordinance-making, taxing and appropriation powers of the local government under Article IX, Section 2 of the Constitution of the Marshall Islands are vested in it.

§ 6. Membership and elections.

- (1) The Council shall consist of members being:
 - (a) the members elected by the wards, as specified in Section 4 of this Constitution; and
 - (b) ⁴
- (2) The members referred to in Subsection (1)(a) of this Section shall be elected by ballot/consensus⁵ by eligible voters, as provided for by Sections 113 and 123 of the Local Government Act 1980 (4 MIRC 1).
- (3) ⁶
- (4) ⁷

§7. Qualifications.

- (1) The qualifications for election as a member referred to in Section 6(1)(a) of this Constitution are set out in Section 109(1) of the Elections and Referenda Act 1980 (2 MIRC 1).⁸
- (2) [see footnote 7]

§8. Term of office.

- (1) The term of office of a member referred to in Section 6(1)(a)2 of this Constitution:
 - (a) commences on the day after the day on which his election is announced under Section 129 of the Local Government Act

1980 (4 MIRC 1) or Section 185 of the Elections and Referenda Act 1980 (2 MIRC1), as the case may be; and

- (b) terminates (unless the seat of the member becomes vacant earlier under Section 9 of this Constitution on the day before the day announced for the first election meeting under Division 2 of Part VI of the Local Government Act 1980 (4 MIRC 1) at the next general election to the Council, or the day proclaimed under Section 142 of the Elections and Referenda Act 1980 (2 MIRC1) for that election, as the case may be.

(2) 9

§9. Vacation of seats.

- (1) The seat of a member of the Council becomes vacant if, and only if:
 - (a) his term of office terminates in accordance with Section 8 of this Constitution;
 - (b) he ceases to possess the qualifications for election that he was required, under Section 7 of this Constitution, to have at the time of his election or appointment; [see footnote 3]
 - (c) he dies;
 - (d) he resigns his seat by notice in writing to the local government; or
 - (e) he is removed from office under Subsection (2) of this Section.
- (2) The Council may, by the affirmative vote of not less than three-fourths of the total membership of the Council, remove a member from office, for cause.

§10. Casual vacancies.

- (1) If the seat of a member of the Council referred to in Section 6(1)(a) of this Constitution becomes vacant otherwise than by the termination of his term of office in accordance with Section 8 of this Constitution, the vacancy shall be filled as soon as practicable by a special election in the ward or area that he represented.
- (2) [see footnote 7]

§11. Meetings.

- (1) Meetings of the Council shall be held at least once in every month of the calendar, on such days and at such times as are fixed by the Council, by resolution, or in default by the Mayor, by notice in accordance with the Rules of Procedure of the Council.
- (2) The Chief Electoral Officer shall, as soon as practicable after the declaration of the results of the first general election to the Council, by notice to all members, call a meeting of the Council.
- (3) The Mayor may at any time, and shall as soon as practicable after receipt of a petition of a majority of the members of the Council, stating the business to be dealt with, call a meeting of the Council, by notice in accordance with the Rules of Procedure of the Council stating the business to be dealt with.
- (4) A special meeting shall deal only with the subjects stated in the notice calling the meeting.
- (5) Meetings of the Council shall be held in public.
- (6) The quorum for a meeting of the Council is a majority of the total number of the membership of the Council.
- (7) The Mayor shall preside at all meetings of the Council at which he is present, and, subject to Section 18 of this Constitution and to the Rules of Procedure of the Council, in his absence or during a vacancy in his office a member elected by the members present shall preside.
- (8) Except as otherwise provided by the Local Government Act 1980 (4 MIRC 1), all questions before a meeting of the Council shall be determined in accordance with the majority of the votes of the members present and voting, but no question shall be decided on an evenly divided vote.

§12. Procedures.

- (1) The Council shall keep and publish a journal of its proceedings.
- (2) The Council shall make Rules of Procedure, not inconsistent with this Constitution, any Central Government law or any ordinance of the local government, for the regulation and orderly conduct of its proceedings and the dispatch of its official business.

- (3) Subject to this Constitution. any Central Government law or any ordinance of the local government, the Council may regulate its own proceedings.

§13. Committees.

The Council may establish standing and other committees to deal with any matter than can, in its opinion, more properly or more conveniently be dealt with by a committee.

PART IV - THE HEAD OF THE LOCAL GOVERNMENT

§14. Office of the head of the local government.

An office of head of the local government, who shall be known as the Mayor, is hereby established for the local government.

§15. Qualifications.

The Mayor must be a member of the Council who is 25 years of age or more.

§16. Election.

- (1) The Mayor shall be elected by the Council by the affirmative vote of a majority of the total number of the membership of the Council.
- (2) If on a ballot no member receives the votes of a majority of the total number of the membership of the Council, the candidate receiving the lowest number of votes (or if there be more than one such candidate, one of them selected by lot) shall be excluded and a fresh ballot taken, and so on until one candidate has received the votes of a majority of the total number of the membership.
- (3) If at the end of that procedure no candidate has received the votes of a majority of the total membership of the Council, the election is void and a fresh election shall be held on the next sitting day of the Council, and so on until a member is elected Mayor.

§17. Vacation of office.

- (1) The office of the Mayor becomes vacant if, and only if:

- (a) his seat in the Council becomes vacant under Section 9 of this Constitution;
 - (b) he is dismissed under Subsection (2) of this Section; or
 - (c) he resigns his office by notice in writing to the Clerk of the local government.
- (2) The Council may, by the affirmative vote of not less than two-thirds of the total membership of the Council, dismiss the Mayor from office.
- (3) If the office of the Mayor becomes vacant by reason of the termination of the term of his office as a member of the Council in accordance with Section 8 of this Constitution, he shall continue to perform the functions of the Mayor until a new Mayor is elected, but unless he becomes again a member of the Council he shall not vote or take part in its deliberations otherwise than as the member presiding at a meeting.

§18. Acting head of the local government.

- (1) In the event of the absence or incapacity of the Mayor, his functions shall be performed by a member of the Executive Committee appointed by him, or in default, the Executive Committee.
- (2) For the purpose of the performance of any function of the Mayor that a member of the Executive Committee is authorized to perform by virtue of Subsection (1) of this Section, the member shall be deemed to be the Mayor, and any reference in any law or in the Rules of Procedure of the Council to the Mayor shall be read as including a reference to that member accordingly.

§19. Functions of the head of the local government.

The Mayor has such powers, functions, duties and responsibilities as are conferred or imposed on him by this Constitution, an ordinance of the local government, a Central Government law or the Rules of Procedure of the local government.

PART V - THE EXECUTIVE

§20. Establishment of the executive.

- (1) An executive committee of the local government, to be known as the Executive Committee of the _____ Council, is hereby established, which shall, in accordance with Section 114(1) of the Local Government Act 1980 (4 MIRC 1), be the principal executive arm of the local government.
- (2) The Executive Committee is collectively responsible to the Council for the executive government of the local government area, and for the performance of the functions of the Executive Committee and the members of the Executive Committee under this Constitution, an ordinance of the local government or a Central Government law.

§21. Composition.

- (1) The Executive Committee shall consist
 - (a) the Mayor; and
 - (b) three (3) members of the Council appointed by the Mayor in writing, to be known as Executive Members.
- (2) The quorum for a meeting of the Executive Committee is two (2).

§22. Vacation office.

- (1) The office of the Mayor or becomes vacant in accordance with Section 17 of this Constitution.
- (2) The office of an Executive Member becomes vacant if, and only if:
 - (a) his seat in the Council becomes vacant under Section 9 of this Constitution;
 - (b) the office of the Mayor becomes vacant under Section 17 of this Constitution;
 - (c) he is dismissed from office under Subsection (3) of this Section; or
 - (d) he resigns his office by notice in writing to the Mayor.
- (3) The Mayor may at any time, with or without cause, dismiss an Executive Member from office.

- (4) If the office of the Mayor becomes vacant otherwise than by reason of his dismissal under Section 17(2) of this Constitution, the Executive Members shall continue to perform their functions (including the function of appointing under Section 18 of this Constitution a member of the Executive Committee to perform the function of the Mayor).
- (5) If the office of an Executive Member becomes vacant by reason of termination of the term of his office as a member of the Council under Section 8 of this Constitution, he may continue to perform the functions of an Executive Member until a new Mayor is elected, but unless he becomes again a member of the Council he shall not vote or take part in its deliberations.

§23. Acting appointments.

In the event of the absence or incapacity of an Executive Member, the Mayor may during such absence or incapacity:

- (a) appoint another Executive Member to perform some or all of his functions
- (b) appoint a member of the Council to act as an Executive Member; or
- (c) do both of the foregoing.

§24. Allocation of responsibilities to Executive Members.

- (1) Subject to this Constitution, any ordinance of the local government and any Central Government law, the Mayor may from time to time allocate to an Executive Member responsibility for matters within the competence of the Executive Committee (including responsibility for the administration of ordinances of the local government).
- (2) The Mayor is responsible for any matter the responsibility for which is not for the time being allocated under Subsection (1) of this Section.
- (3) Nothing in this Section affects the collective responsibility of the Executive Committee under Section 20(2) of this Constitution.

§25. Functions of the Executive Committee.

The Executive Committee has such powers, functions, duties and responsibilities as are conferred or imposed on it by this Constitution, an ordinance of the local government or a Central Government law.

§26. Advice to the Council, etc., of certain matters.

- (1) The Mayor shall promptly notify the Council and the Minister of the Government of the Marshall Islands responsible for local government matters of:
 - (a) the appointment, dismissal or resignation of a member of the Executive Committee;
 - (b) the appointment, or the termination of the appointment, of a member of the Council to act as an Executive Member under Section 23(b) of this Constitution;
 - (c) the appointment by him of a member of the Executive Committee to perform the functions of the Mayor under Section 18(1) of this Constitution; or
 - (d) the allocation under Section 24(1) of this Constitution of responsibilities to Executive Members and the appointment under Section 23(a) of this Constitution of an Executive Member to perform functions of another Executive Member.
- (2) The Executive Committee shall promptly notify the Council and the Minister of the Government of the Marshall Islands responsible for local government matters of the appointment by it of a member of the Executive Committee to perform the functions of the Mayor under Section 18(1) of this Constitution.
- (3) The Clerk of the local government shall promptly notify the Council and the Minister of the Government of the Marshall Islands responsible for local government matters of the resignation or the dismissal of the Mayor under Sections 17(1)(c) and 17(2) of this Constitution, respectively.

PART VI- FINANCE

§27. Control of revenue and expenditure.

- (1) No taxes shall be imposed and no other revenue shall be raised, and no monies of the local government shall be expended, unless authorized by law.
- (2) Subsection (1) of this Section does not apply to the acceptance of grants (other than loans) from the Government of the Marshall Islands, or to expenditure from such grants for the purposes for which, and subject to the conditions on which, they are made.
- (3) All money received by the local government, shall, unless otherwise authorized by ordinance of the local government or by or under Local Government Financial Memoranda issued under Section 146(2) of the Local Government Act 1980 (4 MIRC 1), be paid into a fund or account established in accordance with such an ordinance or the Financial Memoranda.

§28. Financial responsibility of the Executive Committee.

- (1) It is the responsibility of the Executive Committee to make proposals to the Council on all matters relating to the budget, and in particular the Executive Committee shall make recommendations to the Council for the raising of taxes and other revenue, and for the expenditure of money of the local government.
- (2) The Executive Committee is accountable to the Council for all expenditure of money of the local government and for relating such expenditure to appropriations made by the Council or to other authority conferred by this Constitution, an ordinance of the local government or a Central Government law.
- (3) Except on the recommendation or with the consent of the Executive Committee, signified by or on behalf of the Mayor, the Council shall not make or approve any ordinance or other proceeding introduced by a member other than the Mayor or an Executive Member if the ordinance or proceeding would, in the opinion of the member of the Council presiding:
 - (a) dispose of or charge any of the revenue of the local government;

- (b) revoke or alter (otherwise than by way of reduction) any such disposition or charge; or
- (c) impose alter or abolish any tax, rate, due, fee or fine.

§29. Budgets and appropriations.

- (1) The Executive Committee shall cause to be introduced into the Council with respect to each financial year:
 - (a) a set of budget estimates of revenue and expenditure; and
 - (b) an Appropriation Ordinance to make appropriations for expenditure.

The Executive Committee may also introduce additional supplementary estimates and Supplementary Appropriation Ordinances.

- (2) Subject to any Local Government Administrative Memoranda issued under Section 146(1)(a) of the Local Government Act 1980 (4 MIRC I) in relation to the format of ordinances and to any Local Government Financial Memoranda issued under Section 146(2) of that Act, Appropriation Ordinances and Supplementary Appropriation Ordinances shall follow the general form of Central Government Appropriation Bills and Supplementary Appropriation Bills under Article VIII, Sections 6 and 8 of the Constitution of the Marshall Islands.
- (3) Subject to any Local Government Financial Memoranda issued under Section 146(2) of the Local Government Act 1980 (4 MIRC 1), an ordinance of the local government may make provision, in accordance with the principles of Article VIII, Sections 7 and 9 of the Constitution of the Marshall Islands, for anticipated and reprogrammed expenditures and a Contingencies Fund.
- (4) Nothing in this Section prevents appropriations for specific purposes being included in an ordinance of the local government other than an Appropriation Ordinance or a Supplementary Appropriation Ordinance.
- (5) Appropriations lapse at the end of the financial year to which they respectively relate, unless, in relation to any particular head of appropriation, an ordinance of the local government provides otherwise.

§30. Loans.

The local government shall not accept loans, grant charges against its future revenue, or incur indebtedness chargeable to future revenue otherwise than in accordance with Section 150 of the Local Government Act 1980 (4 MIRC 1).

§31. Accounts.

- (1) The Executive Committee shall cause to be kept full and proper accounts and records of revenue and expenditure of the local government, assets of or under the control of the local government and liabilities of the local government.
- (2) The accounts and records shall comply with any Local Government Financial Memoranda issued under Section 146(2) of the Local Government Act 1980 (4 MIRC 1), subject to any directions of the Auditor-General, and any ordinance of the local government.
- (3) The Executive Committee shall, as soon as practicable after the end of a financial year lay before the Council accounts relating to all revenues and expenditures of the local government for that financial year, together with any report of the audit of the accounts under Section 32 of this Constitution.

§32. Audit.

- (1) In addition to the audit provided for by Section 140 of the Local Government Act 1980 (4 MIRC 1), the Auditor-General or a person authorized by him may at any time audit the accounts and records of the local government, and any accounts laid or to be paid before the Council under Section 31(3) of this Constitution.
- (2) The Auditor-General or authorized person shall report to the Council and to the Minister of the Government of the Marshall Islands responsible for local government matters on the audit and shall, in his report, draw attention to any irregularities in the accounts and records, or in the accounts, as the case may be.
- (3) For the purpose of an audit under Subsection (1) of this Section, the Auditor-General or authorized person has the powers and rights referred to in Article VIII, Section 15 of the Constitution of the Marshall Islands.

§33. Financial Memoranda.

Subject to this Constitution, all persons concerned with the financial administration of the local government shall comply with any Local Government Financial Memoranda issued under Section 146(2) of the Local Government Act 1980 (4 MIRC 1).

PART VII- STAFF**§34. Employment of staff.**

- (1) The Mayor, on behalf of the local government, may appoint a Clerk of the local government, and such other officers and employees as he considers necessary for the effective operation of the local government.
- (2) The local government is the employer of the Clerk and the other officers and employees.
- (3) The terms and conditions of appointment and employment of the Clerk and the other officers and employees shall be determined by or under an ordinance of the local government, and in the absence of such an ordinance are, with the necessary modifications, those members of the Public Service holding equivalent positions, for which purpose any reference in any Central Government law to:
 - (a) the Chief Secretary or a Department head, shall be read as a reference to the clerk or
 - (b) the Public Service Commission, shall be read as a reference to the Executive Committee.

§35. Secondment, etc., of public servants.

Subject to any arrangements made under Section 116(3) of the Local Government Act 1980 (4 MIRC 1), and to anything to the contrary in any ordinance of the local government, a member of the Public Service who is seconded to the local government in accordance with that Section, shall be deemed to be an officer of the local government for the purposes of any ordinance of the local government other than an ordinance prescribing terms and conditions of employment by the local government.

PART VIII- AMENDMENT OF THE CONSTITUTION

§36. Method of amendment.

- (1) This Constitution may be amended by ordinance of the local government approved on two occasions by a two-thirds (2/3) majority of the total membership of the Council, provided that:
 - (a) not less than thirty (30) days, or such shorter period as is approved in any particular case, and for a special reason, by the Minister of the Government of the Marshall Islands responsible for local government matters, has elapsed between the first and second such occasion; and
 - (b) before the second occasion the Mayor has obtained from that Minister and presented to the Council a report by the Attorney-General on the validity of the amendment.
- (2) If the Minister of the Government of the Marshall Islands responsible for local government matters recommends to the local government, amendments to this Constitution, the Council shall consider those amendments, but need not adopt them, with or without modification.

§37. Central Government recommendations as to ordinances, etc.

If the Minister of the Government of the Marshall Islands responsible for local government matters recommends to the local government that an ordinance be made, amended or repealed, the Mayor shall cause the recommendation to be presented to the Council together with the comments of the Executive Committee pertaining thereto.

§38. Advice as to validity of ordinance, etc

- (1) The Mayor may, and shall if so directed by the Council, request the Minister of the Government of the Marshall Islands responsible for local government matters for a report by the Attorney-General on the validity of any ordinance or proposed ordinance of the local government, or of any action or proposed action by the local government.
- (2) If the Minister furnishes a report as requested in accordance with Subsection (2), the Mayor shall present the report to the Council.

§39. Vacancies.

The validity of anything done by the Council or the Executive Committee or (subject to any ordinance of the local government and to the Rules of Procedure of the Council) by a committee of the Council, is not affected by any vacancy in its membership, provided that the number necessary to form a quorum for a meeting remains.

§40. Service.

Where any document or thing is to be given to, served on or communicated to a local government at a time when there is a vacancy in the office of the Mayor or the Mayor is absent or incapacitated, and there is no person appointed under Section 18 of this Constitution, it is sufficient if it is addressed to the Clerk of the local government.

§41. Effective date.

This Constitution shall be effective on a date fixed by the Minister of the Government of the Marshall Islands responsible for local government matters.

SCHEDULE I**REFERENCE SECTION: 2 - DEFAULT CONSTITUTION****THE LOCAL GOVERNMENT AREA**

(Include the baselines from which the territorial sea is measured, or an accurate reference to them, e.g., by reference to a map or chart.)

SCHEDULE 2**REFERENCE SECTION: 4, DEFAULT CONSTITUTION**

| Name of Wards | Description of ward |
|---------------|---------------------|
|---------------|---------------------|

ENDNOTES

Endnote References

1 If the local government covers only part of an atoll or island, or if it covers an atoll or island that is less than 10 miles from an atoll or island that has its own local government, this Section will need not be redrafted to describe the boundaries in accordance with the principles prescribed in Section 107(3) of the Local Government Act 1980 (4 MIRC 1).

2 Or as the case may be.

3 Omit if unnecessary or not desired.

4 Iroij, etc., membership and appointed or ex officio membership, if desired, specifying manner of election or appointment either here or in a separate Subsection.

5 Delete whichever is inappropriate.

6 One of the following provisions should be enacted as appropriate as Subsection (3):

(a) If the Local Government Constitution provides for a general election to be conducted by ballot, the following language shall be inserted: "The general election of members referred to in Subsection (1)(a) [or as the case may be] of this Section shall, beginning in the year 1995, be conducted once in every fourth calendar year on the third Monday in November."

(b) If the Local Government Constitution provides for a general election to be conducted by consensus, the following language shall be inserted: "The general election of members referred to in Subsection (1)(a) [or as the case may be] of this Section shall, beginning in the year 1995, be conducted once in every fourth calendar year, the first election meeting of which shall be conducted on the third Monday in November."

[P.L. 1991-114, § 2(2). deleting Subsection 6(3) of the Act and substituting alternate provisions as new Subsection 6(3).]

Each Local Government shall, if necessary to comply with the terms of P. L. 199 1114, enact conforming amendments to their respective Local Government Constitutions in accordance with this Chapter before January 1, 1995. The Ministry of Interior and Outer Islands Affairs shall assist Local Governments in determining whether such conforming amendments are required and in the drafting of such amendments.

In the event that any such amendment to a Local Government Constitution would operate to shorten the term of office of any person elected by ballot or by consensus in accordance with the provisions of the Local Government Constitution in effect immediately prior to the effective date of such amendment, the Local Government Council shall:

- (a) give reasonable notice to all prospective candidates prior to any such election that the term of office for all candidates will be shortened for that election; and
- (b) shall state the new term of office for that election. [P.L. 1991-114, § 3, setting forth the transition provisions for amending existing Local Government Constitution to conform to these amendments.]

7 Provision for Iroij, etc., membership and appointed membership, if any.

8 Add any further qualifications or disqualifications desired, in accordance with Section 9(2) of the Elections and Referenda Act 1980 (2 MIRC 1).

9 Not to exceed four years