

COOK ISLANDS

FINANCIAL TRANSACTIONS REPORTING ACT 2003

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2003, No. 10

An Act to facilitate the prevention, detection, investigation and prosecution of money laundering and other serious offences and the enforcement of the Proceeds of Crime Act 2003 by -

(a) establishing a financial intelligence unit to collect, analyse, and disseminate suspicious transactions reports and other financial information;
and

(b) requiring financial institutions to undertake due diligence measures and other measures to combat money laundering.

(7 May 2003)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same, as follows:

PART 1
PRELIMINARY

1. Short title and commencement - (1) This Act may be cited as the Financial Transactions Reporting Act 2003.

(2) This Act comes into force on a date to be determined by the Queen's Representative by Order in Executive Council.

2. Definitions - (1) In this Act, unless the context otherwise requires,-

"account" means any facility or arrangement by which a financial institution does any 1 or more of the following -

- (a) accepts deposits of currency;
- (b) allows withdrawals of currency;
- (c) pays cheques or payment orders drawn on the financial institution, or collects cheques or payment orders on behalf of a person other than the financial institution;

and includes any facility or arrangement for a safety deposit box or for any other form of safe deposit;

"business relationship" means a continuing relationship between 2 or more parties at least 1 of whom is a financial institution acting in the course of that financial institution's business in providing services to that other party;

"cash" means any coin or paper money that is designated as legal tender in the country of issue; and includes bearer bonds, travellers' cheques, postal notes and money orders;

"Court" means the High Court of the Cook Islands and its appellate courts;

"customer" includes -

- (a) a person engaged in a business relationship; or
- (b) the person in whose name a transaction or account is arranged, opened, or undertaken; or
- (c) a signatory to a transaction or account; or
- (d) any person to whom a transaction has been assigned or transferred; or
- (e) any person who is authorised to conduct a transaction; or
- (f) any person on whose behalf the account or transaction is being conducted; or
- (g) any other person that may be prescribed;

"data" means representations, in any form, of information or concepts;

"document" has the same meaning given by section 3 of the Proceeds of Crime Act 2003;

"financial institution" means a person that carries on the principal business of doing any of the following -

- (a) accepting deposits and other repayable funds from the public or banking business as defined in the Banking Act 2003;

- (b) lending, including consumer credit, mortgage credit, factoring (with or without recourse), and financing of commercial transactions;
- (c) financial leasing;
- (d) providing money transmission services;
- (e) issuing and administering means of payment (for example, credit cards, travellers' cheques and bankers' drafts);
- (f) entering into or issuing guarantees and commitments;
- (g) trading for the institution's own account, or for account of customers, in money market instruments (for example cheques, bills, certificates of deposit), foreign exchange, financial and commodity futures and options, exchange and interest rate instruments, and transferable securities;
- (h) underwriting share issues and participation in those issues and the provision of financial services related to those issues;
- (i) money-brokering;
- (j) providing portfolio management and advice;
- (k) safekeeping and administration of cash, liquid investments and securities;
- (l) providing safe custody services;
- (m) insurance, an insurance intermediary (which includes an agency or brokering business), a securities dealer or a futures broker;
- (n) trustee administrator or investment manager of a superannuation scheme but excluding closed-ended schemes;
- (o) dealing in bullion;
- (p) operating a gambling house, casino or lottery, including an operator who carries on operations through the internet;
- (q) acting as a trustee company as defined in the Trustee Companies Act 1981;
- (r) the holder of an offshore insurance licence;
- (s) acting as a lawyer or an independent legal professional, but only to the extent that the lawyer or the independent legal professional gives investment advice or receives funds in the course of his or her business for the purpose of deposit or investment, or settling real estate transactions (whether or not the funds are deposited into a separate trust account);

(t) acting as an accountant, but only to the extent that the accountant gives investment advice or receives funds in the course of his or her business for the purposes of deposit or investment (whether or not the funds are deposited into a separate trust account);

(u) dealing in real estate or high-value items including antiques;

(v) acting as a friendly society;

(w) otherwise investing, administering or managing funds or money on behalf of another person;

(x) underwriting and placement of life insurance and other investment related insurance;

(y) money and currency changing;

(z) acting as a dealer in precious metals and stones, including pearls;

(aa) acting as investment advisers;

(bb) incorporating domestic companies, partnerships or trusts;

(cc) any other business that may be prescribed by the Minister;

"FIU" means the Financial Intelligence Unit established under section 20;

"Head" means the Head of the FIU appointed under section 21;

"Minister" means the Minister of Finance, and includes any member of Cabinet or Minister of the Cook Islands Government acting for him or her or in his or her place;

"money laundering offence" means an offence against section 280A of the Crimes Act 1961;

"Money Laundering Reporting Officer" means a person who-

(a) is a member of the management of the financial institution; and

(b) has been approved by the FIU after consultation with any supervisory authority;

"money transmission services" means a person (other than a financial institution) carrying on a business of -

(a) exchanging cash or the value of money; or

(b) collecting, holding, exchanging or remitting funds or the value of money, or otherwise negotiating transfers of funds or the value of money, on behalf of other persons; or

(c) delivering funds; or

(d) issuing, selling or redeeming travellers' cheques, money orders or similar instruments;

"prescribed" means prescribed by regulations made under this Act;

"property" has the same meaning given by section 3 of the Proceeds of Crime Act 2003;

"record" means any material on which data is recorded or marked and that is capable of being read or understood by a person, computer system or other device;

"serious offence" has the same meaning given by section 3 of the Proceeds of Crime Act 2003;

"supervisory authority" means any institution or authority established in the Cook Islands to regulate or supervise a financial institution;

"suspicious transaction report" means a report required to be made under section 11 or 12;

"transaction" includes, but is not limited to -

(a) any deposit, withdrawal, exchange, or transfer of funds (in whatever currency denominated), whether:

(i) in cash; or

(ii) by cheque, payment order or other instrument; or

(iii) by electronic or other non-physical means;

(b) the use of a safety deposit box or any other form of safe deposit;

(c) any payment made in satisfaction, in whole or in part, of any contractual or other legal obligation;

(d) any other transactions that may be prescribed.

(2) In this Act a reference to the law of the Cook Islands or any foreign country, includes a reference to a written or unwritten law of, or in force in, any part of the Cook Islands or that foreign country, as the case may be.

3. Application - (1) This Act applies in relation to business relationships, accounts and a transaction conducted through a financial institution on or after the commencement of this Act.

(2) A financial institution or other person, as the case may be, must comply with the provisions of this Act, despite any other Act or law to the contrary.

PART 2
OBLIGATIONS TO KEEP RECORDS AND VERIFY IDENTITY

4. Financial institution must identify and verify customer - (1) When establishing a business relationship, opening an account or conducting a transaction, a financial institution must, as soon as practicable and before any person becomes a customer, identify and verify the customer on the basis of any official or other identifying document or other evidence as is reasonably capable of verifying the identity of the customer.

(2) Without limiting the generality of subsection (1) -

(a) if the customer is a legal entity, a financial institution must adequately verify its legal existence and structure, including information relating to:

(i) the customer's name, legal form, address, and directors;

(ii) the principal owners and beneficiaries;

(iii) provisions regulating the power to bind the entity; and to verify that any person purporting to act on behalf of the customer is authorised to do so, and identify those persons.

(b) the official or identifying document or other evidence or procedures required for the verification of any particular customer or class of customers may be prescribed.

(3) A financial institution must -

(a) obtain information on the purpose; and

(b) conduct on-going due diligence on the business relationship with its customer; and

(c) conduct on-going scrutiny of any transaction undertaken throughout the course of the business relationship with a customer to ensure that the transaction being conducted is consistent with the financial institution's knowledge of the customer, the customer's business and risk profile, including where necessary, the source of funds.

(4) If a person conducts a transaction, other than a one-off transaction, through a financial institution and the financial institution has reasonable grounds to believe that the person is undertaking the transaction on behalf of any other person or persons, then, in addition to complying with subsections (1) and (2), the financial institution must verify the identity of the other person or persons for whom, or for whose ultimate benefit, the transaction is being conducted.

(5) If a financial institution contravenes subsection (1), (2), (3) or (4) the financial institution commits an offence punishable by -

(a) in the case of an individual, to a fine of up to \$10,000 or to a term of imprisonment of up to 12 months, or both; or

(b) in the case of a body corporate, to a fine of up to \$50,000.

(6) Subsection (1) or (2) does not apply -

(a) if the transaction is part of an existing and regular business relationship with a person who has already produced satisfactory evidence of identity, unless the financial institution has reason to suspect that the transaction is suspicious or unusual; or

(b) in relation to customer verification only, if the transaction is a one-off transaction not exceeding \$10,000, unless the financial institution has reason to suspect that the transaction is suspicious or unusual; or

(c) in any other circumstances that may be prescribed.

(7) For the purposes of subsection (6), "one-off transaction" means any transaction other than a transaction carried out in the course of an established business relationship formed by a person acting in the course of relevant financial business.

5. Necessity of identification to conduct business - If -

(a) satisfactory evidence of the identity is not produced to, or obtained by, a financial institution under section 4; and

(b) if, in all the circumstances, the financial institution is of the opinion that a report should be made to the FIU reporting the matter referred to in paragraph (a),

the financial institution must -

(c) not proceed any further with the business relationship, the opening of the account or transaction, as the case may be; and

(d) report the matter to the FIU.

6. Financial institution must maintain records - (1) A financial institution must establish and maintain -

(a) records of all transactions carried out by it and correspondence relating to the transactions;

(b) records of a person's identification and verification obtained in accordance with section 4;

(c) records of all reports made to the FIU; and

(d) records of all enquiries made to or by the financial institution by the FIU.

(2) Records required under subsection (1) are those records that are reasonably necessary to enable the transaction to be readily reconstructed at any time by the FIU or by a law enforcement agency.

(3) Records referred to in subsection (2) must contain particulars sufficient to identify the name, address and Occupation (or, where appropriate, business or principal activity) of each person -

(a) conducting the transaction; and

(b) if applicable, on whose behalf the transaction is being conducted.

(4) In addition, the documents used by the financial institution to identify and verify each person must have sufficient particulars to identify -

(a) the nature and date of the transaction;

(b) the type and amount of any currency involved;

(c) the type and identifying number of any account with the financial institution involved in the transaction;

(d) if the transaction involves a negotiable instrument other than currency, the name of the drawer of the instrument, the name of the institution on which it was drawn, the name of the payee (if any), the amount and date of the instrument, the number (if any) of the instrument and details of any endorsements appearing on the instrument;

(e) the name and address of the financial institution, and of the officer, employee or agent of the financial institution who prepared the record.

(5) The records mentioned in subsection (1)(a) must be kept-

(a) for a minimum period of 6 years from the date of any transaction or correspondence; and

(b) in the Cook Islands or, if kept elsewhere, in a manner and form that allows the FIU to reproduce, within three working days, that record in usable form in the Cook Islands.

(6) The records mentioned in subsections (1)(b), (c) and (d) must be kept -

(a) for a minimum period of 6 years from the date the account is closed or the business relationship ceases, whichever is the later; and

(b) in the Cook Islands or, if kept elsewhere, in a manner and form that allows the FIU to reproduce, within 3 working days, that record in usable form in the Cook Islands.

(7) If a financial institution contravenes subsections (1) to (4), the financial institution commits an offence punishable by, -

(a) in the case of an individual, to a fine of up to \$5,000;

(b) in the case of a body corporate, to a fine of up to \$20,000.

(8) A copy of any record required to be kept under this Act may be kept -

(a) in a machine-readable form, if a paper copy can be readily produced from it; or

(b) in an electronic form, if a paper copy can be readily produced from it and an electronic signature of the person who keeps the record is retained.

7. Financial institution must maintain account in true name - (1) A financial institution must maintain any accounts in the true name of the account holder.

(2) A financial institution must not open, operate or maintain any anonymous account.

(3) A financial institution must not open, operate or maintain any account which the financial institution ought reasonably to have known is in a fictitious or false name.

(4) If a financial institution contravenes subsections (1), (2) or (3), the financial institution commits an offence punishable by, -

(a) in the case of an individual, to a fine of up to \$10,000;

(b) in the case of a body corporate, to a fine of up to \$50,000.

(5) For purposes of this section, -

(a) an account is in a false name if the person, in opening the account, or becoming a signatory to the account, uses a name other than a name by which the person is commonly known;

(b) an account is operated in a false name if the person operating the account does any act or thing in relation to the account (whether by way of making a deposit or withdrawal or by way of communication with the financial institution concerned or otherwise) and, in doing so, uses a name other than a name by which the person is commonly known; and

(c) an account is in a false name if it was opened in a false name, whether before or after the commencement of this Act.

8. Financial institution must monitor transactions - (1) A financial institution must pay special attention to -

(a) any complex, unusual or large transactions or attempted transactions or any unusual patterns of transactions or attempted transactions that have no apparent or visible economic or lawful purpose; or

(b) business relationships and transactions with persons in jurisdictions that do not have adequate systems in place to prevent or deter money laundering; or

(c) wire transfers that do not contain complete originator information.

(2) In relation to subsection (1), a financial institution -

(a) must examine, as far as possible, the background and purpose of the transactions or business relations and record its findings in writing; and

(b) must report those findings to the FIU or to a law enforcement agency, to assist the FIU or the law enforcement agency in any investigation relating to a serious offence or a money laundering offence.

9. Banks and money transmission service providers must include originator information - A financial institution must include accurate originator information and other related messages on electronic funds transfers and other forms of funds transfers, and that information must remain with the transfer.

PART 3 **OBLIGATIONS TO REPORT**

10. Financial institution must report financial transactions - (1) A financial institution must, within 3 working days, report to the FIU, within a time and in the form and manner that may be prescribed, -

(a) any transaction of an amount in cash exceeding \$10,000, or any other amount that may be prescribed, in the course of a single transaction, unless the recipient and the sender is a financial institution;

(b) the sending out of the Cook Islands at the request of a customer of any electronic funds transfer exceeding that \$10,000, or any other amount that may be prescribed in the course of a single transaction;

(c) the receipt from outside the Cook Islands of an electronic funds transfer, sent at the request of a customer, of an amount exceeding \$10,000, or other amount as may be prescribed, in the course of a single transaction.

(2) Nothing in paragraph (1)(a) overrides requirements relating to suspicious transactions reports.

(3) Paragraph (1)(b) does not apply when the financial institution sends an electronic funds transfer to a person or entity in the Cook Islands, even if the final recipient is outside the Cook Islands.

(4) Paragraph (1)(c) does not apply when the financial entity receives an electronic funds transfer from a person or entity in the Cook Islands, even if the initial sender is outside the Cook Islands.

(5) If a financial institution contravenes subsection (1), the financial institution commits an offence punishable by -

(a) in the case of an individual, to a fine of up to \$10,000;

(b) in the case of a body corporate, to a fine of up to \$50,000.

(6) Every person commits an offence who conducts 2 or more transactions or electronic funds transfers that are of an amount below the threshold set out in subsection (1) if, having regard to the matters in subsection (7), it would be reasonable for the Court to conclude that the person conducted the transactions, or transfers in that manner or form, for the sole or dominant purpose of ensuring, or attempting to ensure, that no report in relation to the transactions or transfers is required to be made.

(7) The matters referred to in subsection (6) are -

(a) the manner and form in which the transactions or transfers were conducted, including, without limiting the generality of this, all or any of the following:

(i) the value of the currency involved in each transaction or transfer;

(ii) the aggregated value of the currency involved in the transactions or transfers;

(iii) the period of time over which the transactions or transfers occurred;

(iv) the interval of time between any of the transactions or transfers;

(v) the locations at which the transactions or transfers were initiated or conducted; and

(b) any explanation made by the person about the manner or form in which the transfers were conducted.

(8) Every person who contravenes subsection (6) is liable on conviction -

(a) in the case of an individual, to a fine of up to \$10,000 or a term of imprisonment of up to 12 months, or both;

(b) in the case of a body corporate, to a fine of up to \$50,000.

11. Financial institution must report suspicious transactions - (1) If a financial institution has reasonable grounds to suspect that information that the financial institution has concerning any transaction or attempted transaction may be -

(a) relevant to an investigation or prosecution of a person or persons for a serious offence or a money laundering offence; or

(b) of assistance in the enforcement of the Proceeds of Crime Act 2003; or

(c) related to the commission of a serious offence or a money laundering offence, the financial institution must, as soon as practicable after forming that suspicion but no later than 2 working days, report the transaction or attempted transaction to the FIU.

(2) If a financial institution fails without reasonable excuse to comply with subsection (1), the financial institution commits an offence punishable by, -

(a) in the case of an individual, to a fine of up to \$20,000 or a term of imprisonment of up to 2 years, or both;

(b) in the case of a body corporate, to a fine of up to \$100,000.

(3) A report under subsection (1) must -

(a) except as provided for in subsection (4), be in writing and may be given by way of personal delivery, fax, or electronic mail or any other manner that may be prescribed; and

(b) be in any form and contain any details that may be prescribed; and

(c) contain a statement of the grounds on which the financial institution holds the suspicion; and

(d) be signed or otherwise authenticated by the financial institution.

(4) If the urgency of the situation requires, a report under subsection (1) may be made orally but the financial institution must, within 3 working days, forward to the FIU a report that complies with subsection (3).

(5) If requested to do so by a law enforcement agency, a financial institution that has made a report to the FIU must give the FIU or a law enforcement agency that is carrying out an investigation arising from, or relating to, the information contained in the report any further information that it has about the transaction or attempted transaction or the parties to the transaction.

(6) If a financial institution fails without reasonable excuse to comply with subsection (5), the financial institution commits an offence punishable by, -

(a) in the case of an individual, to a fine of up to \$20,000, or a term of imprisonment of up to 2 years; or

(b) in the case of a body corporate, to a fine of up to \$100,000.

12. Suspicious transaction report by supervisory authority or auditor - (1) A supervisory authority must report any transaction or attempted transaction to the FIU, within 2 working days, if it has reasonable grounds to suspect that information that it has concerning that transaction or attempted transaction may be -

(a) relevant to an investigation or prosecution of a person or persons for a serious offence or a money laundering offence;

(b) of assistance in the enforcement of the Proceeds of Crimes Act 2003;

(c) related to the commission of a serious offence or a money laundering offence.

(2) An auditor of a financial institution must report any transaction or attempted transaction to the FIU, within 2 working days, if it has reasonable grounds to suspect that information that it has concerning that transaction or attempted transaction may be -

(a) relevant to an investigation or prosecution of a person or persons for a serious offence or a money laundering offence;

(b) of assistance in the enforcement of the Proceeds of Crimes Act 2003;

(c) related to the commission of a serious offence or a money laundering offence.

13. False or misleading statements - A person who, in making a report under sections 10, 11 or 12, makes any statement that the person knows is false or misleading in any material particular or omits from any statement any matter or thing without which the person knows that the statement is false or misleading in any material particular commits an offence punishable by -

(a) in the case of an individual, to a fine of up to \$20,000 or a term of imprisonment of up to 2 years; or

(b) in the case of a body corporate, to a fine of up to \$100,000.

14. Disclosure of suspicious transaction reports and other information - (1) A financial institution, its officers, employees or agents or any other person must not disclose to any person -

(a) that a report under section 11(1) or 12 has been or may be made, or further information has been given under section 11(5); or

(b) that the financial institution has formed a suspicion in relation to a transaction for purposes of section 11(1); or

(c) any other information from which the person to whom the information is disclosed could reasonably be expected to infer that a suspicion has been formed or that a report has been, or may be, made.

(2) Subsection (1) does not apply to disclosures made to -

(a) the FIU; or

(b) an officer or employee or agent of the financial institution for any purpose connected with the performance of that person's duties; or

(c) a barrister or solicitor for the purpose of obtaining legal advice or representation in relation to the matter; or

(d) a supervisory authority of the financial institution for the purposes of carrying out the supervisory authority's functions.

(3) No person referred to in subsection (2)(b) to whom disclosure of any information to which that subsection applies has been made must disclose that information except to another person of the kind referred to in that subsection, for the purpose of -

(a) the performance of the first-mentioned person's duties; or

(b) obtaining legal advice or representation in relation to the matter.

(4) No person referred to in subsection 2(c) to whom disclosure of any information to which that subsection applies has been made must disclose that information except to a person of the kind referred to in that subsection for the purpose of giving legal advice or making representations in relation to the matter.

(5) Subject to this Act, nothing in any of subsections (1) to (3) prevents the disclosure of any information in connection with, or in the course of, proceedings before a court.

(6) If a person contravenes subsection (1), the person commits an offence punishable by, -

(a) in the case of an individual, to a fine of up to \$20,000 or a term of imprisonment of up to 2 years; or both

(b) in the case of a body corporate, a fine of up to \$100,000.

(7) If a person contravenes subsection (1) with intent to prejudice an investigation of a serious offence or a money laundering offence or for the purpose of obtaining directly or indirectly an advantage or a pecuniary gain for himself or herself or for any other person, the person commits an offence punishable by, -

(a) in the case of an individual, to a fine of up to \$50,000 or a term of imprisonment of up to 5 years;

(b) in the case of a body corporate, to a fine of up to \$150,000.

15. Protection of identity of persons and information - (1) This section applies to reports made under sections 5, 8, 10, 11 and 12 and to any other information given to the FIU.

(2) A person must not disclose any information that will identify, or is likely to identify any of the following except for the purposes specified in subsection (3) -

(a) any person who has handled a transaction in respect of which a report has been made; or

(b) any person who has prepared a report; or

(c) any person who has made a report; or

(d) any information contained in a report or information provided under section 11(5).

(3) The purposes referred to in subsection (2) are -

(a) the investigation or prosecution of a person or persons for a serious offence or a money laundering offence; or

(b) the enforcement of the Proceeds of Crime Act 2003;

(c) the administration of the Mutual Assistance in Criminal Matters Act 2003.

(4) No person is required to disclose any information to which this section applies in any judicial proceedings unless the judge or other presiding officer is satisfied that the disclosure of the information is necessary in the interests of justice.

(5) Nothing in this section prohibits the disclosure of any information for the purposes of the prosecution of any offence against any of the provisions of section 14.

(6) If a person contravenes subsection (2), the person commits an offence punishable by, -

(a) in the case of an individual, to a fine of up to \$20,000 or a term of imprisonment of up to 2 years; or both

(b) in the case of a body corporate, a fine of up to \$100,000.

16. Protection of persons reporting in good faith - (1) No civil, criminal or disciplinary proceedings may be taken against -

(a) a financial institution, an auditor or supervisory authority of a financial institution; or

(b) an officer, employee or agent of a financial institution, an auditor or supervisory authority of a financial institution acting in the course of that person's employment or agency;

in relation to any action by the financial institution, the auditor or the supervisory authority or their officer, employee or agent taken under sections 5, 8(2)(b), 10, 11, or 12 in good faith.

(2) Subsection (1) does not apply in respect of proceedings for an offence against section 14.

(3) If a financial institution or its officer, employee, agent, or the supervisory authority or auditor of the financial institution makes a report under sections 5, 8(2)(b), 10, 11 or 12, the person is taken, for the purposes of proceedings for a money laundering offence, not to have been in possession of that information at any time.

17. Privileged communication - (1) Nothing in section 11 requires any lawyer to disclose any privileged communication.

(2) For the purposes of this section, a communication is a privileged communication only if -

(a) it is a confidential communication, whether oral or in writing, passing between:

(i) a lawyer in his or her professional capacity and another lawyer in such capacity; or

(ii) a lawyer in his or her professional capacity and his or her client, whether made directly or indirectly through an agent of either; and

(b) it is made or brought into existence for the purpose of obtaining or giving legal advice or assistance; and

(c) it is not made or brought into existence for the purpose of committing or furthering the commission of an illegal or wrongful act.

(3) If the information consists wholly or partly of, or relates wholly or partly to, receipts, payments, income, expenditure or financial transactions of a specified person (whether a lawyer, his or her client, or any other person), it is not a privileged communication if it is contained in, or comprises the whole or part of, any book, account, statement or other record prepared or kept by the lawyer in connection with a trust account of the lawyer.

(4) For the purposes of this section, references to a lawyer include a firm in which the person is a partner or is held out to be a partner.

18. Other preventative measures by financial institution - (1) A Compliance Officer appointed under section 17 of the Financial Supervisory Commission Act 2003 is responsible for ensuring the financial institution's compliance with sections 4, 6 and 7 by establishing and maintaining procedures and systems to -

(a) implement the customer identification requirements under section 4; and

(b) implement record keeping and requirements under sections 6 and 7.

(2) A financial institution must appoint a Money Laundering Reporting Officer who is responsible for ensuring the financial institution's compliance with sections 10 and 11 by -

(a) establishing and maintaining procedure and systems to –

(i) implement the reporting requirements under sections 10 and 11;

(ii) make its officers and employees aware of the laws relating to money laundering;

(iii) make its officers and employees aware of the procedures, policies and audit systems adopted by it to deter money laundering; and

(b) train its officers, employees and agents to recognise suspicious transactions;

(c) establish an audit function to test its anti-money laundering procedures and systems.

19. Defences - (1) It is a defence to a person or financial institution charged with an offence under any of the sections 4, 6, 7, 10, 11, 13, 14 and 15 if the defendant proves -

(a) that the defendant took all reasonable steps to ensure that the defendant complied with that provision; or

(b) that, in the circumstances of the particular case, the defendant could not reasonably have been expected to ensure that the defendant complied with the provision.

(2) In determining, for the purposes of subsection (1)(a), whether or not a financial institution took all reasonable steps to comply with a provision, the court must have regard to -

(a) the nature of the financial institution and the activities in which it engages; and

(b) the existence and adequacy of any procedures established by the financial institution to ensure compliance with the provision, including (without limitation) -

(i) staff training; and

(ii) audits to test the effectiveness of any such procedures.

PART 4 **FINANCIAL INTELLIGENCE UNIT**

20. FIU established - The FIU is established.

21. Minister to appoint Head - The Minister must appoint a Head of the FIU on any terms and conditions the Minister may determine in consultation with Cabinet.

22. Functions, powers and duties of Head - (1) The Head may exercise all of the functions, powers and duties of the FIU under this Act.

(2) The Head may from time to time, appoint such other officers and employees of the FIU as are necessary for the efficient exercise of the duties, functions and powers of the FIU.

(3) The Head may authorise any person, subject to any terms and conditions that the Head may specify, to carry out any power, duty, or function conferred on the Head under this Act.

23. Head may delegate - (1) The Head may, from time to time, in writing, either generally or particularly, delegate to any employee or agent of the FIU as he or she thinks fit, all or any of the powers exercisable by him or her under this or any other enactment, but not including the power of delegation conferred by this section.

(2) Subject to any general or special directions given or conditions attached by the Head, the employee or agent to whom powers are delegated, may exercise those powers in the same

manner and with the same effect as if they had been conferred on him or her directly by this section and not by delegation.

(3) Until a delegation is revoked in writing, it continues in force according to its tenor and in the event of the Head ceasing to hold office, the delegation continues to have effect as if made by the person for the time being holding office as Head.

(4) Every delegation made under this section is revocable at will and no delegation prevents the exercise of any power by the Head.

24. Head to hold no other office - The Head must not be -

(a) a member of Parliament; or

(b) a member of a local authority; or

(c) a director, officer or employee of, or hold any shares in any financial institution or be the spouse or immediate family of any such person,

and must not, without the approval of the Minister, hold any other office or take on any other occupation.

25. Removal or suspension from office - The Head may at any time be removed or suspended from office by the Minister for disability affecting the performance of duty, neglect of duty, incompetence or misconduct proved to the satisfaction of the Minister.

26. Head must report to Minister - (1) The Head -

(a) must report to the Minister on the exercise of the Head's powers and the performance of his or her duties and functions under this Act; and

(b) advise the Minister on any matter relating to money laundering.

(2) The Head may not disclose any information, except in accordance with this Act, that would directly or indirectly identify an individual who provided a report or information to the FIU, or a person or an entity about whom a report or information was provided under this Act.

27. Functions and powers of FIU - The FIU has the following functions-

(a) it must receive reports made under sections 5, 8, 10, 11 and 12 and information provided to the FIU by any agency of another country, information provided to the FIU by a law enforcement agency or a Government institution or agency, and any other information voluntarily provided to the FIU about suspicions of a serious offence or a money laundering offence;

(b) it may collect information that the FIU considers relevant to serious offences or money laundering activities and that is publicly available, including commercially available databases, or information that is collected or maintained, including information that is stored in databases maintained by the Government;

- (c) if the FIU has reasonable grounds to believe a serious offence or a money laundering offence has been, is being or may be committed, the FIU must refer the matter to the Police for investigation;
- (d) it may request information from any law enforcement agency and supervisory authority for the purposes of this Act;
- (e) it may analyse and assess all reports and information;
- (f) it may send any report, any information derived from that report or any other information it receives to the appropriate law enforcement authorities if, having considered the report or information, the FIU also has reasonable grounds to suspect that the transaction is suspicious;
- (g) it must destroy a suspicious transaction report received or collected on the expiry of 6 years after the date of receipt of the report if there has been no further activity or information relating to the report or the person named in the report or 6 years from the date of the last activity relating to the person or to the report;
- (h) it may ask for further information relating to any suspicious transaction report received by it from a financial institution;
- (i) it may instruct any financial institution to take any steps that may be appropriate in relation to any information or report received by the FIU to enforce compliance with this Act;
- (j) it may compile statistics and records, disseminate financial information and intelligence to domestic authorities within the Cook Islands or elsewhere for investigation or action if there are grounds to suspect money laundering;
- (k) it must issue guidelines to financial institutions;
- (l) it may provide training programmes for financial institutions in relation to customer identification, record keeping and reporting obligations and the identification of suspicious transactions;
- (m) it may provide feedback to financial institutions and other relevant agencies regarding outcomes relating to the reports or information given under this Act;
- (n) it may conduct research into trends and developments in the area of money laundering and improved ways of detecting, preventing and deterring money laundering;
- (o) it may educate the public and create awareness of matters relating to money laundering;
- (p) it must undertake compliance audits for entities not regulated by a supervisory authority;

it may transmit any information from, or derived from, a compliance audit or supervisory review or suspicious transaction report to the appropriate domestic or foreign law enforcement authority, if the FIU has reasonable grounds to believe that the information is suspicious or is relevant to an investigation for non-compliance with this Act, a serious offence or a money laundering offence

28. Agreements and arrangements by FIU - (1) The FIU may, with the approval of Cabinet, enter into negotiations, orally or in writing, relating to an agreement or arrangement, in writing, with an institution or agency of a foreign state or an international organisation established by the governments of foreign states that has powers and duties similar to those of the FIU, regarding the exchange of information between the FIU and the institution or agency.

(2) Final agreements or arrangements entered into under subsection (1) must be approved by Cabinet.

(3) The information exchanged under subsection (1) must be information that the FIU, institution or agency has reasonable grounds to believe would be relevant to investigating or prosecuting a serious offence or a money laundering offence or an offence that is substantially similar to either offence.

(4) Agreements or arrangements entered into under subsection (1) must -

(a) restrict the use of information to purposes relevant to investigating or prosecuting a serious offence, a money laundering offence or an offence that is substantially similar to either offence; and

(b) stipulate that the information must be treated in a confidential manner and must not be further disclosed without the express consent of the FIU.

29. Disclosure to foreign agencies - (1) The FIU may disclose its information to an institution or agency of a foreign state or of an international organisation established by the governments of foreign states that has powers and duties similar to those of the FIU on the terms and conditions set out in the agreement or arrangement between the FIU and that foreign state or international organisation regarding the exchange of information.

(2) Nothing in subsection (1) limits the power of the FIU to disclose its information to an institution or agency of a foreign state or of an international organisation established by the governments of foreign states that has powers and duties similar to those of the FIU for the purposes of an investigation, prosecution or proceedings relating to a serious offence or a money laundering offence.

(3) The FIU may transmit any information from, or derived from, a compliance audit or supervisory review to the appropriate domestic or foreign law enforcement authority, if the FIU has reasonable grounds to believe that the information is suspicious or is relevant to an investigation for non-compliance with this Act, a serious offence or a money laundering offence.

30. Power to examine - (1) The FIU or any suitably qualified person appointed by the FIU may examine the records and inquire into the business and affairs of any financial institution for the purpose of ensuring compliance with Parts 2 and 3 and, for that purpose, may, -

- (a) at any reasonable time without warrant, enter any premises in which the authorised person believes, on reasonable grounds, that there are records relevant to ensuring compliance with Parts 2 and 3;
- (b) use or cause to be used any computer system or data processing system in the premises to examine any data contained in or available to the system;
- (c) reproduce any record, or cause it to be reproduced from the data, in the form of a printout or other output for examination or copying;
- (d) use or cause to be used any copying equipment in the premises to make copies of any record.

(2) The owner or person in charge of premises referred to in subsection (1) and every person found there must give the FIU or any authorised person all reasonable assistance to enable them to carry out their responsibilities and must furnish them with any information that they may reasonably require with respect to the administration of Parts 2 and 3 or any regulations made under this Act.

(3) Any person who wilfully obstructs or hinders or fails to cooperate with the FIU or any authorised person in the lawful exercise of the powers under subsection (1) or any person who does not comply with subsection (2) commits an offence punishable by, -

- (a) in the case of an individual, to a fine of up to \$20,000 or a term or imprisonment of up to 2 years, or both;
- (b) in the case of a body corporate, to a fine of up to \$100,000.

(4) The FIU may send any information from, or derived from, an examination to -

- (a) a supervisory authority;
- (b) the Solicitor-General;
- (c) a law enforcement agency or a foreign supervisory authority;

if the FIU has reasonable grounds to suspect that the information is suspicious or is relevant to an investigation for non-compliance with this Act, a serious offence or a money laundering offence.

31. Powers to enforce compliance - (1) Every officer and employee of a financial institution must take all reasonable steps to ensure compliance by that financial institution with its obligations under this Act.

(2) The FIU may direct or enter into an agreement with any financial institution that has, without reasonable excuse, failed to comply in whole or in part with any obligations under

Part 2 or 3 to implement any action plan to ensure compliance with its obligations under those Parts.

(3) If a financial institution fails to comply with a directive under subsection (2) or fails to implement an action plan under subsection (2), the FIU may, on application to the Court and after satisfying the Court that a financial institution has failed without reasonable excuse to comply in whole or in part with any obligations under Part 2 or 3, obtain an injunction against all or any of the officers or employees of that financial institution on the terms that the Court considers necessary to enforce compliance with those obligations.

(4) In granting an injunction under subsection (3), the Court may order that, if the financial institution or any officer or employee of that institution fails, without reasonable excuse, to comply with all or any of the provisions of that injunction, the financial institution, officer or employee must pay a financial penalty in the sum of \$20,000 or any other penalty that the Court may determine.

32. Audit - (1) The FIU is subject to examination and audit by the Director of the Public Expenditure Review Committee and Audit ("Director of PERCA").

(2) The Director of PERCA and every person acting on behalf of, or under the direction of, the Director of PERCA must not use or disclose any information that they have obtained, or to which they have had access, in the course of their audit, except for the purposes of exercising those powers or performing their duties and functions under the Public Expenditure Review Committee and Audit Act 1995-96.

33. Non-disclosure - (1) This section applies to a person while the person is, or after the person ceases to be, the Head, officer, employee or agent of the FIU.

(2) Except for the purpose of the performance of his or her duties or the exercise of his or her functions under this Act, or when lawfully required to do so by any court, the person referred to in subsection (1) must not disclose any information or matter that has been obtained by him or her in the performance of his or her duties or, the exercise of his or her functions under this Act or that he or she has knowledge except for one or more of the following purposes -

(a) the detection, investigation or prosecution of a serious offence or a money laundering offence;

(b) the enforcing of the Proceeds of Crime Act 2003.

34. Immunity - No action lies against the Head, any officer, employee or agent of the FIU or any person acting under the direction of the Head for anything done in good faith in the administration or discharge of any powers, duties, or functions under this Act.

PART 5 **OTHER MATTERS**

35. Overriding of secrecy - For the avoidance of doubt, a financial institution must comply with the requirements of this Act despite any obligation as to secrecy or other restriction on the disclosure of information imposed by any written law or otherwise.

36. Act to prevail if conflict with other specified Acts - If there is a conflict between the provisions of this Act and any other Act including the following Acts, this Act prevails -

- (a) International Companies Act 1981-82;
- (b) International Partnership Act 1984;
- (c) International Trusts Act 1984;
- (d) Banking Act 2003;
- (e) Off-Shore Insurance Act 1981-82;
- (f) Trustee Companies Act 1981-82.

37. Anonymous account or account in fictitious or false name - (1) A person who opens, operates or authorises the opening or operation of an anonymous account commits an offence punishable by, -

- (a) in the case of an individual, to a fine of up to \$10,000 or to a term of imprisonment of up to 12 months, or both;
- (b) in the case of a body corporate, to a fine of up to \$50,000.

(2) A person who intentionally opens or operates an account with a financial institution in a fictitious or false name commits an offence punishable by, -

- (a) in the case of an individual, to a fine of up to \$10,000 or a term of imprisonment of up to 12 months, or both;
- (b) in the case of a body corporate, to a fine of up to \$50,000.

(3) A person who authorises the opening or the operation of an account with a financial institution in a fictitious or false name in circumstances where that person ought to have reasonably known that the name of the account was fictitious or false, commits an offence punishable by, -

- (a) in the case of an individual, to a fine of up to \$10,000 or a term of imprisonment of up to 12 months, or both;
- (b) in the case of a body corporate, to a fine of up to \$50,000.

(4) If a person is commonly known by 2 or more different names, the person must not use one of those names in opening an account with a financial institution unless the person has previously disclosed the other name or names to the financial institution.

(5) If a person using a particular name in his or her dealings with a financial institution discloses to it a different name or names by which he or she is commonly known, the

financial institution must make a record of the disclosure and must, at the request of the FIU, give the FIU a copy of that record.

(6) For purposes of this section, -

(a) a person opens an account in a false name if the person, in opening the account, or becoming a signatory to the account, uses a name other than a name by which the person is commonly known;

(b) a person operates an account in a false name if the person does any act or thing in relation to the account (whether by way of making a deposit or withdrawal or by way of communication with the financial institution concerned or otherwise) and, in doing so, uses a name other than a name by which the person is commonly known; and

(c) an account is in a false name if it was opened in a false name, whether before or after the commencement of this Act.

38. Liability of employers or principals - (1) Any act done or omitted by a person as an employee or agent is, for the purposes of this Act, to be treated as done or omitted by that person's employer or principal, whether or not it was done with the knowledge or approval of the employer or principal.

(2) Subsection (1) only applies, in the case of an agent, if the agent acted within the terms of his or her agency or contract.

39. Liability of directors, controllers and officers of bodies corporate - If a body corporate is convicted of an offence under this Act or any regulations made under this Act, every director, controller or officer concerned in the management of the body corporate commits an offence if it is proved that the act or omission that constituted the offence took place with that person's knowledge, authority, permission or consent.

40. Regulations - The Queen's Representative may, from time to time, by Order in Executive Council make regulations -

(a) prescribing any requirements, policies, or procedures for customer identification, record keeping, reporting obligations, systems, training and internal controls;

(b) prescribing requirements relating to accounts in existence at the commencement of this Act relating to customer identification and verification;

(c) prescribing the qualifications and criteria for appointment as a Money Laundering Reporting Officer and terms and conditions of appointment;

(d) prescribing offences for non-compliance with this Act;

(e) providing for any other matters that are contemplated by or are necessary giving full effect to this Act and for its administration.

41. Transitional provisions - (1) A financial institution which, at the commencement of this Act, is subject to the Money Laundering Prevention Act 2000, must, within 6 months after

the date of commencement of this Act, comply with the provisions relating to customer identification and verification set out in this Act.

(2) Upon the date of coming into force of this Act, all assets and liabilities held by the Financial Intelligence Unit set up by the Money Laundering Authority for the purpose of fulfilling certain of its obligations under the Money Laundering Prevention Act 2000, must be transferred to and vest in the FIU without further assurance than this section and the FIU shall have all powers necessary to take possession of recover and deal with such assets and discharge such liabilities.

(3) All monies appropriated by Parliament for the year ending 30th June during which this Act comes into force for the purposes of the Financial Intelligence Unit referred to in subsection (2) shall, without further authority than this subsection, be appropriated to the FIU.

(4) Every head, officer or employee of the Financial Intelligence Unit appointed by the Money Laundering Authority before the coming into force of this Act shall continue to hold office as a head, officer or employee of the FIU for such period and upon such terms and conditions as to remuneration or otherwise as shall be determined by the Minister, but in all other respects as if their appointments were made by the Minister or the Head, as the case may be, under section 21 or 22 of this Act.

This Act is administered by the Financial Intelligence Unit