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An Act to make provision for the disclosure by financial institutions of customer information to foreign governments.

(6 December 2013)

The Parliament of the Cook Islands enacts as follows—

- 1 **Title**
This Act is the Financial Institutions (Provision of Customer Information) Act 2013.
- 2 **Commencement**
This Act comes into force on the date it is assented to by the Queen's Representative.
- 3 **Interpretation**
In this Act, unless the context otherwise requires—
Agreement means an agreement entered into by a financial institution with a foreign government for the provision of customer information for taxation purposes
Beneficiary means any person with a fixed, vested or contingent interest as a beneficiary of a trust
Company means a corporation wheresoever formed and if created in the Cook Islands includes any company established under the Companies Act 1970-71, the International Companies Act 1981-82 and the Limited Liability Companies Act 2008

Customer means a person who has engaged a financial institution to provide services in the course of its business undertaking and includes, in respect to such customer—

- (a) where assets are held by the customer pursuant to a trust any beneficiary and settlor of that trust and where such persons are entities or trusts, includes the ultimate beneficial owners and providers of funds to the relevant account:
- (b) any beneficiary founder or dedicator of assets to a foundation registered under the Foundations Act 2012 and, where such persons are entities or trusts, includes the ultimate beneficial owners and providers of funds to the Foundation:
- (c) the shareholders of any company and where such shareholders are entities or trusts, the ultimate beneficial owners of those shares:
- (d) the partners of a partnership and where a partner is an entity or trust the ultimate beneficial owners and providers of funds to that entity or trust

Customer information means information relating to a customer and the services provided by a financial institution to a customer

Financial institution means a person—

- (a) licensed under the Banking Act 2011 to carry on banking business:
- (b) whose principal business is to hold financial assets on account of others:
- (c) whose principal business is investing, reinvesting or trading in securities, partnership interests or commodities on behalf of others:
- (d) registered to carry on business as a trustee company under the Trustee Companies Act 1981-82 and includes a subsidiary of that person:
- (e) registered to carry on insurance business under the Insurance Act 2008

Foreign government means a government designated by order in Executive Council and includes any authority charged with the administration and collection of tax, and the enforcement of the taxation laws, of that government pursuant to its laws

Settlor means the creator of an international trust and any person who makes a gift to that trust

Taxation purposes means the provision of information for the purpose of assisting a foreign government in the enforcement of its taxation laws.

4 Financial institution may provide customer information

Notwithstanding any provision in any other Act and in any contract, trust or deed a financial institution may enter into an agreement.

5 Financial institution may identify customer

- (1) Notwithstanding the provisions of any other Act or any contract, trust or deed limiting the disclosure of information held by a financial institution a financial institution may disclose to a foreign government pursuant to the terms of an agreement customer information for the purposes of helping the foreign government to whom the disclosure is being made determine if a customer is—

- (a) a taxpayer:
- (b) liable to pay tax:

- and if a customer is a taxpayer and liable to pay tax—
 - (c) the amount of tax that customer is liable to pay; and
 - (d) whether that customer has or has not paid that tax under the laws of that foreign county.
- (2) A financial institution may require of the customer such customer information as it needs to comply with any agreement it has entered into.

6 Financial institution may refuse service

If a customer refuses to provide information under section 5 a financial institution may—

- (a) refuse to provide any further services to the customer; and
- (b) terminate any contract by which the financial institution is obligated to provide such services.

7 No Liability

A financial institution acting in good faith and pursuant to the provisions of this Act shall incur no liability for doing so under the provisions of any other Act or pursuant to any contract, trust or deed it has entered into whether such contract, trust or deed was entered into before or after this Act came into force.

8 Regulations

The Queen's Representative may by order in Executive Council make regulations for the better administration of this Act.

This Act is administered by the Ministry of Finance and Economic Management.

Printed under the authority of the Cook Islands Parliament—2013.
