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2000, No. 16

An Act to make provision for the prevention of money laundering

(18 August 2000)

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

PART I
PRELIMINARY

1. Short Title - This Act may be cited as the Money Laundering Prevention Act 2000.

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

“Authority” means the Money Laundering Authority appointed under section 8;

“business transaction” means any arrangement, including opening an account, between two or more persons where the purpose of the arrangement is to facilitate a transaction of a commercial nature between the persons concerned and includes any related transaction between any of the persons concerned and another person;

“business transaction record” includes in relation to a business transaction, whether in written or electronic form –

- (a) sufficient documentary evidence to prove to the satisfaction of a financial institution that a person is who that person claims to be;

- (b) a description of that transaction sufficient to identify its purpose and method of execution;
- (c) the details of any account used by the financial institution for that transaction, including bank, branch and sort code; and
- (d) the total value of that transaction.

“Court” means the High Court of the Cook Islands and its appellate Courts;

“document” means any -

- (a) paper, parchment, or other material used for writing or printing, marked with matter capable of being read; or
- (b) photograph, or any photographic negative, plate slide film, or microfilm, or photostatic negative; or
- (c) disk, tape, wire, sound track, card, or other material or device in or on which information, sounds, or other data are recorded, stored, or embodied so as to be capable, with or without the aid of some other equipment, of being reproduced therefrom; or
- (d) material by means of which information is supplied, whether directly or by means of any equipment, to any device used for recording or storing or processing information; or
- (e) material derived, whether directly or by means of any equipment, from information recorded or stored or processed by any device used for recording or storing or processing information.

“drug trafficking” means the sale, delivery, conveyance or possession for the purposes of sale transfer delivery or conveyance of any prohibited narcotic substance whether occurring in the Cook Islands or elsewhere;

“financial institution” means any person listed in the Schedule or whose regular occupation or business is the carrying out of any activity listed in the Schedule;

“freezing” means temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property by order of the Court;

“forfeiture” means the permanent deprivation of property by order of the Court;

“identification record” means in the case where the person is a corporate body incorporated outside of the Cook Islands, sufficient documentary evidence to satisfy a financial institution that the corporate body has been properly incorporated;

“Judge” means a Judge of the Court;

“Minister” means the Minister of Finance;

“money laundering” means knowingly –

- (a) engaging directly or indirectly, in a business transaction that involves property that is the proceeds of crime, knowing or having reasonable grounds for believing the same to be the proceeds of crime; or
- (b) receiving, possessing, concealing, disguising, transferring, converting, disposing of, removing from or bringing into the Cook Islands any property that is the proceeds of crime, knowing or having reasonable grounds for believing the same to be the proceeds of crime.

“person” means any entity, natural or juridical, including among others, a corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture or other unincorporated organization or group, capable of acquiring rights or entering into obligations;

“proceeds of crime” means the proceeds of unlawful activity (whether derived or obtained directly or indirectly through such activity), and includes any property that is mingled with property that is the proceeds of unlawful activity;

“property” includes money, investments, holdings, possessions, assets real or personal, heritable or moveable including choses in action and other intangible or incorporeal property wherever situate, whether in the Cook Islands or elsewhere, and includes any interest in such property;

“requesting State” means any State that makes a request under the provisions of Part V;

“unlawful activity” means any activity which –

- (a) is an offence under the Crimes Act 1969 and carries a maximum penalty of imprisonment of not less than 5 years imprisonment or the death penalty; or
- (b) under the laws of the place where the activity occurs, constitutes drug trafficking; or

- (c)
 - (i) under the laws of any place where the activity occurs constitutes an offence which carries a maximum penalty of imprisonment of not less than 5 years or the death penalty, and
 - (ii) would be an offence under the Crimes Act 1969 if such activity occurred within the Cook Islands and such offence carries a maximum penalty of imprisonment of not less than 5 years or the death penalty.
- (2) A reference in this Act to a document includes a reference to -
 - (a) any part of a document;
 - (b) any copy, reproduction or duplicate of the document or of any part of the document, or
 - (c) any part of such copy, reproduction or duplicate.

PART II

MONEY LAUNDERING PROHIBITED

3. Offence of Money Laundering - (1) Every person who, after the commencement of this Act, engages in money laundering is guilty of an offence.

(2) Where a person discloses to the Authority a suspicion or belief that any property is proceeds of crime or is derived from or used in connection with the proceeds of crime, or discloses to such Authority any matter on which such a suspicion or belief is based-

- (a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information by any enactment, professional relationship or otherwise and shall not give rise to any civil or criminal liability; and
- (b) if that person does any act that would otherwise constitute an offence under subsection (1) and the disclosure relates to the arrangement concerned, that person does not commit an offence under this section if -
 - (i) the disclosure is made before the person does the act concerned; or
 - (ii) the disclosure is made after the person does the act, but is made on that person's initiative and as soon as it is reasonable for that person to make it.

4. Offence committed by a body of persons - Where an offence under the provisions of section 3 is committed by a body of persons, whether corporate or unincorporate, every person who, at the time of the commission of the offence, acted in an official capacity for or on behalf of such body of persons, whether as a director, manager, secretary or other similar officer, or was purporting to act in such capacity, and who is proven to have had actual knowledge that an offence was being committed, shall be guilty of that offence.

5. Attempts, aiding and abetting and conspiracy - Every person who knowingly attempts or who knowingly aids, abets, counsels, or procures the commission of, or who conspires to commit the offence of money laundering is guilty of an offence.

6. Penalties - A person guilty of an offence under the provisions of sections 3, 4 or 5, shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a period not exceeding 5 years, or to both such fine and imprisonment.

7. Jurisdiction - Any act done by a person –
- (a) ordinarily resident in the Cook Islands, anywhere in the world; or
 - (b) on a ship or aircraft registered in the Cook Islands ; or
 - (c) outside the Cook Islands with intent to do that act within the Cook Islands,

shall, if it would be an offence by that person if done within the Cook Islands under section 3, section 4 or section 5, be deemed an offence by that person under those provisions.

PART III SUPERVISION

8. Establishment of Authority - (1) There is hereby established an agency called the Money Laundering Authority.

- (2) The Authority shall comprise –
- (a) the Financial Secretary, who shall be chairperson of the Authority;
 - (b) the Commissioner for Offshore Financial Services;
 - (c) the Commissioner of Police.

9. Powers and duties of the Authority - (1) Without limiting the powers and duties of the Authority under any other provision of this Act, the Authority –

- (a) shall receive the reports issued by financial institutions pursuant to the provisions of section 10(b);
- (b) shall send any such report to the Solicitor-General if, having considered the report, the Authority also has reasonable grounds to suspect that the offence of money laundering is being, has been or is about to be committed;
- (c) shall send to the Solicitor-General any information derived from any report received by it pursuant to paragraph (a) if the report gives the Authority reasonable grounds to suspect that the offence of money laundering is being, has been, or is about to be committed;
- (d) shall destroy any report or copy received pursuant to the provisions of paragraph (a) within three years of the receipt thereof save where any such report has been sent to the Solicitor-General;

- (e) may instruct any financial institution to take such steps as may be appropriate to facilitate any investigation anticipated by the Authority following a report received under the provisions of this section;
- (f) may -
 - (i) compile statistics and records, provide information to law enforcement agencies and regulatory bodies within or beyond the Cook Islands in accordance with Part V;
 - (ii) make recommendations arising out of any information received;
 - (iii) issue guidelines to financial institutions; and
 - (iv) advise the Minister and the Solicitor-General with regard to any matter relating to money laundering;
- (g) may create training requirements and provide such training for any financial institution in respect of the business transaction record keeping and reporting obligations as provided in sections 10(a) and 10 (b);
- (h) may consult with any person, institution or organisation for the purposes of the exercise of its powers or duties under paragraphs (e), (f) and (g).

(2) The Authority shall not conduct any investigation into money laundering under this section other than for the purpose of ensuring compliance by a financial institution with the provisions of section 10.

10. Obligations of financial institutions - Every financial institution shall -

- (a) keep a business transaction record of -
 - (i) every new account;
 - (ii) every new business transaction exceeding \$30,000; and
 - (iii) the beneficial owner or the principal beneficial owner of every account opened,for a period of 5 years;
- (b) where any officer or employee of a financial institution has reasonable cause to suspect that a business transaction involves the proceeds of crime, report to the Authority details of the business transaction and the parties involved;
- (c) subject to any regulations made pursuant to section 41(2)(b), comply with any guidelines and training requirements issued to it by the Authority pursuant to section 9(f) or section 9(g);
- (d) develop and apply internal policies, procedures and controls to combat money laundering and develop audit functions to evaluate such policies, procedures and controls.

11. Offence of wilful failure to make report - (1) Every financial institution or its employees, staff, directors, owners or other authorised representatives commit an offence who, acting as such, wilfully fail to comply with the obligations in section 10(b), or who wilfully makes a false or falsified report to the Authority.

(2) Every person guilty of an offence under the provisions of subsection (1) shall on conviction be liable to a fine not exceeding \$5,000 and in addition the licence or other approval of such financial institution to carry on business as such may subject to such enactments as may be relevant in the particular case, be revoked by the issuer or grantor of the licence or approval.

12. Power to obtain search warrant - (1) The Authority, upon application to a Judge and satisfying the Judge that there are reasonable grounds to believe that –

- (a) a financial institution has failed to keep a business transaction record as provided by the provisions of section 10(a);
- (b) a financial institution has failed to report any business transaction as provided by the provisions of section 10(b); or
- (c) an officer or employee of a financial institution is committing, has committed or is about to commit an offence under section 3 or section 4 or section 5,

may, if entry cannot be obtained by consent of the occupier, obtain a warrant to enter any premises belonging to, in the possession or under the control of the financial institution or any officer or employee of such institution and to search the premises and remove any document, material or other thing therein for the purposes of the Authority as ordered by the Judge and specified in the warrant.

(2) A person lawfully exercising the powers conferred by this section may make or take copies of any document or any information recorded or stored in a computer or other device, and for that purpose may take possession of and remove any document, tape, or disc from the place where it is kept for such period of time as is reasonable in the circumstances, or may require a person to reproduce, or assist the authorised person to reproduce, in usable form information recorded or stored in a computer or other device.

13. Property Tracking and Monitoring Orders - The Authority upon application to a Judge and satisfying the Judge that there are reasonable grounds for believing that a person is committing, has committed or is about to commit an offence under section 3 or section 4 or section 5 may obtain an order that any document relevant to the commission of the offence and -

- (a) identifying, locating or quantifying any property; or
- (b) identifying or locating any document necessary for the transfer of any property;

belonging to, or is or has been in the possession of, or is under or has been under the control of that person be delivered forthwith to the Authority.

14. Mandatory injunction to enforce compliance - (1) Every officer and employee of a financial institution shall take all reasonable steps to ensure the compliance by that financial institution with its obligations under this Part.

(2) The Authority upon application to a Judge and satisfying the Judge that a financial institution has failed without reasonable excuse to comply in whole or in part with any obligations as provided in section 10(a), may obtain an injunction against any or all of the officers or employees of that financial institution in such terms as the Court deems necessary to enforce compliance with such obligation.

(3) In granting an injunction pursuant to subsection (2) the Court may in addition to any other penalty at law, order that should the financial institution or any officer or employee of that institution fail without reasonable excuse to comply with all or any of the provisions of that injunction, such financial institution, officer or employee shall be liable for a fine not exceeding \$1,000 plus an additional \$50 for every day during which the failure continues.

PART IV
FREEZING AND FORFEITURE OF ASSETS IN RELATION TO MONEY
LAUNDERING

15. Freezing of property - (1) Where a person (in this section referred to as "the defendant") has been charged or is about to be charged with an offence under section 3 or section 4, or section 5, the Authority may make an application to a Judge in accordance with subsection (2) for an order (hereinafter referred to as a "freezing order") freezing any property which is or has been in the possession or under the control of that person, which property is alleged to be the proceeds of crime, wherever such property may be.

(2) An application made under subsection (1) may be made *ex parte* to a Judge in chambers and shall be accompanied by an affidavit sworn on the information and belief of a member of the Authority or any other person deposing to the following matters, namely –

- (a) the offence or matter under investigation;
- (b) the person who is believed to be in possession of the property;
- (c) the grounds for the belief that a freezing order may be made under this Act; and
- (d) a description of the property.

(3) Where an application for a freezing order is made under subsection (1), the Judge may make an order –

- (a) prohibiting any person from disposing of, or otherwise dealing with any interest in, the property specified in the order otherwise than in such manner as may be specified in the order; and
- (b) at the request of the Authority where the Judge is of the opinion that the circumstances so require –
 - (i) appointing a person to take control of and to manage or otherwise deal with all or part of that property in accordance with directions of the Judge; and
 - (ii) requiring any person having possession of that property to give possession of the property to the person appointed under subparagraph (i).

(4) The Judge in making any order freezing the property of the defendant may give directions as to –

- (a) the period of effect of the freezing order;

- (b) the disposal of the property for the purpose of its proper administration during the period of freezing and the cost of such administration;
- (c) the payment of debts incurred in good faith due to creditors prior to the making of the order;
- (d) the payment of moneys to the defendant for his reasonable subsistence and that of his family;
- (e) the payment of the reasonable business and legal expenses of the defendant;
- (f) the use of the property in order to enter into a recognisance required of the defendant by a Court.

(5) For the purpose of determining the reasonableness of business and legal expenses referred to in paragraph (e) of subsection (4), a Judge may hold a hearing in chambers.

(6) An order made under the provisions of this section shall provide for notice to be given to persons affected by the order in such manner as the Judge directs or in the absence of any such direction, as may be prescribed by the Code of Civil Procedure of the High Court 1981.

(7) Where an order is made under the provisions of this section but the defendant has not been charged with an offence under section 3 or section 4 or section 5, the order shall cease to have effect at the end of the period of seven days, following the hour the order was made.

(8) The Authority and any person acting on its behalf shall not be liable for any damages or costs arising directly or indirectly from the making of a freezing order unless it is proved that the application for the freezing of the property was not made in good faith.

(9) Where the Court makes an order for the administration of frozen property, the person charged with the administration of the property shall not be liable for any loss or damage to the property or for the cost of proceedings taken to establish a claim to the property or to an interest in the property, unless the Court in which the claim is made is of the opinion that the person has been guilty of negligence in respect of the taking of custody and control of the property.

(10) Every person is guilty of an offence who knowingly acts in contravention of or who knowingly fails to comply with the provisions of an order made under this section.

16. Forfeiture of property - (1) Upon application by the Authority to a Judge, any property which is or has been in the possession or under the control of any person who is convicted by the Court of an offence under sections 3, 4 or 5 any property of that person which is the subject of a freezing order may be forfeited by order of the Court, provided the Court is satisfied that the property is the proceeds of crime for which the person has been convicted.

- (2) In making a forfeiture order the Court may give directions -
 - (a) for the purpose of determining any dispute as to the ownership of or other interest in the property or any part thereof; and
 - (b) as to the disposal of the property.

(3) Upon application to a Judge by a person against whom a forfeiture order has been made under the provisions of this section, the Court may order that a sum deemed by the Court to be the value of the property so ordered to be forfeited be paid by that person to the Court and upon satisfactory payment of that sum by that person the property ordered to be forfeited shall be returned to him.

17. Property tracking and monitoring - (1) For the purpose of determining whether any property which is the proceeds of crime belongs to, or is in the possession or under the control of any person, the Court may upon application by the Authority and if satisfied that there are reasonable grounds for so doing, order that any document relevant to -

- (a) identifying, locating or quantifying such property; or
- (b) identifying or locating any document necessary for the transfer of such property,

be delivered forthwith to the Authority.

(2) Upon being satisfied by the Authority that any person is failing to comply with, is delaying or is otherwise obstructing an order made in accordance with the provisions of subsection (1), the Court may order that the Authority or other person acting on its behalf may enter any premises occupied by or under the control of that person, search the premises and remove any document, material or other thing therein for the purposes of executing such order.

(3) Where a person produces or delivers a document pursuant to an order made under this section, the production or delivery of the document or any information, document or thing obtained as a direct or indirect consequence of the production or delivery of the document, is not admissible against that person in any proceedings, except a proceeding for an offence of failing to comply with an order of a court.

18. Offences - (1) It is an offence for any person to falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, concealment, destruction or disposal of any document or material which is or is likely to be relevant to the execution of any order made in accordance with the provisions of section 17(1).

(2) It is an offence for a person who is the subject of an order made under section 17(1) to disclose the existence or operation of the order to any person except to an officer of the law enforcement authority named in the order, an officer or agent of the financial institution, for the purposes of ensuring that the order is complied with or a barrister or solicitor, for the purpose of obtaining legal advice or representation in relation to the order.

(3) A person guilty of an offence under the provisions of subsection (1) or subsection (2) shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 3 years, or to both such fine and imprisonment.

19. Limitations on freezing and forfeiture of property - The provisions of sections 15 and 16 shall only apply to property coming into the possession or under the control of a person after the commencement of this Act.

PART V**MUTUAL ASSISTANCE IN RELATION TO MONEY LAUNDERING**

20. Co-operation with a foreign State - Subject to the provisions of section 21, where a foreign State makes a request for assistance in the investigation or prosecution of an activity which if it had occurred in the Cook Islands would constitute an offence under section 3, 4 or 5 (in this Part called a "money laundering offence"), the Authority shall -

- (a) take all action necessary to implement the request forthwith; or
- (b) inform the foreign State making the request of any reason -
 - (i) for not executing the request forthwith; or
 - (ii) for delaying the execution of the request.

21. Limitations on compliance with request - (1) Subject to subsection (2), assistance to a foreign State referred to in this Part shall be provided only to those States with whom the Cook Islands has entered into mutual assistance arrangements on a bilateral or multilateral basis, and all such assistance shall be subject to the terms of such arrangements.

(2) Notwithstanding subsection (1), the Authority may, subject to the approval of the Minister, consider and act upon a request made pursuant to section 20 by a State with which the Cook Islands has not entered into mutual assistance bilateral or multilateral arrangements if, after considering the request and -

- (a) the seriousness of the money laundering offence which is the subject of the investigation or prosecution;
- (b) the likelihood of the requesting State assisting with a similar request from the Cook Islands;
- (c) such other matters as the Authority and the Minister consider relevant,

the Authority is of the opinion that it ought to consider and act upon the request.

(3) The Authority shall refuse to comply with any request for assistance in the investigation or prosecution of money laundering, if in the opinion of the Authority, acting in consultation with the Minister -

- (a) the action sought by the request is contrary to any provisions of the Constitution of the Cook Islands; or
- (b) the request relates to the prosecution or investigation of an activity which is not a money laundering offence; or
- (c) the provision of assistance would prejudice the sovereignty, security, national interest or existing laws, policy or procedure of the Cook Islands.

22. Form of request - A request shall be in writing, including facsimile transmitted writing, and shall be dated and signed by or on behalf of the person making the request.

23. Contents of request - Every request shall -

- (a) confirm either that an investigation or prosecution is being conducted into or in respect of a specified money laundering offence or that a person has been convicted of a money laundering offence;

- (b) state the grounds on which any person is being investigated or prosecuted for a money laundering offence or give details of the convictions of the person referred to in paragraph (a);
- (c) give particulars sufficient to identify any person referred to in paragraph (b);
- (d) give particulars sufficient to identify any financial institution or other person believed to have information, documents or material of assistance to the investigation or prosecution referred to in paragraph (a);
- (e) request the Authority to obtain from a financial institution or other person referred to in subparagraph (d) all and any information, documents or material of assistance to the investigation or prosecution referred to in paragraph (a) above;
- (f) specify the manner in which and to whom any information, documents or material obtained pursuant to the request is to be produced;
- (g) state whether or not a freezing or forfeiture order is required and identify the property to be the subject of such an order; and
- (h) contain such other information as in the opinion of the Authority may assist the execution of the request.

24. Search warrant - (1) Upon receipt of a request from a foreign State, the Authority may apply to a Judge for a search warrant authorising the Authority or a person authorised by it to enter the offices of any financial institution or other person where the Judge is reasonably satisfied that the financial institution or the person is in possession of information, documents or material of assistance to the investigation or prosecution of a money laundering offence.

(2) A person lawfully exercising the powers conferred by this section may make or take copies of any document or any information recorded or stored in a computer or other device, and for that purpose may take possession of and remove any document, tape, or disk from the place where it is kept for such period of time as is reasonable in the circumstances, or may require a person to reproduce, or assist the authorised person to reproduce, in usable form information recorded or stored in a computer or other device.

25. Property Tracking and Monitoring Orders - Upon receipt of a request from a foreign State and upon satisfying a Judge that there are reasonable grounds to believe that a person named in the request is likely to be in possession or have control of property which is the proceeds of crime, the Authority may obtain an order that any document relevant to -

- (a) identifying, locating or quantifying any property; or
- (b) identifying or locating any document necessary for the transfer of any such property;

belonging to, in the possession or under the control of any person the subject of the request, be delivered to the Authority.

26. Request accompanied by an Evidence Order - (1) Subject to the provisions of section 21, the Authority may upon application to a Judge and upon production to the Judge of a request accompanied by an order issued by a court of the requesting State directed to any person within the jurisdiction of the Court, obtain an evidence order in respect of any person whom the Court is satisfied may be able to give evidence relevant to court proceedings in a foreign State in relation to a money laundering offence.

(2) Upon being served with an evidence order issued in accordance with the provisions of subsection (1), the person served shall for the purposes of the order deliver himself to the jurisdiction of the Court.

(3) The Court may take the evidence relevant to the money laundering offence referred to in subsection (1) of any person served with an evidence order. Such evidence shall subsequently be forwarded by the Court to the Authority for transmission by the Authority to the foreign State.

(4) Evidence taken pursuant to this section shall be heard *in camera*.

27. Freezing of property - (1) Where a person (in this section referred to as "the defendant") beyond the Cook Islands has been charged or is about to be charged with a money laundering offence, the Authority may upon receiving a request from the foreign State prosecuting or investigating that offence may make an application to a Judge in accordance with subsection (2) for an order (hereinafter referred to as a "freezing order") freezing any property which is or has been in the possession or under the control of the defendant, which property is alleged to be the proceeds of crime of the alleged money laundering offence wherever such property may be.

(2) An application made under subsection (1) may be made *ex parte* to a Judge in chambers and shall be accompanied by an affidavit sworn on the information and belief of a person with knowledge of the investigation or prosecution of the offence, deposing to the following matters, namely –

- (a) the money laundering offence under investigation;
- (b) the person who is believed to be in possession of the property;
- (c) the grounds for the belief that a freezing order may be made under this Act; and
- (d) a description of the property.

(3) Where an application for a freezing order is made under subsection (1), the Judge may make an order –

- (a) prohibiting any person from disposing of, or otherwise dealing with any interest in, the property specified in the order otherwise than in such manner as may be specified in the order; and
- (b) at the request of the Authority where the Judge is of the opinion that the circumstances so require –
 - (i) appointing a person to take control of and to manage or otherwise deal with all or part of that property in accordance with directions of the Judge; and
 - (ii) requiring any person having possession of that property to give possession of the property to the person appointed under subparagraph (i).

(4) The Judge in making any order freezing the property of the defendant may give directions as to –

- (a) the period of effect of the freezing order;
- (b) the disposal of the property for the purpose of its proper administration during the period of freezing and the cost of such administration;
- (c) the payment of debts incurred in good faith due to creditors prior to the making of the order;
- (d) the payment of moneys to the defendant for his reasonable subsistence and that of his family;
- (e) the payment of the reasonable business and legal expenses of the defendant;
- (f) the use of the property in order to enter into a recognisance required of the defendant by a Court.

(5) For the purpose of determining the reasonableness of business and legal expenses referred to in paragraph (e) of subsection 4, a Judge may hold a hearing in chambers.

(6) An order made under the provisions of this section shall provide for notice to be given to persons affected by the order in such manner as the Judge directs or in the absence of such direction, as may be prescribed by the Code of Civil Procedure of the High Court 1981.

(7) An order made under the provisions of this section shall cease to have effect at the end of the period of seven days, following the hour the order was made, if the defendant has not been charged with a money laundering offence within that time.

(8) The Authority and any person acting on its behalf shall not be liable for any damages or costs arising directly or indirectly from the making of a freezing order unless it is proved that the application for the freezing of the property was not made in good faith.

(9) Where the Court makes an order for the administration of frozen property, the person charged with the administration of the property shall not be liable for any loss or damage to the property or for the cost of proceedings taken to establish a claim to the property or to an interest in the property, unless the Court in which the claim is made is of the opinion that the person has been guilty of dishonesty or negligence in respect of the taking of custody and control of the property.

(10) Every person is guilty of an offence who knowingly acts in contravention of or who knowingly fails to comply with the provisions of an order made under this section.

28. Forfeiture of property - (1) Where a person beyond the Cook Islands has been convicted by a foreign court of a money laundering offence, the Authority may upon receiving a request from the foreign State where the conviction has been entered, make an application to a Judge in accordance with subsection (2) for an order (in this section referred to as a “forfeiture order”) forfeiting any property which is or has been in the possession or under the control of that person or which is the subject of a freezing order, where such property is proven to be the subject matter of the offence, wherever such property may be.

- (2) In making a forfeiture order the Court may give directions -
 - (a) for the purpose of determining any dispute as to the ownership of or other interest in the property or any part thereof; and
 - (b) as to the disposal of the property.
- (3) Upon application to a Judge by a person against whom a forfeiture order has been made under the provisions of this section, the Court may order that a sum deemed by the Court to be the value of the property so ordered to be forfeited be paid by that person to the Court and upon satisfactory payment of that sum by that person the property ordered to be forfeited shall be returned to him.

PART VI

REQUESTS TO FOREIGN STATES

29. Requests to foreign States - The Authority may issue to a foreign State a request for assistance in the investigation or prosecution of an offence under sections 3, 4 or 5 accompanied, if required, by an order issued in accordance with section 30.

30. Issuing Evidence Order against foreign resident - The Authority upon application to a Judge may, in respect of any proceedings in the Cook Islands for a money laundering offence, apply for an order directed to any person resident in a foreign State to deliver himself subject to the approval of the foreign State, to the jurisdiction of the court of the foreign State for the purpose of giving evidence in relation to those proceedings.

31. Evidence pursuant to a request - Evidence taken pursuant to an evidence order under section 30 in any proceedings in a court of a foreign State shall be received as prima facie evidence in any proceedings in the Cook Islands to which such evidence relates.

32. Offences - (1) It is an offence -
- (a) for any person to falsify, conceal, destroy or otherwise dispose of or cause or permit the falsification, concealment, destruction or disposal of any document or material which is or is likely to be relevant to the execution of any order made in accordance with the provisions of this Part;
 - (b) for any person who knows or suspects that an investigation into money laundering has been, is being or is about to be made, or that an order has been made or may be made requiring the delivery or production of any document, to divulge that fact or other information to another whereby the investigation is likely to be prejudiced.
- (2) A person guilty of an offence under the provisions of subsection (1) above shall on conviction be liable to a fine not exceeding \$5000, or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

33. Asset sharing - Subject to any order of the Court made pursuant to section 28(3), where the Authority acting with the written concurrence of the Minister considers it appropriate, either because an international arrangement so requires or permits or in the interest of comity, the Authority may order that the whole or any part of any property forfeited under the provisions of this Part, or the value thereof, be given or remitted to the requesting State.

PART VII

EXTRADITION

34. Money Laundering an offence for extradition purposes - For the purposes of any law relating to extradition or the rendition of fugitive offenders, money laundering is an offence for which extradition or rendition may be granted.

PART VIII

CURRENCY REPORTING AT THE BORDER

35. Currency reporting at the border - (1) Every person who leaves or enters the Cook Islands with more than \$10,000 in cash or negotiable bearer instruments in the lawful currency of the Cook Islands or equivalent foreign currency without first having reported the fact in the prescribed form to an authorised officer commits an offence and shall be liable on conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 1 year, or to both such fine and imprisonment.

(2) For the purpose of this section, the term –

(a) “authorised officer” means:

- (i) a constable; or
- (ii) a Customs Officer; or
- (iii) an Immigration Officer;

(b) “negotiable bearer instrument” means a document representing ownership of debts or obligations, including bills of exchange, promissory notes or certificates of deposit, made payable to the bearer.

(3) Where a person –

- (a) is about to leave the Cook Islands or has arrived in the Cook Islands; or
- (b) is about to board or leave, or has boarded or left, any ship or aircraft which an authorised officer believes is about to depart the Cook Islands,

an authorised officer may, with such assistance as is reasonable and necessary, examine any article which a person has with him or in his luggage and if the officer has reasonable grounds to suspect that an offence under subsection (1) may have been or is being committed, search the person, for the purpose of finding out whether the person is in possession of any cash or negotiable bearer instruments in respect of which a report under subsection (1) is required.

(4) A person shall not be searched by a person of the opposite sex.

(5) An authorised officer, and any person assisting such authorised officer, may board any ship or aircraft for the purposes of exercising the powers conferred by subsection (3).

(6) Where an authorised officer has reasonable grounds to believe that cash or negotiable bearer instruments found in the course of an examination or search, conducted under subsection (3), may afford evidence as to the commission of an offence under this section, the authorised officer may seize the cash or negotiable bearer instruments.

(7) Where a seizure is made under the provisions of this section but the person from whom the cash or negotiable bearer instruments were seized has not been charged within 7 days of the seizure with an offence under subsection (1), the cash or negotiable bearer instruments so seized shall forthwith be returned to the person from whom they were seized.

PART IX **MISCELLANEOUS**

36. Confidentiality obligations overridden - The provisions of this Act shall have effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information imposed by any law or otherwise.

37. Disclosure protected - Notwithstanding any rule of law to the contrary, it shall not be unlawful for any person to make any disclosure in compliance with this Act. A financial institution, its employees, staff, directors, owners or other representatives as authorised by law shall be exempted from criminal, civil and/or administrative liability, as the case may be, for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, regardless of the result of the disclosure, where the disclosure was made in good faith.

38. Tipping-off - (1) Every person commits an offence who knows or suspects that an investigation into money laundering has been, is being or is about to be made, or that an order has been made or may be made requiring the delivery or production of any document and who divulges that fact or other information to another person whereby the investigation is likely to be prejudiced.

(2) Every person commits an offence who knows or suspects that a disclosure by a financial institution has been made to the Authority under section 10(b), and who divulges that fact or other information to another person whereby any investigation that might be conducted following the disclosure is likely to be prejudiced.

(3) Every person guilty of an offence under the provisions of subsection (1) or subsection (2) shall be liable on conviction to a fine not exceeding, \$5,000 or to imprisonment for a term not exceeding 3 years, or to both such fine and imprisonment.

39. Falsification, concealment of document - (1) Every person commits an offence who falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of any document or material which is known to that person to be relevant or is known by that person to be likely to be relevant to an investigation into money laundering.

(2) Every person guilty of an offence under the provisions of subsection (1) shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 3 years, or to both such fine and imprisonment.

40. General penalty provisions - Any person who contravenes or fails to comply with any provision or requirement for which no offence is specifically created is guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000.

41. Regulations - (1) The Queen's Representative may by Order in Executive Council make regulations prescribing all matters and things required or authorised by this Act to be prescribed or which are necessary or convenient to be prescribed or provided, for the carrying out of or the giving full effect to the provisions and its due administration.

(2) Without limiting the generality of subsection (1), regulations may -

- (a) provide for the regulation and control of customer and client identification by financial institutions for the prevention of money laundering; or
- (b) prescribe procedures and systems for training, identification, record keeping, internal reporting and reporting to the Authority for financial institutions.

(3) Regulations made under this section may impose penalties in respect of offences made thereunder not exceeding a fine of \$1,000 or imprisonment for a term not exceeding one year or both such fine and imprisonment.

This Act is administered by the Office of the Commissioner for Offshore Financial Services

SCHEDULE**Section 2****Financial Institutions and Activities**

Banking business as defined in the Banking Act 1969

Offshore banking business as defined in the Offshore Banking Act 1981

Offshore insurance business as defined in the Offshore Insurance Act 1981-82

Money transmission services

Issuing and administering means of payment (e.g. credit cards, travellers' cheques and bankers' drafts)

Guarantees and commitments

Trading for own account or account of customers in -

- (a) money market instruments (cheques, bill, certificates of deposit, etc.);
- (b) foreign exchange;
- (c) financial and commodity based derivative instruments (e.g. futures, options, interest rate and foreign exchange instruments, etc.);
- (d) exchange and interest rate instruments; and
- (e) transferable or negotiable instruments.

Underwriting share issues and the participation in such issues

Money broking

Investment business

Insurance business transactions

A real estate agent but only to the extent that the real estate agent receives funds in the course of that person's business for the purpose of settling real estate transactions

Bullion dealing

Casinos and other gambling and betting services carrying on business or incorporated in the Cook Islands.

Acting as a financial intermediary

Acting as a trustee company pursuant to the Trustee Companies Act 1981-82

A barrister or solicitor, but only to the extent that the barrister or solicitor receives funds in the course of that person's business-

- (i) for the purposes of deposit or investment; or
- (ii) for the purpose of settling real estate transactions

An accountant, but only to the extent that the accountant receives funds in the course of that person's business for the purposes of deposit or investment

A trustee or administration manager or investment manager of a superannuation scheme.
