



## ANALYSIS

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1995-96, No. 26

An Act to provide for the protection of the Cook Islands offshore industry from serious criminal activity.  
(21 November 1996)

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

1. Short Title - This Act may be cited as the Offshore Industry (Criminal Provisions) Act 1995-96.

2. Interpretation - In this Act unless the context otherwise requires -  
"associated legislation" means the Trustee Companies Act 1981-82, the Development Investment Act 1977, and the Monetary Board Act 1981;

"Board" means the Cook Islands Monetary Board;

"drug trafficking" means the sale, transfer, delivery, conveyance, or possession for the purpose of sale, transfer, delivery or conveyance, of any prohibited narcotic substance, whether such act occurred in the Cook Islands or elsewhere and includes the laundering of the proceeds of sale of prohibited narcotic substances;

Price \$1.50c

"empowering legislation" means the legislation pursuant to which an entity is so registered or licensed;

"entity" means an international company registered under the International Companies Act 1981-82, an international partnership registered under the International Partnerships Act 1984, a foreign company registered under the International Companies Act 1981-82, an international trust registered under the International Trusts Act 1984, an offshore bank licensed under the Offshore Banking Act 1981, or an offshore insurance company licensed under the Offshore Insurance Act 1981-82;

"interested parties" means any persons whom the Court considers would be unjustly prejudiced by the granting of an order under this Act;

"serious criminal activity" means,

- (a) drug trafficking, or
- (b) any activity, whether occurring in the Cook Islands or elsewhere, which is or would be an offence under the Crimes Act 1969 if such activity occurred in the Cook Islands, and if such offence carries a maximum sentence of imprisonment of not less than 5 years;

"trustee company" includes a wholly owned subsidiary of a trustee company nominated pursuant to section 4A of the Trustee Companies Act 1981-82.

3. Court order - (1) Where an officer or employee of a trustee company, in relation to any entity for which it provides the registered office, or is the registered agent or trustee, has cause to suspect such entity is related to or involved in drug trafficking, or has actual knowledge that a person related to or involved with such entity has been convicted of a serious criminal activity, that trustee company shall refer such suspicion or knowledge to the Board, and shall provide all reasonable assistance, documentation or other information as may be required by the Board for the purposes of this Act.

(2) The Board may apply to a Judge of the High Court, in camera, for an order under subsection (3) in respect of any entity which the Board reasonably believes, after making due enquiry of the relevant trustee company or otherwise, is involved in any serious criminal activity.

(3) The Court, on application by the Board under subsection (2), may in relation to any entity involved in serious criminal activity, and subject to subsection (4), order that -

- (a) such entity be struck off, de-licensed, or de-registered as the case may be from the relevant register, and upon the making of such order the provisions of the empowering legislation and associated legislation shall apply to that entity as if that entity was struck off, de-licensed or de-registered in accordance with that legislation; and
- (b) such entity cease carrying on business in the Cook Islands.

(4) The Court shall not grant an order under subsection (3) unless it is satisfied beyond reasonable doubt that the entity -

- (a) is related to or involved in, or owns, controls or comprises assets which are the proceeds of drug trafficking or is owned by, or under the effective management or control, or is established for the exclusive or non-exclusive benefit of, any person involved in drug trafficking, or

- (b) owns, controls or comprises assets which are the proceeds of serious criminal activity, and is owned by, or under the effective management or control, or is established for the exclusive or non-exclusive benefit of any person who has, whether in the Cook Islands or elsewhere, been convicted and sentenced to imprisonment (and not discharged or given a suspended sentence) for a period of not less than 3 years for such serious criminal activity, or
- (5) When making an order under subsection (3) the Court may make such other orders as it sees fit to determine the rights and liabilities of any parties interested in such entity or the assets of such entity including orders -
- (a) determining the rights of creditors or interested parties of the entity or person;
  - (b) the disposal, including by way of forfeiture, of assets of the entity not required to meet the claims of creditors or costs under subsection (5)(c);
  - (c) against the entity or the assets of the entity, of costs incurred by the relevant trustee company, the Board and the Court in making and determining any application or order under this Act, which costs shall rank in priority to any other interests in the entity or the assets of the entity.
- (6) Nothing in this Act shall apply so as to affect any assets which are not, in the opinion of the Court, the proceeds of serious criminal activity.

4 Liability of trustee company - (1) Where an entity has been struck-off, delicensed, or deregistered under this Act then the provisions of the empowering legislation, including associated legislation, shall continue to apply in respect of that entity insofar as is required to retain the benefit of any rights or protections afforded to a trustee company, or its officers or employees, by that empowering legislation.

(2) A trustee company or an officer or employee of a trustee company shall not, in the performance of any obligation, duty, service or other activity for and on behalf of an entity to which this Act applies, incur any tortious, criminal or any contractual liability in respect of that entity, including under this Act, by virtue of that entity being involved in any serious criminal activity.

(3) A trustee company shall have no liability for the costs in making an application or order under this Act.

(4) A trustee company or any other person shall not be guilty of any offence prohibiting disclosure of information where it does so pursuant to the provisions of this Act.

5 Application - (1) The provisions of this Act shall apply to every entity, whether registered before or after the commencement of this Act, and to all matters relating to or concerning every such entity, or the interested parties to any such entity.

(2) The provisions of this Act shall have effect notwithstanding any obligation or restriction as to secrecy or confidentiality, or any other restriction prohibiting the disclosure of information, imposed by any Act, rule of law or otherwise.

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This Act is administered by the Cook Islands Monetary Board.