



**FINANCIAL TRANSACTIONS REPORTING
(CUSTOMER IDENTIFICATION) REGULATIONS 2004**

LAURENCE MURRAY GREIG, Chief Justice of the High Court of the Cook Islands

ORDER IN EXECUTIVE COUNCIL

At Avarua, Rarotonga, this 18th day of February 2004

Present:

**HIS HONOUR THE CHIEF JUSTICE OF THE HIGH COURT OF
THE COOK ISLANDS IN EXECUTIVE COUNCIL**

PURSUANT to Article 7(1) of the Constitution of the Cook Islands and section 40 of the Financial Transactions Reporting Act 2003, the Chief Justice of the High Court, acting by and with the advice and consent of the Executive Council, makes the following regulations.

ANALYSIS

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REGULATIONS

1. Title and commencement – (1) These regulations may be cited as the Financial Transactions Reporting (Customer Identification) Regulations 2004.

(2) These regulations shall come into force 5 days after the date that the Chief Justice signs the Order in Executive Council making these regulations.

2. Interpretation – (1) In these regulations, unless the context otherwise requires, –

“Act” means the Financial Transactions Reporting Act 2003 and words not otherwise defined shall have the same meaning as in the Act;

“approved jurisdiction” means a jurisdiction that is not identified by the FATF (Financial Action Task Force on Money Laundering) as a Non-Cooperative Country or Territory in the fight against money laundering;

“approved stock exchange” shall have the meaning given to it by section 126A of the International Companies Act 1981-82;

“association” means any incorporated or unincorporated association of persons, and includes any company, corporation, firm, partnership, society, joint venture, mutual fund, statutory body, association, organisation, state or agency of a state (but excludes a trust);

“certified” means in respect of any document, where a certifier has certified in writing on the document that the document is a true and correct copy;

“certifier” means –

- (a) a notary public exercising his or her office; or
- (b) a Registrar or Deputy Registrar of a court; or
- (c) a Justice of the Peace; or
- (d) a postmaster; or
- (e) a legal practitioner; or
- (f) an officer or employee of a regulated financial institution;

“existing customer” means a customer of the financial institution as at the date these regulations come into force;

“foreign regulatory authority” means an authority in a country outside the Cook Islands, which exercises a function corresponding to a statutory function of the FIU or of the Financial Supervisory Commission established by the Financial Supervisory Commission Act 2003;

“licensed financial institution” has the same meaning as in the Financial Supervisory Commission Act 2003;

"mutual fund" means any unit trust, group investment fund, pension fund, superannuation fund, and any other form of collective investment scheme comprising 10 or more investors whereby,

- (a) investor funds are collected and pooled for the purposes of collective investment; and
- (b) shares, units or interests are issued to investors that entitle the investor to receive an amount computed by reference to the value of a proportionate interest in the whole or in a part of the assets of the scheme;

"officer" means, in relation to an association, any person occupying a position in the association, by whatever title, comparable to a director of a company;

"principal person" means, in the relation to any customer, any person whom the financial institution considers the person on whose behalf or instruction, the relationship is established, account opened or transaction conducted;

"regulated financial institution" means

- (a) a licensed financial institution in the Cook Islands; or
- (b) a person resident, based, carrying on business, or incorporated in or formed under the laws of an approved jurisdiction carrying on business in relation to which a foreign regulatory authority exercises regulatory functions, and includes a wholly owned subsidiary thereof;

"settlor" means any person who settles assets on a trust;

"significant interest-holder" means any person holding more than 10% of the shares, membership or partnership interest, stock or voting rights in an association or who otherwise exercises, directly or indirectly, effective control of the association;

"trust" includes a charitable trust or a purpose trust, but does not include a mutual fund;

"verifying documentation" means -

- (a) in respect of an individual, a certified copy of a valid photographic identification document (such as a passport or driving license) issued by a government, state, federal or governmental agency, together with one or more of the following -

- (i) a bank reference from a regulated financial institution where the customer has maintained a current relationship for at least 12 months; or
 - (ii) an original or certified copy of a recent rates or utility bill that shows the person's permanent residential address; or
 - (iii) a written introduction or reference from a senior employee of the financial institution, a regulated financial institution, a legal practitioner or an accountant; or
 - (iv) a certified credit reference agency search; or
 - (v) a certified entry in a register of electors; or
 - (vi) a certified entry in a telephone directory;
 - (b) in the case of an association, the following -
 - (i) a certified copy of a certificate of incorporation or comparable document under which the association was incorporated, established, registered or otherwise created; and
 - (ii) verifying documentation in respect of each officer and significant interest-holder;
 - (c) in the case of a trust, the following -
 - (i) a certified copy of a certificate of registration or a document evidencing or by which the trust was established, settled, or otherwise created; and
 - (ii) verifying documentation in respect of each settlor and trustee;
 - (d) in any other case, such documentation as may be required by the FIU.
- (2) Unless the context otherwise requires, words and expressions used in these regulations bear the same meaning as in the Act.

3. Customer information - A financial institution that is required to identify a customer under section 4 of the Act must obtain in respect of that customer the following information -

- (a) in the case of an individual, the full name, date and place of birth, nationality, address, and occupation;
- (b) in the case of an association -
 - (i) name of the association, place and date of incorporation or establishment, address of registered office, and principal place of business; and
 - (ii) description of the nature of the business carried out by the association; and
 - (iii) the full name, occupation, date and place of birth, and permanent residential address of each significant interest-holder and each officer;

- (c) in the case of a trust -
 - (i) the name of the trust, address of any registered office, and an address for service of the trust; and
 - (ii) an explanation of the nature of the trust and description of the purpose or beneficiaries; and
 - (iii) full name, occupation, date and place of birth, and permanent residential address of each settlor and trustee.

4. **Customer verification** - A financial institution that is required to identify a customer under section 4 of the Act must obtain verifying documentation in respect of that customer, unless -

- (a) the customer remits funds by bank cheque or letter of credit issued by a regulated financial institution, or from an account in the name of the customer held with a regulated financial institution; or
- (b) the customer is a central or local government, statutory body or a state or government agency; or
- (c) the customer is an association listed on an approved stock exchange; or
- (d) the customer is an existing customer that has already provided such official or other identifying document or other evidence as is reasonably capable of verifying the identity of the customer; or
- (e) the customer is an existing customer, and the activity involves a transaction of less than \$10,000.

5. **Definition of customer** - For the purposes of these regulations, the definition of customer includes the following -

- (a) where an association is established, incorporated or managed, or an officer or secretary is provided by a financial institution to an association -
 - (i) the significant interest-holders; and
 - (ii) the officers;
- (b) where a trust is established -
 - (i) the settlors; and
 - (ii) the trustees;
- (c) in relation to any customer -
 - (i) any principal person, except where the customer is a regulated financial institution;
 - (ii) any person acting or authorized to act on behalf of the customer in respect of the business relationship, transaction or account.

6. Application of section 4(1) - Section 4(1) of the principal Act shall not apply -
- (a) where a customer is a regulated financial institution, either acting in its own right or on behalf of another person; or
 - (b) to any transaction where the recipient and the sender are regulated financial institutions.

7. Application of these regulations - in any case to which the Financial Transactions Reporting (Offering Company) Regulations 2004 apply, if there is any inconsistency or conflict between these regulations and the provisions of those regulations, then the provisions of those regulations shall prevail over the provisions of these regulations.

8. Offences - (1) Every person who refuses, or fails without reasonable excuse, to comply with these regulations 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.
- (2) In proceedings for an offence under these regulations, it is a defence for that person to show that he, she or it, took all reasonable steps and exercised all due diligence to avoid committing the offence.

P. Arere
Clerk of the Executive Council

These regulations are administered by the Financial Intelligence Unit