



**FINANCIAL TRANSACTIONS REPORTING (OFFERING COMPANY)
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 and section 40 of the Financial Transactions Reporting Act 2004, the Queen's Representative, acting by and with the advice and consent of the Executive Council hereby 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 (Offering Company) 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.

Price \$3.00

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;

"activities" means activities of an offering company arising out of or consequent upon any invitation to subscribe, offering of or subscription for shares or debentures, in the capital of that offering company or any invitation to deposit money with or lend money to that offering company in circumstances where Division 2 of Part XII of the International Companies Act 1981-82 applies to that invitation, offering, subscription or transfer (or would apply but for the application of section 229A of the International Companies Act 1981-82) to the original invitation, prospectus or advertisement in respect of those shares or debentures or to the depositing or lending of money (including but not limited to making any invitation, offering, the consideration of applications for subscription, the acceptance of money as a deposit or loan, transfer, purchase, redemption, repayment, or forfeiture);

"applicant" means -

- (a) a person who wishes to become a shareholder, or a debenture holder in an offering company and who has for that purpose made or accepted an offer to subscribe for, or to receive in any capacity, a share or a debenture in that offering company; or
- (b) a person who receives and wishes to act upon any invitation to deposit money with or lend money to an offering company;

"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 ascribed to it by section 126A of the International Companies Act 1981-82;

"guidance note" means any guidance note, guideline or practice note issued by the FIU under the authority of section 27(k) of the Act and having application to the matters the subject of these regulations;

"offering company" means an international company, which is also a financial institution, which is incorporated pursuant to the International Companies Act 1981-82, and undertakes activities;

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"regulated financial institution" means a person resident, based or incorporated in or formed under the laws of an approved jurisdiction that acts in the course of a business in relation to which an overseas regulatory authority exercises functions corresponding to the statutory functions of the Financial Supervisory Commission or the FIU in relation to compliance with the anti-money laundering laws in that approved jurisdiction and includes any person or entity which, with reference to any approved jurisdiction, is specified as an overseas regulatory authority in respect of that jurisdiction in the schedule to these regulations;

"trustee company" means a trustee company licensed pursuant to the Trustee Companies Act 1981-82.

(2) Unless the context otherwise requires, words and expressions used in these regulations bear the same meaning as in the Act.

3. Application of these regulations - (1) These regulations shall apply only to -
- (a) an offering company;
 - (b) a trustee company which provides trustee company services to or for an offering company;

and in either case shall apply only in respect of the activities .

(2) In every case to which these regulations apply, then, as provided for by sections 4 and 40 of the Act, the provisions of sections 4(1) and (2) of the Act shall not apply and the relevant offering company and trustee company shall instead identify and verify an applicant in the manner provided for by these regulations.

(3) In any case not specifically provided for by these regulations, the identity and verification of the identity of an applicant shall be ascertained with reference to the Act and to any other regulations and any guidance note made thereunder.

4. Procedures to identify an applicant - (1) No offering company shall -
- (a) accept any offer to subscribe for such shares from an applicant;
 - (b) register an applicant as the transferee of any share in the capital of that offering company;
 - (c) accept any deposit of money lent in relation to the activities of the offering company from the applicant,

unless that applicant has provided to that offering company a signed written application form (or in the case of any transfer of a share a signed share transfer form) setting out the full name and address of that applicant provided that the offering company has no grounds to believe that the application form proffered by the applicant, is false or misleading.

(2) If identification and verification of an applicant has not been satisfactorily completed within 90 days of the date of receipt of the applicant's monies then, except in any case to which section 11 of the Act applies, those monies shall be returned (after deducting those costs to which that offering company may be entitled for any reason) to the account from where they came, or if by post to the address of the applicant.

5. Procedures to be maintained to verify the identity of an applicant (1) Where an applicant has provided evidence of identity in accordance with regulation 4, it shall be the duty of an offering company to verify the identity of that applicant other than in the case of a transfer to a beneficiary of a will or as the result of a court order where the receipt of a completed transfer form together with a copy of the will or court order or other reasonable evidence of entitlement shall be deemed to constitute sufficient evidence of verification. The verification of the identity of an applicant by an offering company shall be undertaken in accordance with regulation 5(2).

(2) An offering company shall verify the identity of an applicant where that applicant is acting on his, her or its own behalf by means of any one or more of the following –

- (a) by reliance upon the procedures and practices of a regulated financial institution where the payment of funds -
 - (i) is made by an applicant, or on behalf of an applicant by a regulated financial institution; and
 - (ii) is sent by post or delivered by hand or by any electronic means which is effective to transfer such funds; and
 - (iii) is debited from an account held in the name of the applicant from a regulated financial institution (whether the account is held by the applicant alone or jointly with one or more other persons), or from a regulated financial institution's own account on behalf of the applicant;
- (b) by reliance upon that applicant being a regulated financial institution where the offering company has determined that there are reasonable grounds for believing that the applicant is a regulated financial institution;
- (c) where the offering company has determined that there are reasonable grounds for believing that the applicant is a national or local government, a statutory body or an agency of government in an approved jurisdiction;
- (d) by reliance upon the practices and procedures of a regulated financial institution where the applicant is a client of a regulated financial institution and the offering company has satisfied itself that the regulated financial institution has measures in place to comply with the customer identification and verification requirements of the approved jurisdiction in which the regulated financial institution is resident, based or incorporated in. Evidence of such measures may include, without limitation and if compliant with the requirements in the relevant approved jurisdiction, the use of eligible introducers' forms;

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- (e) where the applicant is an existing customer of the offering company or a related offering company and identification and verification procedures in accordance with the Act and these regulations have previously been carried out; or
- (f) otherwise as would be acceptable for the verification of a person under the Financial Transaction Reporting (Customer Identification) Regulations 2004.

6. Identification and verification procedures for applicant acting on behalf of another - (1) This regulation applies where an applicant is or appears to be acting on behalf of any other person or persons

(2) If the applicant is a regulated financial institution, the offering company may rely on the regulated financial institution having identified any third person where the offering company has satisfied itself that the regulated financial institution has measures in place to comply with the customer identification and verification requirements of the approved jurisdiction in which that regulated financial institution is resident, based, or incorporated. Evidence of such measures may include without limitation and if compliant with the requirements in the relevant approved jurisdiction, the use of eligible introducers' forms.

- (3) If the applicant is not a regulated financial institution then -
 - (a) if the person on whose behalf an application has been made effects payment of the application money's to the offering company, regulation 5 shall apply; or
 - (b) as would be acceptable for the verification of a person under the Financial Transaction Reporting (Customer Identification) Regulations 2004.

7. Exemption when offering company is listed - (1) Notwithstanding any other regulation, when an offering company is listed on an approved stock exchange in an approved jurisdiction and provides satisfactory evidence to the trustee company which provides trustee company services to or for the offering company that it is subject to the listing and disclosure rules of the approved jurisdiction, then the offering company will be deemed to be in compliance with the customer identification and verification requirements of these regulations.

8. Access by FIU or overseas regulatory authority to records - Where, by reason of the application of these regulations, the provisions of sections 4(1) and (2) of the Act do not apply, the offering company shall make available all records held by the offering company, in relation to matters to which these regulations apply, to the FIU within 3 working days of any request to do so.

9. Obligations of trustee company in respect of activities of offering company

(1) Where a trustee company provides trustee company services to or for an offering company, these regulations shall not affect the application of the provisions of section 4(1) and (2) of the Act to those persons with whom the trustee company forms a business relationship in the nature of receiving instructions to provide trustee company services in respect of the formation (or transfer to that trustee company) of that offering company, and its ongoing administration and provision of a resident secretary or any other officer.

(2) In respect of the activities, the provisions of section 4(1) and (2) of the Act shall not apply to the relevant trustee company. It shall instead be sufficient compliance with the requirements of the Act as to identification and verification of any subscriber or transferee, or any lender or depositor, for the trustee company to satisfy itself that the offering company has implemented the practices and procedures required and contemplated by both the Act and by these regulations and, in respect of the production of records, that trustee company shall make available all records held by it in relation to matters to which these regulations apply, to the FIU within 3 working days of any request to do so.

P. Arere
Clerk of Executive Council

These regulations are administered by the Financial Intelligence Unit

BY AUTHORITY:
Cook Islands Government - 2004