



MONEY LAUNDERING PREVENTION REGULATIONS 2002


Queen's Representative

ORDER IN EXECUTIVE COUNCIL

At Avarua, Rarotonga, this *28th* day of January 2002.

Present:

**HIS EXCELLENCY THE QUEEN'S REPRESENTATIVE
IN EXECUTIVE COUNCIL**

PURSUANT to Section 41 of the Money Laundering Prevention Act 2000 the Queen's Representative, acting by and with the advice and consent of the Executive Council, makes the following regulations.

ANALYSIS

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REGULATIONS

1. Title - These regulations are the Money Laundering Prevention Regulations 2002.

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2. **Commencement** – These regulations come into force on the 15th day after the date that the Queen's Representative signs the Order in Executive Council making these regulations.

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

“The Act” means the Money Laundering Prevention Act 2000;

“Facility”, –

- (a) Means any account or arrangement–
 - (i) That is provided by a financial institution; and
 - (ii) Through which a facility holder may conduct 2 or more transactions; and
- (b) Without limiting the generality of the foregoing, includes–
 - (i) A life insurance policy;
 - (ii) Membership of a superannuation scheme;
 - (iii) The provision, by a financial institution, of facilities for safe custody, including (without limitation) a safety deposit box;

“Facility holder”, in relation to a facility, –

- (a) Means the person in whose name the facility is established; and
- (b) Without limiting the generality of the foregoing, includes–
 - (i) Any person to whom the facility is assigned; and
 - (ii) Any person who is authorised to conduct transactions through the facility; and
- (c) In relation to a facility that is a life insurance policy, means any person who for the time being is the legal holder of that policy; and
- (d) In relation to a facility that consists of membership of a superannuation scheme, means any person who is a member of the scheme under the rules of the scheme;

“Identifier”, in relation to an individual, means a friend or work colleague of that individual, who–

- (a) Is over 18 years of age; and
- (b) Has personally known that individual for more than 12 months;

“Notary” 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;

“Principal facility holder”, in relation to a facility provided by a financial institution, means the facility holder or facility holders whom that financial institution reasonably regards, for the time being, as principally responsible for the administration of that facility;

“Transaction” –

- (a) Means any deposit, withdrawal, exchange, or transfer of funds (in whatever currency denominated), whether–
 - (i) In cash; or
 - (ii) By cheque, payment order, or other instrument; or
 - (iii) By electronic or other non-physical means; and
- (b) Without limiting the generality of the foregoing, includes any payment made in satisfaction, in whole or in part, of any contractual or other legal obligation; but
- (c) Does not include–
 - (i) The placing of any bet; or
 - (ii) Participation in a game of chance or any other form of gaming.

(2) For the purposes of these regulations, a person becomes a facility holder in relation to a facility when that person is first able to use the facility to conduct transactions.

4. Information and documents about facility holders – (1) Subject to subclauses (6) and (7), where any request is made to a financial institution for a person to become a facility holder (whether in relation to an existing facility provided by that financial institution or by means of the establishment, by that financial institution, of a new facility), that financial institution must obtain the information and documents specified in subclauses (2) and (3) in respect of that person.

(2) In the case of an individual, subclause (1) refers to the following information and documents about that individual:

- (a) The full name, date and place of birth, nationality, permanent address, and occupation; and either
- (b) A copy of a valid photographic identification document (such as a passport or driving licence) issued by a government or governmental agency, where a notary has verified that copy, or an officer or employee of the financial institution has sighted the original; or
- (c) Where that individual does not have such an identification document, –
 - (i) A copy of that individual’s full birth certificate, where a notary has verified that copy, or an officer or employee of the financial institution has sighted the original; and

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- (ii) A passport photograph of that individual, with the full name of that individual, the signature of an identifier, and the date of that signature set out at the back of the photograph; and
 - (iii) A letter signed by the identifier setting out the identifier's full name, date and place of birth, and permanent address, the individual's full name, and a statement that the identifier is a friend or work colleague of that individual and has personally known that individual for more than 12 months.
- (3) In the case of any other entity, subclause (1) refers to the following information and documents about that entity:
 - (a) The full name; and
 - (b) The jurisdiction in which, and laws under which, that entity was incorporated or otherwise created; and
 - (c) A copy of every document proving the incorporation or creation of that entity; and
 - (d) A copy of every document proving registration of that entity, if registration is required either in the jurisdiction where that entity was incorporated or created, or in the Cook Islands.
- (4) A financial institution must obtain the information and documents before or at the time a person becomes a facility holder in relation to that facility.
- (5) A financial institution must keep the information and documents for a period of not less than 5 years after that person ceases to be a facility holder in relation to that facility.
- (6) In any case where, in relation to a facility provided by a financial institution, there are 3 or more facility holders, it is not necessary for that financial institution to obtain the information and documents in respect of every such facility holder, as long as the financial institution has obtained the information and documents in respect of every person who is, for the time being, a principal facility holder.
- (7) Nothing in subclause (1) requires a trustee or administration manager or investment manager of a superannuation scheme to obtain the information and documents in respect of any person—
 - (a) Who becomes a member of that superannuation scheme by virtue of the transfer, to that scheme, of all the members of another superannuation scheme; or
 - (b) Who becomes a member of a section of that superannuation scheme by virtue of the transfer, to one section of that scheme, of all the members of another section of the same scheme.
- (8) Nothing in this regulation limits section 10(a) of the Act.

5. Holding of records, information, documents – Where a financial institution is required to keep a business transaction record or other information or document under the Act or a regulation, guideline, or requirement made under the Act, that financial institution must hold that record, information, or document at all times–

- (a) In the Cook Islands; and
- (b) In a manner and form that allows that financial institution to readily and speedily reproduce that record, information, or document in usable form in the Cook Islands.

6. Suspicious transaction reports – A financial institution required to make a report to the Authority under section 10(b) of the Act must–

- (a) Make that report–
 - (i) In writing; and
 - (ii) As soon as practicable, and in all cases within 2 working days of an officer or employee of the financial institution forming the suspicion; and
- (b) Include in that report the information and documents specified in the Schedule to these regulations.

7. Offences – Every person commits an offence who refuses, or fails without reasonable excuse, to comply with any of regulations 4, 5, or 6.

8. Liability of principals and agents – (1) If an offence is committed against regulation 7 by any person acting as the agent or employee of another person, that other person is, without prejudice to the liability of the first-mentioned person, liable under these regulations, in the same manner and to the same extent as if he or she had personally committed the offence, if it is proved that the act or omission that constituted the offence took place with his or her authority, permission, or consent, or that he or she knew or should have known the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.

(2) Where any body corporate is convicted of an offence against regulation 7, every person, being a director or a person concerned in the management of the body corporate, is guilty of the same offence if it is proved that the act or omission that constituted the offence took place with that person's authority, permission, or consent, or that the person knew or should have known the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.

9. Penalties – Every person who commits an offence against regulation 7 is liable on conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$1000 or to both.


Clerk of the Executive Council

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These regulations are administered in the Office of the Commissioner for Offshore Financial Services.

**BY AUTHORITY:
COOK ISLANDS GOVERNMENT – 2002**

SCHEDULE

Regulation 6(b)

CONTENTS OF SUSPICIOUS TRANSACTION REPORTS

The following information and documents must be included in the report referred to in regulation 6:

1. The name and contact details of the financial institution making the report.
2. A copy of all business transaction records held by the financial institution concerning the business transaction referred to in section 10(b) of the Act.
3. Without limiting the generality of clause 2 of this Schedule, –
 - (a) The name, and all contact details held by the financial institution, of every person known to the financial institution to have been involved in the conduct of that business transaction, including every person on whose behalf that business transaction was conducted; and
 - (b) The dates relevant to that business transaction; and
 - (c) The description specified in paragraph (b) of the definition of “business transaction record” in section 2(1) of the Act; and
 - (d) The amounts involved in that business transaction, including the value specified in paragraph (d) of the definition of “business transaction record” in section 2(1) of the Act; and
 - (e) The types of currency involved in that business transaction; and
 - (f) The name of the officer, employee, or other representative of the financial institution who handled that business transaction.
4. Where a facility provided by the financial institution is relevant to the business transaction, –
 - (a) The information specified in paragraph (c) of the definition of “business transaction record” in section 2(1) of the Act, including the type and identifying number of any account used by the financial institution for that transaction; and
 - (b) A copy of the information and documents required by regulation 4 to be obtained and kept by the financial institution in respect of facility holders of that facility; and
 - (c) A copy of the documentary evidence that—
 - (i) Is specified in paragraph (a) of the definition of “business transaction record” in section 2(1) of the Act; and
 - (ii) Is a business transaction record (relating to that facility) required by section 10(a) of the Act to be kept by the financial institution; and

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- (d) The name, and all contact details held by the financial institution, of every person who is a facility holder of that facility, irrespective of when that person became a facility holder or when the financial institution began providing that facility.
 - 5. All information held by the financial institution about any other facility, wherever located, through which the business transaction was directly or indirectly conducted.
 - 6. An explanation of why the officer or employee referred to in section 10(b) of the Act suspects that the business transaction involves the proceeds of crime.
 - 7. All other information held by the financial institution that may be relevant to the explanation specified in clause 6 of this Schedule.
 - 8. The name of the individual who prepared the report.
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