

COOK ISLANDS LAW SOCIETY

COMPLIANCE AND OPERATIONAL RISK MANUAL FOR LAWYERS

October, 2017

Anti-Money Laundering (AML) / Countering Financing of Terrorism (CFT)

Contents

PART I

1. Money Laundering – Introduction
2. What is Money Laundering?
3. The Stages of Money Laundering
4. Areas of Concern
5. The Lawyer’s Dilemma
6. Risk Based Approach

PART II

7. Lawyers and what falls within the FTRA

PART III

8. Non-sole practitioner law firms

PART IV

9. Risk Assessment

PART V

10. Client Due Diligence

PART VI

11. Reporting and heightened due diligence

PART VII

12. Politically Exposed Persons

PART VIII

13. Record Keeping

Appendices:

Appendix 1 Currency Transaction Report Form

Appendix 2 List of jurisdictions identified by the Financial Intelligence Unit being ones it or the Financial Action Taskforce has made a call on its members to apply countermeasures to protect the financial system from ongoing and substantial risks of money laundering and financing terrorism emanating from the jurisdiction.

Appendix 3 Jurisdictions the FIU has identified as having strategic money laundering and financing of terrorism deficiencies or which pose a higher risk of money laundering and financing of terrorism.

Appendix 4 Politically Exposed Persons

Appendix 5 Suspicious Activity Report Form

Appendix 6 Meaning of “Tipoff”

Legislative & Regulatory Framework

Anti-Money Laundering

- Financial Transaction Reporting Act (2017) – (FTRA)
<https://www.fsc.gov.ck/cookIslandsFscApp/content/assets/1b94f6c11f9fba14520fee90a176d291/Financial%20Transactions%20Reporting%20Act%202017%20No.%203.pdf> and <https://www.fsc.gov.ck/cookIslandsFscApp/content/assets/1840f3f3c3b6615982867b665c3ad5bf/Financial%20Transactions%20Reporting%20Amendment%20Act%202017.PDF>
- Countering Terrorism and the Proliferation of Weapons of Mass Destruction Act 2004 (as amended by the Terrorism Suppression Amendment Act 2017) (CTPWMD)
<https://www.fsc.gov.ck/cookIslandsFscApp/content/assets/ea577a1ed19db461ccfbec2bf5887bbb/Terrorism%20Supression.PDF>
- Financial Intelligence Unit Act 2015 (as amended by the Financial Intelligence Unit Amendment Act 2017) (FIU)
<https://www.fsc.gov.ck/cookIslandsFscApp/content/assets/88aa9b100ccc4d00ae5860502301039d/2015%20%20FIU%20Bill.pdf> and <https://www.fsc.gov.ck/cookIslandsFscApp/content/assets/38076dc2261154cfc62cdc53270413b7/Financial%20Intelligence%20Unit%20Amendment%20Act%202017%20No.4.pdf>
- Financial Supervisory Commission Act 2003 – (FSCA)
<https://www.fsc.gov.ck/cookIslandsFscApp/content/assets/638a4efd0b7f491a1639a4d770ee7be7/Financial%20Supervisory%20Commission%20Act%202003.pdf> and <https://www.fsc.gov.ck/cookIslandsFscApp/content/assets/c65ec8e00d59115d84c0f940f6f5e404/Financial%20Supervisory%20Commission%20Amendment%20Act%202003.pdf> and <https://www.fsc.gov.ck/cookIslandsFscApp/content/assets/c862e8b3a3198b3c84936714ddb8ace/Financial%20Legislation%20Amendment%20Act%202012.pdf>

Regulatory Framework

- Financial Transactions Reporting Regulations 2017
<https://www.fsc.gov.ck/cookIslandsFscApp/content/assets/b0c0feb7b4d8f52ceb5a569b40255d57/Financial%20Transactions%20Reporting%20Regulations%202017.pdf>

Guidelines

- Financial Transactions Reporting Act 2017 Practice Guidelines for Lawyers
<https://www.fsc.gov.ck/cookIslandsFscApp/content/assets/00be257b8e19c132228fba100374c81e/FTRA%202017%20Practice%20Guidelines.pdf>

PART I

1.0 Money Laundering – Introduction

1.1 Money laundering is a global phenomenon that affects all countries to varying degrees. By its very nature it is a hidden activity, and therefore the scale of the problem and the amount of criminal money being generated either locally or globally each year is impossible to measure accurately. Failure to prevent the laundering of the proceeds of crime allows criminals to benefit from their actions, making crime a more attractive proposition.

1.2 One of the best methods of preventing and deterring money laundering is a sound knowledge of a client's business. This is particularly important for those operating trust accounts as clients may seek to use these to hide from banks and other financial institutions beneficial owners of funds or as a means of transmitting funds knowing they will be unable themselves to open a bank account. The latter may not necessarily mean there is money laundering because sometimes banks will refuse to open an account for a customer based on commercial and reputational reasons rather than anything that evidences actual money laundering. For example, the convicted criminal recently out of prison may find it difficult to conduct financial transactions whether or not that person has been rehabilitated and whether or not his conviction relates to an offence related to financial misconduct.

1.3 Such assessments cannot be properly made unless you have a "*know your client*" policy.

2.0 What is Money Laundering?

2.1 Money laundering is the process by which the direct or indirect benefit of crime is channeled through financial institutions to conceal the true origin and ownership of the proceeds of criminal activities. If successful, the money can lose its criminal identity and appear legitimate.

2.2 In basic terms, the money launderer wants to:

- (a) place their money in the financial system, without arousing suspicion;
- (b) move the money around, often in a series of complex transactions crossing multiple jurisdictions, so it becomes difficult to identify its original source; and
- (c) move the money back into the financial and business system, so that it appears as legitimate funds or assets.

3.0 The Stages of Money Laundering

- 3.1 There is no single method of laundering money. Methods can range from the purchase and resale of property to turn tainted monies into 'legitimate' property, and the conduct of numerous transactions by:
- a) Placement - the physical depositing of cash proceeds derived from criminal activity.
 - b) Layering - separating the illicit proceeds from their source by creating complex layers of financial transactions designed to disguise the audit trail and provide anonymity.
 - c) Integration - the provision of apparent legitimacy to wealth derived from crime. If the layering process has succeeded, integration schemes place the laundered proceeds back into the economy in such a way that they re-enter the financial system appearing as normal business funds.
- 3.2 The three basic steps may or may not occur as separate and distinct phases. They may occur simultaneously or, more commonly, they may overlap. How the basic steps are used depends on the available laundering mechanisms and the requirements of the criminal organisations.
- 3.3 Certain points of vulnerability have been identified in the laundering process which the money launderer finds difficult to avoid, and where his activities are therefore more susceptible to being recognised, such as:
- entry of cash into the financial system;
 - cross-border flows of cash;
 - acquisition of financial assets;
 - transfers within and from the financial system;
 - incorporation of companies; and
 - establishment of financial vehicles.

4.0 Areas of Concern

- 4.1 As the efficiency of tracking illegitimate transactions between financial institutions improves, the attraction of Designated Non-Financial Businesses and Professions (such as lawyers' trust accounts), money exchanges, 'charities' and non-profit organisations and other alternative avenues for the conveyance and transformation of illegitimate funds has increased. Correspondingly the Financial Action Task Force has urged countries to place increased emphasis on these institutions. This is evidenced in the Cook Islands by the passage of the Money Changing and Remittance Business Act 2009 and the FTRA.

- 4.2 Particularly important in this regard is the fact that the Cook Islands has an offshore jurisdiction and it is even in the domestic jurisdiction an increasingly attractive place to invest and live for people from overseas. Given its small population and the general familiarity of people in the community with each other, the risk profile of clients hitherto unknown before engagement will obviously be considerably greater.
- 4.3 With the increasing de-risking by banks, some of which have in recent years faced hefty fines for harbouring tainted monies, there has been a growing demand for alternate ways to convey monies or get them into banks. This has included money conveyers like Western Union and the use of alternate currencies such as Bitcoin. Lawyer's trust accounts can be another way of allowing persons to conduct transactions who cannot open an account with a bank. Particular regard should also be had to funds sent to your trust account with a request for funds to be wired back to the client or a third party, particularly if there is an inexplicable termination of services or an intended legal transaction.
- 4.4 The geographical location of a client should be noted, particularly where the client is resident in a country:
- without equivalent money laundering strategies; or
 - where cash is the normal medium of exchange; or
 - where there is a politically unstable regime with high levels of public or private sector corruption; or
 - that are known to be drug producing or drug transit countries,

5.0 The Lawyer's Dilemma

- 5.1 Lawyers have an obligation to act in their client's best interest and that is coupled with an obligation of confidentiality. These obligations arise not only at common law but also under the Code of Ethics set out in the Law Practitioners Act 1993-94. These have the potential to conflict with your obligations under the FTRA. The FTRA deals with this. There is a paramount provision in the FTRA requiring compliance and providing in any conflict between the FTRA and any other Act the FTRA prevails. To the extent lawyers have obligations at common law the statute will, of course, prevail. Consequently, only rights protected by the Constitution will trump the FTRA. However the FTRA provides that nothing in the FTRA requires you to disclose information subject to legal privilege which is defined as any:
- (a) confidential communication, whether orally or in writing between
 - (i) a lawyer acting in a legal professional capacity on behalf of a client and another lawyer in that capacity;
 - (ii) a lawyer acting in a legal professional capacity and that lawyer's client, whether made directly or indirectly through an agent; and
 - (b) it is made for the purpose of obtaining or giving legal advice or assistance; and

(c) it is not made for the purpose of committing or furthering the commission of financial misconduct or a serious offence.

6.0 Risk based approach

6.1 Initially a rather prescriptive approach was taken in the fight against money laundering. Those responsible entered a 'safe harbour' on compliance with strict rules. Over time this approach has given way to a 'risk based' approach with the expectation that those subject to the FTRA will not only comply with the due diligence requirements set out in the legislation in respect to their clients but they will also think carefully about the type of clients where enhanced due diligence and monitoring is appropriate. In short there is expected to be an intelligent exercise of judgment.

PART II

7.0 Lawyers and what falls within the FTRA

7.1 Section 5 of the FTRA provides that a "reporting institution" includes a person who in the course of carrying on business enters into transactions with or on behalf of customers in respect of 1 or more specified activity. A lawyer is a "reporting institution" to the extent that the lawyer carries on a "specified activity". A "customer" is the client being the person with whom or on behalf of whom a lawyer enters into a transaction. So the key tests are whether you are for a client carrying on a specified activity in respect of which a transaction will or is likely to occur.

7.2 The relevant specified activities for those acting as lawyers (other than in-house lawyers for corporations) are:

- (1) any payment into your trust account which repayable to the client;
- (2) if you run a nominee company any lending;
- (3) managing client money, securities and other assets other than the passive receipt and holding of funds in your trust account;
- (4) conveyance of interests in land (including mortgages) unless the conveyance arises by operation of native custom (as opposed to statute, common law or the rules of equity) or you are acting for the native landowners in the transaction;
- (5) managing bank, savings and securities accounts;
- (6) creating, operating or managing legal persons or legal arrangements;
- (7) buying and selling business entities.

7.3 "Transaction" in the FTRA means a "financial transaction" and a "monitored transaction" and an attempt to conduct either transaction. "Financial transaction" has a broad definition and includes any payment into or out of your trust account and any payment in "satisfaction of any obligation arising in law or equity". Because it is not carried out on behalf of the client this will not include payment of your fees. "Monitored transaction" has an interesting

definition. This is a transaction carried out in the course of your business which enables a person to carry out a financial transaction or to avoid carrying out a financial transaction and includes: opening an account; conducting transactions on an account; entering into a fiduciary relationship to hold property; creating any legal entity; and forming a trust.

7.4 For lawyers “transactions” are:

- (1) Any payment into your trust account;
- (2) Any payment out of your trust account;
- (3) Any creation by you of an incorporated society, company or other legal entity;
- (4) Creating any form of trust which is settled and reduced to writing;
- (5) Any fiduciary or nominee relationship you enter into.

- NOTE: Although creating any form of trust which is settled and reduced to writing, and any fiduciary or nominee relationship are “transactions”, because they are not “specified activities” for lawyers, lawyers are not “reporting institutions” in respect of those activities. However, you need to take note of paragraph 7.5 which may bring these fiduciary setups within the purview of the FTRA although they are not “specified activities” for lawyers.

7.5 There is an additional criteria set out in section 9(b) of the FTRA. The FTRA applies not only to “transactions” but also to the extent the reporting institution is carrying out activities which might give rise to a risk of financial misconduct being:

- (1) a breach of the:
 - (i) Mutual Assistance in Criminal Matters Act 2003; or
 - (ii) FTRA; or
 - (iii) Proceeds of Crime Act 2003; or
 - (iv) CTFWMD
- (2) tax evasion involving tax payable in any jurisdiction;
- (3) financing or facilitating bribery or other corrupt practices;
- (4) fraud involving cross border financial transactions.

(transactions and the activities set out above are collectively referred to in this manual as “reportable transactions”).

PART III

8.0 Non-sole practitioner law firms

8.1 This part DOES NOT apply to those lawyers in sole practice who do not engage other staff in a secretarial capacity only unrelated to the business of providing legal services. It should be noted that if staff carry out legal type of work the Part will apply even though those persons are not lawyers.

8.2 This manual is designed to help you meet the requirements of subpart 1 of Part 2 of the Act. However, every manual should be tailored to your firm’s or

company's specific circumstances. It should be approved by management and conveyed to staff.

- 8.3 A person in senior management must be appointed the Money Laundering Reporting Officer ("MLRO") and there must be a deputy able to carry out those duties in the absence of the MLRO.
- 8.4 You need to be able to test the efficacy of your procedures and you specifically need to have policies to satisfy yourselves as to the integrity of any new director, officer and employee. This may include, for example: (a) obtaining 3 professional references no more than 6 months old; (b) procuring a Police Report from the applicant's jurisdiction of residence; (c) personally contacting at least two prior employers or referees; (d) interviewing the prospective candidate.
- 8.5 You also need to ensure there is regular training of staff on their obligations under the FTRA. This can be difficult for small institutions. Previously ANZ welcomed outsiders to its training sessions from persons offshore but now KYC has been centralised offshore that option is no longer available. However, the Financial Intelligence Unit itself has some useful online training which could be utilised.
- 8.6 It is also a requirement your compliance programme to deal with how to recognise and to report suspicious activity. As this is an obligation placed on all lawyers those obligations are addressed later in this manual.

PART IV

9.0 Risk Assessment

- 9.1 All persons carrying on business as lawyers are required to carry out a risk assessment by 22 June, 2018. For lawyers the principal areas of risk will be readily identifiable being: clients; staff; information technology; and trust account transactions. Good policies regarding the engagement and monitoring/cross checking staff, particularly where monetary transactions are involved should help mitigate any risk of financial crime. Similarly, regular reconciliation of the trust account and the annual audit should assist in the proper administration of the trust account.
- 9.2 Generally for lawyers in the Cook Islands the scale of activities is modest but the complexity of transactions can be great. While you must come to your own business risk assessment because all law practices in the Cook Islands are general practices it is anticipated there will be considerable commonality of risks between practices. We suggest the following non-definitive risk profiles might be considered appropriate. They are not just based on the type of specified activity or transaction that may occur, but the type of client who engages you:

(1) Low Risk:

- (a) The grant, purchase and assignment of leases and sub-leases to persons who are Cook Islands or permanent residents (collectively “local persons”) or entities that are managed and majority owned (including beneficial ownership) and controlled by local persons;
- (b) Transactions involving domestic companies owned and controlled by local persons;
- (c) Loan and mortgage transactions where the lender is a bank licenced under the Banking Act 2011 to carry on banking business in the Cook Islands;
- (d) transactions involving debt collection where the debtor and creditor are local persons;
- (e) transactions involving the division of matrimonial property under the Matrimonial Property Act 1976 of New Zealand as that Act applies in the Cook Islands under the Matrimonial Property Act 1991-92.

(2) Medium Risk:

- (a) Transactions involving a foreign enterprise as defined in the Development Investment Act 1995-96;
- (b) Transactions involving entities, or entities or persons who intend to be officers or shareholders, which must apply to and obtain from the Financial Supervisory Commission a licence to be able to carry on its business;
- (c) Formation of and dealings with domestic trusts;
- (d) Any transaction involving or any client residing in a jurisdiction identified in Appendix 3.

(3) High Risk:

- (a) Transactions involving the acquisition, requisition, charter, mortgage (otherwise than to a Bank) or sale of aeroplanes and ships, or the shares in a ship, wheresoever registered;
- (b) Any transaction involving a Politically Exposed Person (“PEP”) (further addressed below);
- (c) Any involvement in the formation, acquisition, assignment or sale or other transfer of any shares, warrants, debentures, membership interests, partnership interests and any other right, title or interest in, or any dealings in the finances of: any foundation established under the Foundations Act 2012;; limited liability company established under the Limited Liability Companies Act 2008; international company established or foreign company registered under the International Companies Act 1980-81; or international partnership registered under the International Partnership Act 1984;
- (d) Any involvement in the settlement, change to the trustees, protectors or beneficiaries or change to the terms, and any involvement in any financial transaction, involving any international trust registered

- under the International Trusts Act 1984 or any trust governed or partially governed by the laws of the Cook Islands;
- (e) Any monies received in trust or on account of fees of any person charged with or convicted within the last 5 years of an offence which relates to committing, assisting, being a party to, or aiding and abetting fraud, bribery, corruption, theft, conversion, robbery or like offences, or a money laundering offence (as that term is defined in the Proceeds of Crime Act 2003);
 - (f) Any transaction involving or any client residing in a jurisdiction identified in Appendix 2.

NOTE: Section 22 allows, should you wish, to apply to the Financial Intelligence Unit be exempt from the provisions of Part 2 of the FTRA (Parts II, III & IV of this manual). The basis for seeking the exemption must be stated in your application and the Head of the Financial Intelligence Unit may only exempt you if he believes you have only a low risk of financial misconduct. Granting the exemption is discretionary and if granted cannot be granted for a term exceeding three years but the exemption may be removed.

PART V

10.0 Client Due Diligence

- 10.1 This Part applies where you are to enter into an isolated transaction or commence a business relationship with a client of a kind which will involve reportable transactions. An isolated transaction is one that takes place outside an ongoing business relationship and involves NZD10,000 or greater or its equivalent in another currency, crypto-currency, goods and services, commodities and any unit of account or store of value. An ongoing business relationship is one where the purpose of your arrangement is to facilitate the carrying on of business on a frequent, habitual, or regular basis.
- 10.2 Where the client instructs through an agent, attorney or other intermediary due diligence must be obtained on both the person acting on behalf of the client and the client. Except where “simplified due diligence” is applicable for Low Risk clients (discussed below) you should follow the due diligence requirements set out in 10.3 to 10.9 below.
- 10.3 Your due diligence should be from reliable sources. Ideally this will include an official document generated by a governmental agency which is current (i.e. not expired) and bears photo identification of the client which is certified by a Notary, Judge, Justice of the Peace or Attorney, Advocate or Lawyer as a true copy of the original.
- 10.4 You should also identify the usual place of residence of your client. As we know from the Cook Islands where there are few street names and houses are not numbered this can, at times, be challenging. It is also made more difficult

by the fact that many utility bills are now sent by e-mail and do not necessarily identify the exact location of the residence serviced. Further, not uncommonly the utility bill is in the name of a company rather than an individual or can be in the name of a partner or flatmate. Ideally you will get an original utility bill (such as power, water rates, telephone) with residence identified but an alternative is to have a person of standing (e.g. Notary Public) by letter confirm they know the client and set out the client's address in a letter. The due diligence you gather should inform you at a minimum of the client's: (1) full name including any aliases; (2) residential address; (3) date and place of birth; (4) nationality; and (5) some sort of identification reference from an official document.

- 10.5 Where a company or other form of incorporated body (other than a statutory corporation) is your client you should obtain a copy of the documents that evidences its incorporation, its current status and the rules by which it is governed along with due diligence on all the individuals who ultimately own or effectively control the company or effectively own 25% or more of the shares or voting rights in the client. Your due diligence should inform you as a minimum of the: (1) name of the legal person; (2) date and country of incorporation, registration or establishment as the case may be; (3) the powers that regulate the company; (4) its official identification number or code; (5) its registered office or place of business; and (6) its beneficial owners and controllers. In the case of Foundations you should obtain due diligence on the: council members; the founder or any other dedicator; and those beneficiaries with a vested interest or in the case of a charitable or discretionary foundation you should have sufficient knowledge of the class of persons who are beneficiaries to be able you to verify the identity of any person who receives a distribution. As stated above the position with trusts and lawyer's obligations is less clear but prudence would suggest it wise for you to obtain the same information on beneficiaries for trusts as you are required to do for Foundations together with due diligence on the settlor (i.e. all persons putting funds into the trust and not just a 'nominal' settlor) and the trustee.
- 10.6 An ancillary but important requirement is to understand the nature of the transaction/business relationship. This should be relatively easy for lawyers (as opposed, for example, to a bank) because in the normal course the lawyer is engaged to assist in the transaction or transactions and consequently should be well aware of the purpose and intent behind financial transactions.
- 10.7 Financial institutions generally subscribe to search engines (such as Worldcheck) at an expense most lawyers would find prohibitive. Nonetheless, you should at least undertake for persons residing outside of the Cook Islands a thorough internet search.
- 10.8 Where justified simplified due diligence may be undertaken. We suggest this is only likely to apply to clients who fall into the Low Risk category and in particular those who reside in the outer islands and who do not have driver's

licences or passports. You still need to know their: (1) full name; (2) residential address; and (3) date and place of birth, and have something that uniquely identifies that client.

- 10.9 In respect of High Risk clients there should be enhanced due diligence from the 'get go'. You should look carefully at the source of any funds that come into your trust account and if an intermediary is being used ask yourself "why" and understand the relationship between agent and principal.
- 10.10 The FTRA permits a delay in obtaining identification documents but this needs to be justified. There must be no suspicion of money laundering and the risk of financial misconduct must be properly managed. It is contemplated this kind of situation will only arise where there is an urgent need to complete a legal arrangement or file a Court proceeding. It must be remembered that urgency can be a convenient vehicle for the quick transmission of funds or property for the purpose of money laundering. It is important you decide for yourself if a matter is "urgent" as your view of urgency may differ greatly from your client's. Indeed if your client presses the matter of urgency when it is not apparent to you that any urgency exists that may be grounds for suspicion (discussed below).

PART VI

11.0 Reporting and Heightened Due Diligence

- 11.1 As a starting point if you receive NZD10,000 into your trust account or greater than that sum, or its equivalent in another currency, and it is in relation to a specified activity then you have an obligation to file a report with the Financial Intelligence Unit in the form set out in Appendix 1.
- 11.2 If at any time you doubt the good faith or the identity of your client, or the reportable transactions your client is involved in have no obvious purpose or are large, of an unusual pattern or complex, you are dealing with "unusual activity".
- 11.3 If you have a MLRO you should immediately report the unusual activity to the MLRO.
- 11.4 Where there is a MLRO the MLRO and where there is none, you, should consider whether the unusual activity justifies making a suspicious activity report ("SAR") to the Financial Intelligence Unit in the form contained in Appendix 5. You need to make your decision quickly and no more than 2 days after the suspicion is identified.
- 11.5 Where a client has been or convicted of, or you have reasonable grounds to suspect the client has committed financial misconduct, you must file a SAR with the FIU within 24 hours of the forming the suspicion.

- 11.6 If in entering into a transaction or ongoing business relationship with a client or prospective client you cannot obtain the due diligence you require then subject to the other provisions of this manual you must terminate that relationship unless you believe such termination will result in tipping off in which case you should instead file a SAR because fear of “tipping off” (see Appendix 6) in itself implies you have a suspicion justifying the filing of such a report.
- 11.7 Once you have filed a SAR enhanced due diligence should be applied to the client until you are advised by the Financial Intelligence Unit this is no longer necessary. Further reports to the Financial Intelligence Unit should be filed where appropriate.
- 11.8 You must take particular care not to tipoff (see Appendix 6) your client. Unlike financial institutions lawyers often have an intimate exchange with their clients involving a great deal of dialogue. Consequently, you need to be careful you do not let anything ‘slip’ in your dealings with your client.
- 11.9 Due diligence is not just a ‘front door’ activity. You should have procedures in place to ensure the ongoing monitoring of clients including ensuring due diligence information is current and as accurate as possible at all times. Also, your client’s risk profile may change over time either rising to a higher level of risk but also reducing to a lower risk. An assessment should periodically be made and recorded.
- 11.10 You should also make an assessment for existing customers. For existing customers you need to make an assessment as to the adequacy of the due diligence you hold.

PART VII

12.0 Politically Exposed Persons

- 12.1 A PEP is any person who falls within the definition set out in Appendix 4. PEPs are a particularly important category in the Cook Islands. There are two reasons for this. The first is that the Cook Islands operates what is generically known as an ‘offshore jurisdiction’. Offshore jurisdictions are often popular with PEPs in other countries where they seek for legitimate, and sometimes illegitimate, reasons a heightened level of confidentiality, particularly concerning their financial affairs. The second reason PEP is an important category is the small size of the Cook Islands as a country. Generally corruption indices show a low level of corruption for medium sized countries such as New Zealand and the Scandinavian countries but the indices tends to be greater for larger or smaller nations. The reason why the indices increase for smaller nations will be readily apparent to you. In the Cook Islands conflicts of interest cannot be avoided but they do have to be

managed. With those conflicts of interest comes greater opportunities for persons, particularly members of parliament and Ministers of the Crown, to wittingly and unwittingly let self-interest creep into their activities which are meant to be for the public good.

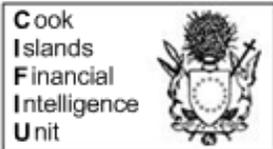
- 12.2 It is for these reasons we have ranked PEPs High Risk justifying heightened due diligence. We also believe it is in this category more than any other than lawyers need to be extra vigilant and ensure they do not themselves become wittingly or unwittingly a party to a money laundering or a serious offence in their dedication to undertake their client's instructions.

PART VIII

13.0 Record Keeping

- 13.1 To put it simply – keep everything on the client for 6 years – in the case of a reportable transaction from the date of the transaction and in the case of an ongoing relationship from the date the relationship ends (noting that because you will likely have loyal clients this could require retention of documents for decades). Also if there is an investigation or you have filed a SAR you need the consent of the Financial Intelligence Unit before destroying documents.
- 13.2 Essentially you must keep records such that if financial misconduct is investigated or prosecuted the competent authority can reconstruct the relevant events that occurred. They can be kept in digital format but only if they can be readily produced in hard copy.
- 13.3 You also need to keep a SAR register which has a copy of each SAR, all inquiries from the Financial Intelligence Unit and other competent authorities, all related correspondence, the name of who filed the report and on what date, where the information related to report can be found, and who it was sent to. These documents must also be kept for not less than 6 years.

You are protected from suit by your clients if you in good faith comply with the provisions of the FTRA. If you fail to comply you are exposed to a maximum fine of \$250,000 or imprisonment for a term not exceeding 5 years. If a corporation the maximum fine is \$500,000. Directors and officers who know of a breach cannot hide behind the corporate veil. In summary compliance with the FTRA is not just an important consideration. It is a paramount consideration.



CASH TRANSACTION REPORT (CTR) \$10,000 NZD OR MORE

Please complete in **INK** and in **CAPITAL LETTERS**

Reporting of cash transactions of \$10,000 NZD or more is required by law under Section 45 of the Financial Transactions Reporting Act 2017. Penalties exist for failure to report or to supply full and correct information.

PART A - IDENTITY OF PERSON CONDUCTING

1 Full name (title, given names and surname)

 Also known as: _____

2 Date of birth: _____ **3 Country of birth:** _____

4 Occupation, business or principal activity

5 Business address (physical and PO Box)

_____ PO Box: _____

 Country: _____ Phone: _____

6 Residential address (cannot be a PO Box)

 Country: _____ Phone: _____

7 NON RESIDENT - Cook Islands contact address

 Country: _____ Phone: _____

8 Give details if this person is a signatory to account affected by this transaction

Account Title/Name: _____
 Account No. _____ Branch: _____
 Financial Institution: _____

9 How was the identity of this person confirmed?

ID Type: _____
 ID Number: _____
 Issuer: _____

10 Is a photocopy of ID document/s attached?

Yes No

If more than one person involved please provide same details contained in Sections 1 - 11 for each person, where appropriate, and attach.

PART B - DETAILS OF PERSON/ORGANISATION ON WHOSE BEHALF THE TRANSACTION WAS CONDUCTED (if applicable)

11 Full name of person/organization

12 Business address (physical and PO Box)

_____ PO Box: _____

 Country: _____ Phone: _____

13 Occupation, business or principal activity

14 Give details if this person is a signatory to account affected by this transaction

Account Title/Name: _____
 Account No. _____ Branch: _____
 Financial Institution: _____

PART C - DETAILS OF THE TRANSACTION

15 Date of transaction

DAY MONTH YEAR

16 Total amount of this transaction (include cash and any other components of the transaction - If a foreign currency is involved, convert the amount to New Zealand dollars)

NZ\$ _____

17 If a foreign currency was involved in this transaction, specify:

Foreign Currency _____
 Foreign Currency Amount _____

18 Cash paid IN

19 Cash paid OUT

20 Type of transaction(s) involved

Transfer to another Financial Institution: _____

Travellers cheques _____

Foreign currency _____

Bank cheque _____

Account deposit / withdrawal _____

Bank draft _____

Securities _____

Precious stones/metals/pearls etc _____

Other _____

21 If a cheque / bank draft / money order / telegraphic transfer / transfer of currency or purchase or sale of any security was involved in this transaction, please specify:

Drawer/Ordering Customer: _____

Payee/Favouree/Beneficiary: _____

22 If another financial institution was involved in this transaction, please specify:

Name of financial institution: _____

Branch: _____

Country: _____

PART D - DETAILS OF THE RECIPIENT PERSON/ORGANISATION (if applicable)

23 Full name of person/organization

24 Business address (physical and PO Box)

_____ PO Box: _____

Country: _____ Phone: _____

25 Occupation, business or principal activity

26 Reason for transaction (eg payment for imports)

27 Details of recipient account (if not already provided)

Account Title/Name: _____

Account No. _____ Branch: _____

Financial Institution: _____

PART E - EXPLANATORY NOTES

28 Give details of the nature and circumstances surrounding the transaction if required. PLEASE PRINT IN BLOCK LETTERS.

29 Is additional information attached to this report?

Yes No

Please specify: _____

PART F - REPORTING FINANCIAL INSTITUTION

30 Type of Financial Institution (eg bank)

31 Name of Financial Institution

32 Name of branch or office where transaction was conducted

33 Business address (physical and PO Box)

_____ PO Box: _____

Country: _____ Phone: _____

PART G - FINANCIAL INSTITUTION'S STATEMENT

34 Details of authorised person:

Given names and surname: _____

Job title: _____

Phone: _____ Fax: _____

35 This statement is made pursuant to the requirement to report "significant" cash transactions under Cook Islands laws on the grounds detailed in this report.

Signature of authorised person:

Sign here _____

Date:

DAY MONTH YEAR

36 Financial Institutions internal reference number (if applicable)

Send completed forms to:	For assistance contact:
Head of FIU PO Box 594 Rarotonga	Financial Intelligence Unit Phone: (+682)29182 Fax: (+682)21798 intel@cifu.gov.ck

APPENDIX 2



Financial Intelligence Unit

Government of the Cook Islands

P.O. Box 594 Avarua Rarotonga Phone: (+682) 29182 Fax: (+682) 21798
E mail head@cifu.gov.ck

The financial Intelligence Unit publishes the following lists A, and B in accordance with the Financial Transaction Reporting Act 2017 Section 29. Lists A and B are effective from 15 September 2017

List A: Financial Action Task Force (FATF) Public Statements.

This list is not intended to provide an exhaustive list and no conclusion should be drawn from the omission of a particular jurisdiction. Furthermore, there may be additional jurisdictions where the FATF Recommendations are not applied or insufficiently applied in respect of particular transactions or business relationships.

This list will be updated as and when the FIU becomes aware of necessary amendments

On the 23 June 2017, the Financial Action Task Force (FATF) issued an updated Public Statement on jurisdictions with strategic anti-money laundering and combating the financing of terrorism (AML/CFT) deficiencies.

In order to protect the financial system of the Cook Islands from any money laundering and terrorist financing threats or activities, those who meet the definition of a Reporting Institution under section 5 of the Financial Transactions Reporting Act 2017 are hereby instructed under section 29(1)(a)(i)&(ii) to take note of the statements and to act accordingly to enforce compliance with the Financial Transactions Reporting Act 2017 (FTRA) when conducting financial transactions or business with any jurisdiction or jurisdictions listed below:

Jurisdictions that are subject to call for counter measures:

The FATF statement calls for countries to apply counter-measures to protect the international financial system from the on-going and substantial money laundering and terrorist financing (ML/TF) risks emanating from the following jurisdictions:

Jurisdiction	Issuing Body	Warning Type
Democratic 'People's	FATF	Apply Counter Measures

Republic of Korea		
Iran	FATF	Apply Enhanced Due Diligence

<http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/public-statement-june-2017.html>

The FATF statement identifies a number of jurisdictions as having strategic AML/CFT deficiencies for which they have developed an action plan with the FATF. It also identifies a number of jurisdictions as not having made sufficient progress on their action plans agreed with the FATF

This list covers countries and territories that may pose a higher risk of money laundering or terrorist financing. Relevant Businesses should consider the statements issued as part of their risk assessment and consider whether enhanced due diligence would be appropriate.

The FATF calls on countries to consider the risks arising from the deficiencies associated with the following jurisdictions:

- Bosnia and Herzegovina
- Ethiopia
- Iraq
- Syria
- Uganda
- Vanuatu
- Yemen

Jurisdictions no longer subject to the FATF's on-going global AML/CFT compliance process.

- Afghanistan
- Lao PDR

<http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/fatf-compliance-june-2017.html>

For further information please visit the FATF website: www.fatf-gafi.org

APPENDIX 3

List B: Jurisdictions that May Pose a Higher Risk

The jurisdictions listed below have also been identified as posing a higher risk of money laundering or terrorist financing. Relevant Businesses should consider the statements issued as part of their risk assessment and consider whether enhanced due diligence would be appropriate.

County	Country Code	Risk Type
Andorra	AD	ML
Austria	AT	ML
Anguilla	AI	ML
Antigua & Barbuda	AG	ML
Aruba	AW	ML
Bahamas	BS	ML
Bahrain	BH	ML
Belize	BZ	ML
Bermuda	BM	ML
British Virgin Islands	VG	ML
Cayman Islands	CK	ML
Chad	TD	TF
Cyprus	CY	ML
Czech Republic	CZ	ML
Delaware,USA		ML
Dominica	DM	ML
Dubai	AE	ML
Estonia	EE	ML
Gibraltar	GI	ML
Grenada	GD	ML
Guernsey, Sark & Alderney	GG	ML
India	IN	TF
Indonesia	ID	TF
Isle of Man	IM	ML
Israel	IL	TF
Jersey	JE	ML
Latvia	LV	ML
Liberia	LR	ML
Liechtenstein	LI	ML
Luxembourg	LU	ML
Macao	MO	ML
Malaysia (Labuan)	MY	ML
Malta	MT	ML
Marshall Islands	MH	ML

Mauritius	MU	ML
Monaco	MC	ML
Netherlands Antilles	AN	ML
Panama	PA	ML
Pakistan	PK	TF
Philippines	PH	TF
Saint Kitts & Nevis	KN	ML
Saint Lucia	LC	ML
Saint Vincent & the Grenadines	VC	ML
Seychelles	SC	ML
Singapore	SG	ML
Sri Lanka	LK	ML
Switzerland	CH	ML
Tanzania	TZ	ML
Thailand	TH	TF
Turks & Caicos Islands	TC	ML
United Arab Emirates (Dubai)	AE	ML
Uganda	UG	ML & TF

APPENDIX 4

politically exposed person or PEP means a person, whether resident in the Cook Islands or elsewhere, who falls into 1 or more of the following categories—

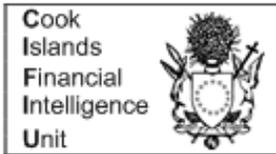
- (a) a natural person who is or, has in the previous 12 months been entrusted with, or is in a position which has, prominent public functions, including—
 - (i) a head of state, head of government, minister, or deputy or assistant or associate minister:
 - (ii) a senior government official who is the administrative head of a government or quasi government agency:
 - (iii) a member of parliament:
 - (iv) a senior politician:
 - (v) an important political party official:
 - (vi) a senior judicial official:
 - (vii) a member of a court of auditors or the board of a central bank:
 - (viii) an ambassador, chargé d'affaires or other high-ranking officer in a diplomatic service:
 - (ix) a high ranking officer in an armed force:
 - (x) a senior executive of a state-owned enterprise:
 - (xi) an honorary consul:
- (b) any of the following family members of a person mentioned in sub-paragraph (a)—
 - (i) a spouse or partner considered by the law in which the person resides as equivalent to a spouse:
 - (ii) a child, or spouse or partner of a child (including a feeding or fostered child):
 - (iii) a sibling:
 - (iv) a parent:
 - (v) a grandchild:
- (c) having regard to information that is public or readily available, any close associate of a person mentioned in sub-paragraph (a), who is a natural person and is one or more of following—
 - (i) known to have joint beneficial ownership of a legal entity or legal arrangement, or any other close ongoing business relationships, with that person:
 - (ii) who has sole beneficial ownership of a legal entity or legal arrangement known to have been set up for the benefit of that person:
 - (iii) known to be beneficiary of a legal arrangement of which that person is a beneficial owner or beneficiary:
 - (iv) known to be in a position to carry out substantial financial transactions on behalf of that person:
- (d) in the case of a **domestic politically exposed person** means—

- (i) a person in (a) who is or has in the previous 12 months been entrusted with prominent public functions in the Cook Islands, and any family members or close associates of that person in (b) or (c), regardless of the location of those family members or close associates; and
 - (ii) a member of senior management of an international entity or organisation regardless of their location and any family members or close associates of that person; and
- (e) in the case of a **foreign politically exposed person** means a person in (a) who is or has in the previous 12 months been entrusted with prominent public functions in a foreign country and any family members or close associates of that person in (b) or (c), regardless of the location of those family members or close associates

2 Politically exposed persons

- (1) A reporting institution must maintain procedures and controls to determine whether any of the following is a PEP—
- (a) a customer;
 - (b) a natural person who has power to direct the activities of a customer;
 - (c) where a life insurance policy is to be paid out, the beneficiary of a life insurance policy (or an ultimate principal of a beneficiary).
- (2) A reporting institution must maintain procedures and controls that require one or more members of senior management to approve any of the following—
- (a) establishing an ongoing business relationship with any foreign PEP or, a domestic PEP who has been identified as posing a higher risk of financial misconduct;
 - (b) undertaking an isolated transaction with any foreign PEP or, a domestic PEP who has been identified as posing a higher risk of financial misconduct;
 - (c) continuing an ongoing business relationship with any foreign PEP, or a domestic PEP who has been identified as posing a higher risk of financial misconduct.
- (3) If a reporting institution determines a person referred to in subsection (1) is a foreign PEP or, a domestic PEP who has been identified as posing a higher risk of financial misconduct, the reporting institution must—
- (a) take reasonable measures to establish the source of wealth and the source of funds of that PEP; and
 - (b) conduct enhanced ongoing monitoring where there is an ongoing business relationship with that PEP; and
 - (c) where a life insurance policy is to be paid out—
 - (i) inform senior management before the pay-out of the policy proceeds; and
 - (ii) conduct enhanced scrutiny on the whole ongoing business relationship with the policyholder; and

- (iii) *consider whether to make a suspicious activity report under section 47.*
- (4) *A reporting institution that breaches this section commits an offence and is liable to the penalties in section 63.*



**SUSPICIOUS
ACTIVITY
REPORT (SAR)**

Please complete in **INK**
and in **CAPITAL LETTERS**

Reporting of suspicious activity is required by law under sections 47, 48 and 49 of the Financial Transactions Reporting Act 2017. Penalties exist for failure to report or to supply full and correct information.

PART A - IDENTITY OF PERSON CONDUCTING

1 Full name (title, given names and surname)

Also known as: _____

2 Date of birth:

Day/Month/Year

3 Country of birth:

4 Occupation, business or principal activity

5 Business address (physical and PO Box)

_____ PO Box: _____

Country: _____ Phone: _____

6 Residential address (cannot be a PO Box)

Country: _____ Phone: _____

7 NON RESIDENT - Cook Islands contact address

COOK ISLANDS Phone: _____

8 Give details if this person is a signatory to account affected by this transaction

Account Title/Name: _____

Account No. _____ Branch: _____

Financial Institution: _____

9 How was the identity of this person confirmed?

ID Type: _____

ID Number: _____

Issuer: _____

10 Is a photocopy of ID document/s attached?

Yes

No

If more than one person involved please provide same details contained in Sections 1 - 11 for each person, where appropriate, and attach.

PART B - DETAILS OF PERSON/ORGANISATION ON WHOSE BEHALF THE TRANSACTION WAS CONDUCTED (if applicable)

11 Full name of person/organisation

12 Business address (physical and PO Box)

_____ PO Box: _____

Country: _____ Phone: _____

13 Occupation, business or principal activity

14 Give details if this person is a signatory to account affected by this transaction

Account Title/Name: _____

Account No. _____ Branch: _____

Financial Institution: _____

PART C - DETAILS OF THE TRANSACTION

15 Type of transaction (eg deposit)

16 Date of transaction

DAY MONTH YEAR

17 Total amount of this transaction (include cash and any other components of the transaction - If a foreign currency is involved, convert the amount to New Zealand dollars)

NZ\$ _____ . _____

18 If a foreign currency was involved in this transaction, specify:

Foreign Currency _____
(eg Hong Kong Dollars)

Foreign Currency Amount _____
(eg HKD\$400,000)

19 If a cheque / bank draft / money order / telegraphic transfer / transfer of currency or purchase or sale of any security was involved in this transaction, please specify:

Drawer/Ordering Customer: _____

Payee/Favouree/Beneficiary: _____

Formosa/Thyagaraj_07/08/2020

20 If another financial institution was involved in this transaction, please specify:
 Name of financial institution: _____

 Branch: _____ Country: _____

21 Give details of accounts of any OTHER person(s) / organisation(s) affected by this transaction
 Account title: _____
 Account type: _____
 Bank/Financial Institution: _____
 Branch: _____
 Account Number: _____

PART D - DETAILS OF THE RECIPIENT

22 Full name of person/organisation

23 Business address (physical and PO Box)
 _____ PO Box: _____

 Country: _____ Phone: _____

24 Occupation, business or principal activity

25 Reason for transaction (eg payment for imports)

26 Details of recipient account (if not already provided)
 Account Title/Name: _____
 Account No. _____ Branch: _____
 Financial Institution: _____

PART E - GROUNDS FOR SUSPICION

27 Give details of the nature and circumstances surrounding the transaction and the reason for suspicion. (If there is insufficient space, attach a separate sheet). PLEASE PRINT IN BLOCK LETTERS.

28 Is additional information attached to this report?
 Yes No
 Please specify: _____

PART F - REPORTING FINANCIAL INSTITUTION

29 Type of Financial Institution (eg bank)

30 Name of Financial Institution

31 Name of branch or office where transaction was conducted

32 Business address (physical and PO Box)
 _____ PO Box: _____

 Country: _____ Phone: _____

PART G - FINANCIAL INSTITUTION'S STATEMENT

33 Details of authorised person:
 Given names and surname: _____

 Job title: _____
 Phone: _____ Fax: _____

34 This statement is made pursuant to the requirement to report suspicious transactions under Cook Islands laws on the grounds detailed in Part E.
 Signature of authorised person:
 Sign here

 Date:
DAY MONTH YEAR

35 Financial Institutions internal reference number (if applicable)

Send completed forms to:	
<p>Head of FIU PO Box 594 Rarotonga COOK ISLANDS</p>	<p>Financial Intelligence Unit Phone: (+682)29182 Fax: (+682)29183 email: intel@cifu.gov.ck</p>

- 53 Tipoff prohibited**
- (5) *This section applies to—*
- (a) *a monitor:*
 - (b) *an employee or agent of a monitor:*
 - (c) *a director, officer or principal of a monitor.*
- (6) *A person who knows of or suspects a suspicious activity must not, apart from complying with the reporting obligations of this Act, disclose to any other person any of the following—*
- (a) *that knowledge or suspicion:*
 - (b) *that a report under this Act has been, or may be made to the FIU:*
 - (c) *that other information required under this Act has been, or may be given to the FIU:*
 - (d) *the contents or likely contents of any report under this Act relating to that suspicious activity:*
 - (e) *information that might identify any person who has—*
 - (i) *handled that suspicious activity; or*
 - (ii) *prepared any report regarding that suspicious activity; or*
 - (iii) *provided any information to the FIU regarding that suspicious activity.*
- (7) *A person must not intentionally say or do anything that, by word or conduct, might allow another person to infer any of the circumstances set out in subsection (2).*
- (8) *Subsection (2) does not apply to a disclosure made to—*
- (a) *a person who has made, or is required to make, a report or provide information under this Act for any purpose connected with the performance of that person's duties:*
 - (b) *a lawyer for the purpose of obtaining legal advice or representation in relation to the disclosure:*
 - (c) *the supervisory body or auditor of the relevant reporting institution:*
 - (d) *the FIU or any person assisting the FIU in the performance of its duties:*
 - (e) *any police officer engaged in the investigation of financial misconduct or any serious offence.*
- (9) *A person who receives information under the exceptions contained in subsection (4) must keep that information confidential. However that person may disclose it to another person of the kind referred to in that subsection provided both are acting properly and in good faith.*
- (10) *Nothing in this section prevents a person disclosing information to a Court if—*
- (a) *the person discloses the information for the purposes of, or in the course of, any proceedings before the Court; and*
 - (b) *the Court is satisfied that it is necessary in the interests of justice for that person to disclose the information.*

(11) *A reporting institution that breaches this section commits an offence and is liable to the penalties in section 63*