

# FINANCIAL TRANSACTIONS REPORTING ACT 2004

## ARRANGEMENT OF SECTIONS

### PART 1: PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Relationship with other Acts

### PART 2: OBLIGATIONS TO KEEP RECORDS AND VERIFY IDENTITY

4. Financial institutions to verify customers identity
5. Financial institutions in cross-border correspondent banking relationship
6. Reliance on third party or intermediary
7. Necessity of identification to conduct business
8. Financial institutions to maintain records
9. Financial institutions to maintain account in true name
10. Financial institutions to monitor transactions
11. Financial institutions to conduct due diligence
12. Financial institutions to include originator information

### PART 3: OBLIGATIONS TO REPORT

13. Financial institutions to report financial transactions
14. Financial institutions to report suspicious transactions
15. Supervisory authority or auditor to report suspicious transactions
16. Duty to disclose information relating to property of terrorist groups
17. False or misleading statements
18. Disclosure of suspicious transaction reports and other information
19. Protection of identity of persons and information in suspicious transaction reports
20. Protection of persons reporting suspicious transactions
21. Other preventative measures by financial institutions

### PART 4: FINANCIAL INTELLIGENCE UNIT

22. Establishment of Unit
23. Appointment of Director
24. Director not to disclose information
25. Functions, duties and powers of Unit
26. Agreements and arrangements by the Unit
27. Disclosure to foreign agencies
28. Power to examine
29. Powers to enforce compliance
30. Non-disclosure
31. Immunity

### PART 5: CURRENCY REPORTING AT THE BORDER

32. Currency reporting at the border
33. Seizure and detention of currency and negotiable instruments
34. Retention and release of currency and negotiable instruments seized

### PART 6: ESTABLISHMENT OF NATIONAL ANTI-MONEY LAUNDERING COUNCIL

35. Establishment of National Anti-Money Laundering Council

### PART 7: MISCELLANEOUS

36. Obligations of supervisory authority
37. Overriding of secrecy
38. Account in anonymous, numbered only, fictitious, false or incorrect name
39. Liabilities of employers or principals
40. Liabilities of directors, controllers and officers

41. Regulations

Schedule: Interpretation of "Financial Institution"

**ACT NO. 22 OF 2004**

I assent

[L.S.]

J. I. ULUIVUDA  
President

[23 December 2004]

**AN ACT**

TO IMPOSE, REGULATE AND CONTROL CERTAIN OBLIGATIONS OF FINANCIAL INSTITUTIONS, TO ESTABLISH THE FINANCIAL INTELLIGENCE UNIT AND PROVIDE FOR ITS FUNCTIONS AND TO ESTABLISH THE NATIONAL ANTI-MONEY LAUNDERING COUNCIL, AND FOR RELATED MATTERS

ENACTED by the Parliament of the Fiji Islands:

**PART 1: PRELIMINARY**

*Short title and commencement*

1. (1) This Act may be cited as the Financial Transactions Reporting Act 2004.

(2) This Act comes into force on a date appointed by the Minister by notice in the *Gazette*.

*Interpretation*

2. In this Act, unless the context otherwise requires:

"account" means any facility or arrangement by which a financial institution does one or more of the following:

- (a) accepts deposits of currency;
- (b) allows withdrawals of currency; or
- (c) pays cheques or payment orders drawn on the financial institution, or collects cheques or payment orders on behalf of a person other than the financial institution;

and includes any facility or arrangement for a safety deposit box or for any other form of safe deposit;

"cash" means any coin or paper money that is designated as legal tender in the country of issue and includes bank drafts, bank cheques, bearer bonds, travellers cheques, postal notes and money orders;

"correspondent account" means any account established by a respondent institution with a correspondent institution in a cross-border correspondent banking relationship where the account is used by the respondent institution for banking services for itself or its customers;

"Council" means the National Anti-Money Laundering Council established by section 35;

"cross-border correspondent banking" means the provision of banking services by a financial institution (correspondent institution) to a foreign financial institution (respondent institution), such services to include receiving of deposits and making payments or disbursement of funds on behalf of the respondent institution and its customers;

"currency" means the cash of the Fiji Islands or of another country that is designated as legal tender and which is customarily used and accepted as a medium of exchange in the country of issue;

"customer" in relation to a transaction or an account, includes:

- (a) the person in whose name a transaction or account is arranged, opened or undertaken;
- (b) a signatory to a transaction or account;
- (c) any person to whom a transaction has been assigned or transferred;
- (d) any person who is authorised to conduct a transaction; or
- (e) such other person as may be prescribed;

"data" means representations, in any form, of information or concepts;

"document" means any record of information, and includes:

- (a) anything on which there is writing;
- (b) anything on which there are marks, figures, symbols, or perforations having meaning for persons qualified to interpret them;
- (c) anything from which sounds, images or writings can be produced, with or without the aid of anything else;
- (d) a map, plan, drawing, photograph or similar thing; and
- (e) an electronic document;

"financial institution" means any person carrying on a business or activity set out in the Schedule for or on behalf of a customer;

"Financial Intelligence Unit" means the Financial Intelligence Unit established by section 22, and "Unit" has a corresponding meaning;

"financing of terrorism" has the meaning given by the Proceeds of Crime Act 1997;

"foreign bank" means an organisation that:

- (i) is organised under the laws of a foreign country;
- (ii) engages in the business of banking;
- (iii) is recognised as a bank by the bank supervisory or monetary authority of the country of its organisation or principal banking operations;
- (iv) receives deposits to a substantial extent in the regular course of its business; and
- (v) may accept demand deposits,

but does not include the local branches of agencies of a foreign bank;

"law enforcement agency" means the Fiji Police Force or any other agency having the power to investigate a serious offence;

"legal practitioner" includes a barrister, solicitor, attorney or legal advisor;

"money laundering offence" means an offence against section 69 of the Proceeds of Crime Act 1997;

"occasional transaction" means any transaction involving cash that is conducted by a person otherwise than a transaction through an account in respect of which the person is the account holder;

"originator" means any account holder, or where there is no account, any person, that instructs the financial institution to perform the electronic funds transfer or other form of funds transfer;

"originator information" means such information that accompanies any electronic funds transfer or other form of funds transfer that sufficiently provides the identity of the originator, including the name and address of the originator and the account number of the originator or, in the absence of an account, a unique reference number;

"payable-through account" means any correspondent account at a financial institution (correspondent institution) by which the correspondent institution extends direct access to its banking services to a customer of a foreign financial institution (respondent institution);

"politically exposed person" means any individual who is or has been entrusted with any prominent public function in a foreign country, such as a Head of State or of government, a senior politician, a senior government, judicial or military official, a senior executive of a state owned corporation, and any important political party official and includes the family members or close associates of any such person;

"record" means any material on which data or information is recorded or marked and which is capable of being read or understood by a person, computer system or other device;

"serious offence" has the meaning given by the Proceeds of Crime Act 1997;

"specified entity" means:

- (a) an entity that has knowingly committed, attempted to commit, participated in committing, or facilitated the commission of a terrorist act; or

(b) an entity knowingly acting on behalf of, or at the direction of, or in association with, an entity referred to in paragraph (a) and which has been prescribed under a written law relating to terrorism;

"supervisory authority" means any body or agency having regulatory, supervisory or licensing authority over a financial institution;

"suspicious transaction report" means a report required to be made under section 14;

"terrorist act" means:

(a) an act or omission in or outside the Fiji Islands which constitutes an offence within the scope of a counter terrorism convention;

(b) an act or threat of action in or outside the Fiji Islands which:

(i) involves serious bodily harm to a person;

(ii) involves serious damage to property;

(iii) endangers a persons life;

(iv) creates a serious risk to the health or safety of the public or a section of the public;

(v) involves the use of firearms or explosives;

(vi) involves releasing into the environment or any part thereof or distributing or exposing the public or any part thereof to any dangerous, hazardous, radioactive or harmful substance, any toxic chemical, or any microbial or other biological agent or toxin;

(vii) is designed or intended to disrupt any computer system or the provision of services directly related to communications infrastructure, banking or financial services, utilities, transportation or other essential infrastructure;

(viii) is designed or intended to disrupt the provision of essential emergency services such as police, civil defence or medical services; or

(ix) involves prejudice to national security or public safety;

and is intended, or by its nature and context, may reasonably be regarded as being intended to:

(A) intimidate the public or a section of the public; or

(B) compel a government or an international organisation to do, or refrain from doing, any act; or

(C) seriously destabilize or destroy the fundamental political, constitutional, economic or social structures of a country or an international organisation;

but does not include an act which disrupts any services, and is committed in pursuance of a protest, demonstration or stoppage of work if the act is not intended to result in any harm referred to in subparagraphs, (i), (ii), (iii) or (iv);

"terrorist group" means:

(a) an entity that has as one of its activities or purposes committing, or facilitating a terrorist act;

(b) a specified entity; or

(c) an organisation that is prescribed by regulation;

"terrorist property" means:

(a) proceeds from the commission of a terrorist act;

(b) property which has been, is being, or is likely to be used to commit a terrorist act;

(c) property which has been, is being, or is likely to be used by a terrorist group;

(d) property owned or controlled by or on behalf of a terrorist group; or

(e) property which has been collected for the purpose of providing support to a terrorist group or funding a terrorist act;

"transaction" includes:

(a) opening of an account;

(b) any deposit, withdrawal, exchange or transfer of funds in any currency whether in cash or by cheque, payment order or other instrument or by electronic or other non physical means;

(c) the use of a safety deposit box or any other form of safe deposit;

(d) entering into any fiduciary relationship;

(e) any payment made in satisfaction, in whole or in part, of any contractual or other legal obligation;

(f) any other prescribed transaction.

*Relationship with other Acts*

3. A person must comply with the provisions of this Act, despite any other Act or law to the contrary.

PART 2: OBLIGATIONS TO KEEP RECORDS AND VERIFY IDENTITY

*Financial institution to verify customers identity*

4. (1) A financial institution must identify a customer (including name, address and occupation where the customer is a natural person) on the basis of any official or other identifying document and verify the identity of the customer on the basis of reliable and independent source documents, data or information or other evidence as is reasonably capable of verifying the identity of the customer if:

(a) a financial institution:

- (i) enters into a continuing business relationship;
- (ii) in the absence of such a relationship, conducts any transaction;

- (b) a financial institution carries out an electronic funds transfer other than an electronic funds transfer referred to in section 12(2);
- (c) there is a suspicion of a money laundering offence or the financing of terrorism; or
- (d) the financial institution has doubts about the veracity or adequacy of the customer identification and verification documentation or information it had previously obtained.

(2) Without limiting the generality of subsection (1), if the customer is a legal entity, a financial institution must adequately verify its legal existence and the structure of the legal entity, including information relating to:

- (a) the customer's name, address and legal form and its control structure;
- (b) the principal owners, directors and beneficiaries;
- (c) provisions regulating the power to bind the entity; and
- (d) whether the person purporting to act on behalf of the customer is so authorised, and to identify the person.

(3) Without limiting the generality of subsection (1), a financial institution must have risk management systems capable of determining whether a customer is a politically exposed person, and where the customer is determined to be such a person, the financial institution must:

- (a) give the approval of senior management before establishing a business relationship with the customer;
- (b) take reasonable measures to establish the source of wealth and source of funds; and
- (c) conduct regular and enhanced monitoring of the business relationship.

(4) For the purposes of subsection (1) the following may be prescribed:

- (a) any official or identifying documents required for the verification of any customer or class of customers;
- (b) the timing of the identification and verification requirements for any customer or class of customer;
- (c) the threshold for, or the circumstances in which, the provisions of this section apply in relation to any customer or class of customer;
- (d) the threshold for, or the circumstances in which, the provisions of this section apply in relation to any financial institution or class of financial institution.

(5) If the business relationship is a payable-through account, a financial institution must ensure that the person with whom it has established the relationship:

- (a) has verified the identity of and performed on-going due diligence on that person's customers that have direct access to accounts of the financial institution; and
- (b) is able to provide the relevant customer identification data upon request to the reporting entity.

(6) A financial institution must take reasonable measures to ascertain the purpose of any transaction and the origin and ultimate destination of the funds involved in the transaction.

(7) If a person conducts a transaction through a financial institution and the financial institution has reasonable grounds to believe that the person is undertaking the transaction on behalf of any other person or persons, then, in addition to complying with subsection (1), (2), and (5), the financial institution must verify the identity of the other person or persons for whom, or for whose ultimate benefit, the transaction is being conducted.

(8) A financial institution which contravenes subsection (1), (2), (3), (6) or (7) commits an offence and is liable on conviction:

- (a) for an individual: to a fine not exceeding \$30,000 or to a term of imprisonment not exceeding 5 years or both; or
- (b) for a body corporate: to a fine not exceeding \$150,000.

(9) Subsection (1) or (2) does not apply:

- (a) if the transaction is part of an existing and regular business relationship with a person who has already produced satisfactory evidence of identity unless the financial institution has reason to suspect that the transaction is suspicious or unusual;
- (b) if the electronic funds transfer is between financial institutions where the originator and beneficiary of the funds transfer are acting on their own behalf;
- (c) if the electronic funds transfer is other than a money transfer effected from the use of a credit or debit card as a means of payment, that results from a transaction carried out using a credit or debit card, provided that the credit or debit card number is included in the information accompanying such a transfer
- (d) if the transaction is an occasional transaction not exceeding \$1,000 or other prescribed amount unless the financial institution has reason to suspect that the transaction is suspicious or unusual; or
- (e) to any other prescribed circumstances.

*Financial institution in cross-border correspondent banking relationship*

5. A financial institution must, in relationship to its cross-border correspondent banking and other similar relationship:

- (a) identify and verify the person with whom it conducts a business relationship;
- (b) gather information about the business of the person and understand the nature of the persons business;
- (c) determine from publicly available information the reputation of the person and the quality of supervision to which the person is subject;
- (d) assess the persons anti-money laundering and combating terrorist financing controls;
- (e) give approval by senior management before establishing a new cross-border correspondent banking relationship; and
- (f) document the responsibilities of the financial institution and the person.

*Reliance on third party or intermediary*

6. Where a financial institution relies on an intermediary or third party to undertake its obligations under section 4 or 5, or for the introduction of business, the financial institution must:

- (a) immediately obtain the information required by section 4 or 5;
- (b) ensure that copies of identification details and other relevant documents required under section 4 are readily available upon request;
- (c) satisfy itself that the intermediary or third party is regulated and supervised, and able to comply with the requirements of sections 4, 5, 7 and 8.

*Necessity of identification to conduct business*

7. If satisfactory evidence of the identity is not produced to or obtained by a financial institution under section 4, 5 or 6, the financial institution must:

- (a) not proceed any further with the transaction unless directed in writing to do so by the Unit; and
- (b) report the attempted transaction to the Unit as a suspicious transaction under section 14.

*Financial institution to maintain records*

8. (1) A financial institution must establish and maintain records of:

- (a) all transactions carried out by it and correspondence relating to the transactions in accordance with the requirements of subsection (2);
- (b) a persons identity obtained under sections 4 and 5;
- (c) all reports made to the Unit; and
- (d) all enquiries relating to money laundering and the financing of terrorism made to it by the Unit or a law enforcement agency.

(2) Records required under subsection (1)(a) must be those records as are reasonably necessary to enable the transaction to be readily reconstructed at any time by the Unit or a law enforcement agency, and must contain particulars sufficient to identify:

- (a) the name, address and occupation (or, where appropriate, business or principal activity) of the person:

- (i) conducting the transaction; and
  - (ii) if applicable, on whose behalf the transaction is being conducted;
- (b) the documents used by the financial institution to verify the identity of the person;
  - (c) the nature and date of the transaction;
  - (d) the type and amount of currency involved;
  - (e) the type and identifying number of any account with the financial institution involved in the transaction;
  - (f) if the transaction involves a negotiable instrument other than currency, the name of the drawer of the instrument, the name of the institution on which it was drawn, the name of any payee, the amount and date of the instrument, any number of the instrument and details of any endorsements appearing on the instrument; and
  - (g) the name and address of the financial institution, and of the officer, employee or agent of the financial institution who prepared the record.
- (3) The records mentioned in subsection (1) must be kept for a minimum period of 7 years from the date:
- (a) the evidence of a persons identity was obtained;
  - (b) of any transaction or correspondence;
  - (c) the account is closed or business relationship ceases,

whichever is the later.

- (4) Where any record is required to be kept under this Act, a copy:
- (a) must be maintained in a manner and form that enables the financial institution to comply as soon as practicable with requests for information from the Unit or a law enforcement agency; and
  - (b) may be kept in a machine-readable form or any other prescribed form from which a paper copy can be readily produced.
- (5) A financial institution which, without reasonable excuse, contravenes subsection (1) or (2) commits an offence and is liable on conviction:
- (a) for an individual: to a fine not exceeding \$12,000 or to a term of imprisonment not exceeding 2 years or both;
  - (b) for a body corporate: to a fine not exceeding \$30,000.

*Financial institutions to maintain account in true name*

9. (1) A financial institution must maintain accounts in the true name of the account holder.
- (2) A financial institution must not open, operate or maintain any anonymous or numbered only account or any account which is in a fictitious, false or incorrect name.
- (3) A financial institution which contravenes subsection (1) or (2) commits an offence and is liable on conviction:
- (a) for an individual: to a fine not exceeding \$30,000 or to a term of imprisonment not exceeding 5 years or both;
  - (b) for a body corporate: to a fine not exceeding \$150,000.

*Financial institutions to monitor transactions*

10. (1) A financial institution must pay special attention:
- (a) to any complex, unusual or large transactions that have no apparent economic or lawful purpose;
  - (b) to any unusual patterns of transactions that have no apparent economic or lawful purpose;
  - (c) to business relations and transactions with persons in a country that does not have adequate systems in place to prevent or deter money laundering or the financing of terrorism; or
  - (d) to electronic funds transfers that do not contain complete originator information.
- (2) A financial institution which contravenes subsection (1) commits an offence and is liable on conviction to a fine of:
- (a) for an individual: to a fine not exceeding \$30,000 or imprisonment for a term not exceeding 5 years or both;
  - (b) for a body corporate: to a fine not exceeding \$150,000.

- (3) Subsection (1)(d) does not apply to an electronic funds transfer:
- (a) if the transfer is between financial institutions that carry on the business or activity set out in paragraph (a) of the Schedule where the originator and beneficiary of the funds transfer are acting on their own behalf; or
  - (b) if the transfer (other than a money transfer effected from the use of a credit or debit card as a means of payment) results from a transaction carried out using a credit or debit card, provided that the credit or debit card number is included in the information accompanying such a transfer.
- (4) For the purpose of subsection (1), a financial institution must:
- (a) examine as far as possible the background and purpose of the transactions or business relations and record its findings in writing; and
  - (b) upon request, make available such findings to the Unit or to a law enforcement agency, to assist the Unit or the law enforcement agency in any investigation relating to a serious offence, a money laundering offence or an offence of the financing of terrorism.

*Financial institutions to conduct due diligence*

11. A financial institution must in the course of its business relationship with its customer:

- (a) conduct continuous due diligence on the customer and its business relationship with the customer; and
- (b) pay special attention to transactions to ensure that they are consistent with its knowledge of the customer, the customer's business, type of business and source of funds.

*Financial institutions to include originator information*

12. (1) A financial institution that carries on the business or activity set out in paragraph (a) or (f) of the Schedule must include accurate originator information and other related messages on electronic funds transfers and other forms of funds transfers and such information must remain with the transfer.

(2) Subsection (1) does not apply to an electronic funds transfer:

- (a) if the transfer is between financial institutions that carry on the business or activity set out in paragraph (a) of the Schedule where the originator and beneficiary of the transfer are acting on their own behalf; or
- (b) if the transfer (other than a money transfer effected from the use of a credit or debit card as a means of payment) results from a transaction carried out using a credit or debit card, provided that the credit or debit card number is included in the information accompanying such a transfer.

### PART 3: OBLIGATIONS TO REPORT

*Financial institutions to report financial transactions*

13. (1) A financial institution must, in the prescribed form and manner, report to the Unit any transaction of an amount in cash exceeding \$10,000 or such other amount as may be prescribed in the course of a single transaction (or its equivalent in foreign currency), unless the recipient and the sender in the transaction are financial institutions carrying on the business or activity set out in paragraph (a) of the Schedule.

(2) A financial institution that carries on the business or activity set out in paragraph (a) or (f) of the Schedule must report to the Unit in the prescribed form and manner:

- (a) the sending out of the Fiji Islands at the request of a customer of any electronic funds transfer exceeding \$10,000, or any other prescribed amount (or its equivalent in foreign currency), in the course of a single transaction;
- (b) the receipt from outside the Fiji Islands of an electronic funds transfer, sent at the request of a customer, of an amount exceeding \$10,000 or any other prescribed amount (or its equivalent in foreign currency), in the course of a single transaction.

(3) Subsection (2)(a) does not apply when the financial institution sends an electronic funds transfer to a person in the Fiji Islands, even if the final recipient is outside the Fiji Islands.

(4) Subsection (2)(b) does not apply when the financial institution receives an electronic funds transfer from a person in the Fiji Islands, even if the initial sender is outside the Fiji Islands.

(5) A financial institution which contravenes subsection (1) or (2) commits an offence and is liable on conviction:

- (a) for an individual: to a fine not exceeding \$30,000 or to a term of imprisonment not exceeding 5 years or both;



(b) for a body corporate: to a fine not exceeding \$150,000.

(6) A person who conducts 2 or more transactions or electronic funds transfers that are of an amount below the threshold set out in subsections (1) or (2) and having regard to:

(a) the manner and form in which the transactions or transfers were conducted, including, without limitation, all or any of the following:

- (i) the value of the currency involved in each transaction or transfer;
- (ii) the aggregated value of the currency involved in the transactions or transfers;
- (iii) the period of time over which the transactions or transfers occurred;
- (iv) the interval of time between any of the transactions or transfers;
- (v) the locations at which the transactions or transfers were initiated or conducted; and

(b) any explanation made by the person as to the manner or form in which the transfers were conducted;

where it would be reasonable to conclude that the person conducted the transactions or transfers in that manner or form for the sole or dominant purpose of ensuring, or attempting to ensure, that no report in relation to the transactions or transfers would be made under subsection (1) or (2), commits an offence and is liable on conviction:

(c) for an individual: to a fine not exceeding \$30,000 or to a term of imprisonment not exceeding 5 years or both;

(d) for a body corporate: to a fine not exceeding \$150,000.

*Financial institution to report suspicious transactions*

14. (1) Where a financial institution:

(a) suspects or has reasonable grounds to suspect that a transaction or attempted transaction may be related to the commission of a serious offence, a money laundering offence or an offence of the financing of terrorism or an act preparatory to an offence of financing of terrorism; or

(b) has information it suspects or has reasonable grounds to suspect may be:

- (i) relevant to an investigation or prosecution of a person or persons for a serious offence, a money laundering offence or an offence of the financing of terrorism;
- (ii) of assistance in the enforcement of the Proceeds of Crime Act 1997;
- (iii) related to the commission of a serious offence; a money laundering offence or an offence of the financing of terrorism; or
- (iv) preparatory to an offence of the financing of terrorism;

the financial institution must, as soon as practicable after forming that suspicion, but no later than 2 working days, report the transaction or attempted transaction to the Unit.

(2) A report under subsection (1) must:

(a) be in writing and may be given by way of mail, fax or electronic mail or such other manner as may be prescribed;

(b) be in such form and contain such details as may be prescribed;

(c) contain a statement of the grounds on which the financial institution holds the suspicion; and

(d) be signed or otherwise authenticated by the financial institution.

(3) A financial institution that has made a report to the Unit must give the Unit or a law enforcement agency that is carrying out an investigation arising from, or relating to the information contained in the report, any further information that the financial institution has about the transaction or attempted transaction or the parties to the transaction if requested in writing to do so by the Unit.

(4) A financial institution which fails without reasonable excuse to comply with subsection (1) commits an offence and is liable on conviction:

(a) for an individual: to a fine not exceeding \$30,000 or to a term of imprisonment not exceeding 5 years or both;

(b) for a body corporate: to a fine not exceeding \$150,000.

(5) A financial institution which fails to comply with subsection (3) commits an offence and is liable on conviction:

- (a) for an individual: to a fine not exceeding \$30,000 or to a term of imprisonment not exceeding 5 years or both; or
- (b) for a body corporate: to a fine not exceeding \$150,000.

*Supervisory authority or auditor to report suspicious transactions*

15. Where a supervisory authority or an auditor of a financial institution has reasonable grounds to suspect that information that it has concerning any transaction or attempted transaction may be:

- (a) relevant to an investigation or prosecution of a person or persons for a serious offence, a money laundering offence or an offence of the financing of terrorism;
- (b) of assistance in the enforcement of the Proceeds of Crime Act 1997;
- (c) related to the commission of a money laundering offence or an offence of the financing of terrorism; or
- (d) preparatory to the offence of the financing of terrorism;

the supervisory authority or the auditor of the financial institution must report the transaction or attempted transaction to the Unit as soon as practicable.

*Duty to disclose information relating to the property of terrorist groups*

16. (1) Every person must disclose to the Unit:

- (a) the existence of any property in his or her possession or control, which to his or her knowledge, is terrorist property, or for which there are reasonable grounds to suspect is terrorist property;
- (b) the existence of any property in his or her possession or control, owned or controlled by or on behalf of a specified entity or for which there are reasonable grounds to suspect is owned or controlled by or on behalf of a specified entity;
- (c) any information regarding a transaction or proposed transaction in respect of terrorist property; or
- (d) any information regarding a transaction or proposed transaction for which there are reasonable grounds to suspect that it may involve terrorist property.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction:

- (a) for an individual: to a fine not exceeding \$30,000 or to a term of imprisonment not exceeding 5 years or both;
- (b) for a body corporate: to a fine not exceeding \$150,000.

(3) The Unit may disclose to the Financial Intelligence Unit of a foreign state or the appropriate authority of a foreign state, any information in its possession relating to any property owned or controlled by or on behalf of a terrorist group, if such information is requested or if the Unit is of the view that the information would be relevant to a foreign state.

*False or misleading statements*

17. A person who, in making a report under section 13, 14, 15 or 16, makes any statement that the person knows is false or misleading in a material particular or omits from any statement any matter or thing without which the person knows that the statement is false or misleading in a material particular commits an offence and is liable on conviction:

- (a) for an individual: to a fine not exceeding \$60,000 or to a term of imprisonment not exceeding 10 years or both; or
- (b) for a body corporate: to a fine not exceeding \$300,000.

*Disclosure of suspicious transaction reports and other information*

18. (1) A financial institution, its officers, employees or agents or any other person must not disclose to any person:

- (a) that a report to the Unit under section 7, 14(1), 15 or 16 has been or may be made, or further information has been given under section 14(3);
- (b) that the financial institution has formed a suspicion in relation to a transaction for purposes of section 14(1); or
- (c) any other information from which the person to whom the information is disclosed could reasonably be expected to infer that a suspicion has been formed or that a report has been or may be made.

(2) Subsection (1) does not apply to disclosures made:

- (a) to an officer, employee or agent of the financial institution, for any purpose connected with the performance of that person's duties;
- (b) to a legal practitioner for the purpose of obtaining legal advice or representation in relation to the matter;
- (c) to the supervisory authority of the financial institution, for the purposes of carrying out the supervisory authority's functions; or
- (d) that a court order has been made under section 25(2).

(3) No person referred to in subsection (2)(b) to whom disclosure of any information to which that subsection applies has been made must disclose that information except to another person of the kind referred to in that subsection, for the purpose of:

- (a) the performance of the first-mentioned person's duties; or
- (b) obtaining legal advice or representation in relation to the matter.

(4) No person referred to in subsection 2(c) to whom disclosure of any information to which that subsection applies has been made must disclose that information except to a person referred to in that subsection for the purpose of giving legal advice or making representations in relation to the matter.

(5) Nothing in any of subsections (1) to (3) prevents the disclosure of any information in connection with, or in the course of, proceedings before a court or tribunal, provided disclosure is in the interest of justice.

(6) A person who contravenes subsection (1) commits an offence and is liable on conviction:

- (a) for an individual: to a fine not exceeding \$12,000 or to a term of imprisonment not exceeding 2 years or both; or
- (b) for a body corporate: to a fine not exceeding \$60,000.

(7) A person who contravenes subsection (1) with intent to prejudice an investigation of a serious offence, a money laundering offence or an offence of the financing of terrorism or for the purpose of obtaining directly or indirectly an advantage or a pecuniary gain for himself or herself or any other person, commits an offence and is liable on conviction:

- (a) for an individual: to a fine not exceeding \$30,000 or to a term of imprisonment not exceeding 5 years or both; or
- (b) for a body corporate: to a fine not exceeding \$150,000.

*Protection of identity of persons and information in suspicious transaction reports*

19. (1) A person must not disclose any information that will identify or is likely to identify:

- (a) any person who has handled a transaction in respect of which a suspicious transaction report has been made;
- (b) any person who has prepared a suspicious transaction report;
- (c) any person who has made a suspicious transaction report; or
- (d) any information contained in a suspicious transaction report or information provided pursuant to section 14(3);

except for the following purposes:

- (e) the investigation or prosecution of a person or persons for a serious offence, a money laundering offence or an offence of the financing of terrorism; or
- (f) the enforcement of the Proceeds of Crime Act 1997.

(2) No person must be required to disclose any information to which this section applies in any judicial proceedings unless the judge or other presiding officer is satisfied that the disclosure of the information is necessary in the interests of justice.

(3) Nothing in this section prohibits the disclosure of any information for the purposes of the prosecution of any offence under section 18.

(4) A person who contravenes subsection (1) commits an offence and is liable on conviction:

- (a) for an individual: to a fine not exceeding \$12,000 or to a term of imprisonment not exceeding 2 years or both; or

(b) for a body corporate: to a fine not exceeding \$60,000.

*Protection of persons reporting suspicious transactions*

20. (1) No civil, criminal or disciplinary proceedings are to be taken against:

- (a) a financial institution, an auditor or supervisory authority of a financial institution; or
- (b) an officer, employee or agent of the financial institution, an auditor or supervisory authority of a financial institution acting in the course of that person's employment or agency;

in relation to any action by the financial institution, the auditor or the supervisory authority or their officer, employee or agent taken under section 7, 13, 14, 15 or 16 in good faith or in compliance with directions given by the Unit pursuant to section 25 (1)(h) or 25(2).

(2) Subsection (1) does not apply to proceedings under section 18.

(3) If a financial institution or its officer, employee, agent, supervisory authority or auditor makes a report under section 7, 14, 15 or 16, the person is deemed, for the purposes of a prosecution for a money laundering offence in relation to that report, not to have been in possession of that information at any time.

*Other preventative measures by financial institutions*

21. (1) A financial institution must:

(a) establish and maintain procedures and systems to:

- (i) implement the customer identification requirements under section 4;
- (ii) implement record keeping and retention requirements under sections 8 and 9;
- (iii) implement the transaction monitoring requirements under section 10;
- (iv) implement the reporting requirements under sections 13 and 14;
- (v) make its officers and employees aware of the laws relating to money laundering and financing of terrorism;
- (vi) make its officers and employees aware of the procedures and policies for compliance with anti-money laundering and combating the financing of terrorism standards;
- (vii) screen potential employees;

(b) train its officers, employees and agents to recognize suspicious transactions.

(2) A financial institution must appoint a compliance officer to be responsible for ensuring the financial institutions compliance with the requirements of this Act.

(3) A financial institution must establish an audit function to test its anti-money laundering and combating financing of terrorism procedures and systems.

(4) Subsections (1) and (2) do not apply to an individual who, in the course of carrying on his or her business, does not employ or act in association with any other person.

(5) A financial institution must ensure that its foreign branches and majority owned subsidiaries located in another country adopt and observe measures consistent with Parts 2 and 3 to the extent that the laws of that country permit, and where the foreign branch or subsidiary is unable to adopt and observe these measures, to report this to the relevant supervisory authority, or in the absence of a supervisory authority, to the Unit.

PART 4: FINANCIAL INTELLIGENCE UNIT

*Establishment of Unit*

22. This section establishes the Financial Intelligence Unit.

*Appointment of Director*

23. (1) This section establishes the position of a Director of the Financial Intelligence Unit, to be appointed by the Minister on the recommendation of the Council.

(2) The Higher Salaries Commission is to fix the remuneration, including allowances, of the Director.

(3) The Director must exercise all of the powers, duties and functions of the Unit under this Part in the performance of which the Director is responsible to the Minister, or such other person as the Minister may appoint.

(4) The Director may authorise in writing any person, subject to any terms and conditions that the Director may specify, to carry out any power, duty or function conferred on the Director under this Act.

(5) The Director must advise the Minister, or such other person as the Minister may appoint, on any matter relating to money laundering and the financing of terrorism.

*Director not to disclose information*

24. The Director may not disclose any information that would directly or indirectly identify an individual who provided a report or information to the Unit, or a person or an entity about whom a report or information was provided under this Act.

*Functions, duties and powers of Unit*

25. (1) The Unit:

- (a) must receive reports made under sections 7, 13, 14, 15, 16 and 33(2) and information provided to the Unit by any agency of another country, information provided to the Unit by a law enforcement agency or a government institution or agency, and any other information voluntarily provided to the Unit about suspicions of a serious offence, a money laundering offence or the offence of the financing of terrorism;
- (b) may collect information that the Unit considers relevant to serious offences, money laundering activities or the financing of terrorism whether or not publicly available, including commercially available databases, or information that is collected or maintained, including information that is stored in databases maintained by the government;
- (c) may obtain information on parties or transactions referred to in reports made under sections 7, 13, 14, 15, 16 and 33(2);
- (d) may request information from any government agency, law enforcement agency and supervisory agency without charge for purposes of this Act;
- (e) must analyse and assess all reports and information received;
- (f) may refer any matter or any information derived from any report or any other information it receives to the appropriate law enforcement and supervisory authorities, both domestic and foreign, if, having considered the report or information, the Unit has reasonable grounds to suspect that the transaction or information is relevant to the investigation or prosecution of a money laundering offence, a terrorist financing offence or a serious offence;
- (g) must destroy a suspicious transaction report received or collected on the expiry of 7 years after the date of receipt of the report if there has been no further activity or information relating to the report or the person named in the report or 7 years from the date of the last activity relating to the person or report;
- (h) may instruct any financial institution to take such steps as may be appropriate in relation to any information or report received by the Unit, including requesting further information in relation to any reports made, to enforce compliance with this Act or to facilitate any investigation anticipated by the Unit or a law enforcement agency;
- (i) must compile statistics and records, disseminate information within the Fiji Islands or any other country and, make recommendations arising out of any information received;
- (j) in consultation with the relevant supervisory authority, must issue guidelines to financial institutions in relation to customer identification, record keeping and, reporting obligations and the identification of suspicious transactions;
- (k) must periodically provide feedback to financial institutions and other relevant agencies regarding outcomes to the reports or information given under this Act;
- (l) may provide training programs for financial institutions in relation to customer identification, record keeping and reporting obligations and the identification of suspicious transactions;
- (m) may undertake due diligence checks and other inquiries as may be requested in writing by a government department or authority;
- (n) may conduct research into trends and developments in the area of money laundering and the financing of terrorism and improved ways of detecting, preventing and deterring money laundering and the financing of terrorist activities;
- (o) may educate the public and create awareness on matters relating to money laundering and the financing of terrorism;
- (p) may disclose any report or information received from a report or any other information received, to an institution or agency of a foreign state or of an international organisation established by the governments of foreign states that has powers and duties similar to those of the Unit under sections 26 and 27, if on the basis of its analysis and assessment, the Unit has reasonable grounds to suspect that report or information would be relevant to investigation or prosecution of a money laundering offence, terrorist financing offence or a serious offence; and
- (q) may enter into agreements or arrangements with a Government institution or department for the exchange of information.

- (2) If the Unit has reasonable grounds to suspect that a transaction or attempted transaction may:
- (a) involve the proceeds of a serious offence, a money laundering offence or an offence of the financing of terrorism; or
  - (b) be preparatory to the offence of the financing of terrorism,

to allow the Unit time to make inquiries or to consult or advise relevant law enforcement agencies, the Attorney-General may apply *ex parte* to a judge of the High Court for an order, and if the judge is satisfied that there are reasonable grounds to suspect that a transaction or attempted transaction may involve the proceeds of such offence or may be preparatory to the offence of the financing of terrorism, the judge may grant an order that the financial institution refrain for a specified period from carrying out the transaction or attempted transaction or any other transaction in respect of the funds affected by that transaction.

*Agreements and arrangements by the Unit*

26. (1) The Minister, or the Unit with the approval of the Minister, may in writing, enter into an agreement or arrangement, with:

- (a) a government of a foreign state, an institution or agency of a foreign state or an international organisation established by the governments of foreign states that has powers and duties similar to those of the Unit; or
- (b) a foreign law enforcement and supervisory authority;

regarding the exchange of information between the Unit and the government, institution, authority, agency or organisation.

(2) Any agreement or arrangement entered into under subsection (1) must:

- (a) be restricted to information that the Government, Unit, institution or agency has reasonable grounds to suspect would be relevant to investigation or prosecution of a serious offence, a money laundering offence or an offence of the financing of terrorism, or an offence that is substantially similar to any of those offences;
- (b) restrict the use of information to purposes relevant to investigating or prosecuting a serious offence, a money laundering offence or an offence of the financing of terrorism, or an offence that is substantially similar to any of those offences; and
- (c) stipulate that the information be treated in a confidential manner and not be further disclosed without the express consent of the Unit.

*Disclosure to foreign agencies*

27. (1) The Unit may disclose any information to an institution or agency of another country or of an international organisation or other institution or agency established by the government of another country that has powers and duties similar to those of the Unit on such terms and conditions as are set out in the agreement or arrangement between the Unit and that other country or international organization regarding the exchange of such information.

(2) Nothing in subsection (1) limits the power of the Unit to disclose its information to an institution or agency of another country or of an international organisation or other institution or agency established by the government of another country that has powers and duties similar to those of the Unit, for the purposes of an investigation, prosecution or proceedings relating to a serious offence, a money laundering offence or an offence of the financing of terrorism.

(3) Any disclosure under subsection (2) is confidential information and must not be disclosed further without the written consent of the Unit.

*Power to examine*

28. (1) The Director or any person authorised in writing by the Director may examine the records and inquire into the business and affairs of any financial institution for the purpose of ensuring compliance with Parts 2 and 3, and for that purpose may:

- (a) at any reasonable time, and with or without warrant enter any premises, in which the Unit or an authorised person believes, on reasonable grounds, that there are records relevant to ensuring compliance with Parts 2 and 3;
- (b) use or cause to be used any computer system or data processing system in the premises to examine any data contained in or available to the system;
- (c) reproduce any record, or cause it to be reproduced from the data, in the form of a printout or other intelligible output and remove the printout or other output for examination or copying; and
- (d) use or cause to be used any copying equipment in the premises to make copies of any record.

(2) The owner or person responsible for premises referred to in subsection (1) and every person found at the premises must give the Unit or any authorised person all reasonable assistance to enable them to carry out their responsibilities and must provide them with any information that they may reasonably require with respect to the administration of Parts 2 and 3 or the regulations under this Act.

(3) The Unit may transmit any information from, or derived from, such examination to the appropriate domestic or foreign law enforcement authorities or supervisory authorities, if the Unit has reasonable grounds to suspect that the information is suspicious or is relevant to an investigation for non-compliance with this Act, a serious offence, a money laundering offence or an offence of the financing of terrorism.

(4) A person who willfully obstructs or hinders or fails to cooperate with the Unit or any authorised person in the lawful exercise of the powers under subsection (1) or a person who fails to comply with subsection (2) commits an offence and is liable on conviction:

- (a) for an individual: to a fine not exceeding \$12,000 or imprisonment for a term not exceeding 2 years or both;
- (b) for a body corporate: to a fine not exceeding \$60,000.

#### *Powers to enforce compliance*

29. (1) All directors, officers and employees of a financial institution must take all reasonable steps to ensure the compliance by that financial institution with its obligations under this Part.

(2) The Unit may direct any financial institution that has without reasonable excuse failed to comply in whole or in part with any obligations in Part 2 or 3 to implement any action plan to ensure compliance.

(3) If a financial institution fails to comply with a directive under subsection (2), the Attorney-General may apply to a judge of the High Court for an order that the financial institution and any or all of its officers or employees be compelled to comply with any of its obligations under Part 2 or 3.

(4) In granting an order under subsection (3) the judge may order that should the financial institution or any officer or employee of that institution fail without reasonable excuse to comply with all or any of the provisions of that injunction such financial institution, officer or employee shall pay such financial penalty consistent with penalties under this Act as the judge may determine.

#### *Non-disclosure*

30. (1) This section applies to a person while the person is or after the person ceases to be a Director, officer, employee or agent of the Unit.

(2) Except for the purpose of the performance of his or her duties or the exercise of his or her functions under this Act or when lawfully required to do so by any court, the person referred to in subsection (1) must not disclose any information or matter which has been obtained by him or her in the performance of his or her duties or the exercise of his or her functions under this Act or which he or she has knowledge except for one or more of the following purposes:

- (a) the detection, investigation or prosecution of a serious offence, a money laundering offence or an offence of the financing of terrorism;
- (b) the enforcing of the Proceeds of Crime Act 1997 and legislation relating to money laundering and financing of terrorism.

(3) A person who contravenes subsection (2) commits an offence and is liable on conviction to a fine not exceeding \$30,000 or imprisonment for a term not exceeding 5 years or both.

#### *Immunity*

31. No action lies against the Director, any officer, employee or agent of the Unit or any person acting under the direction of the Director for anything done in good faith in the administration or discharge of any powers, duties or functions under this Act.

### PART 5: CURRENCY REPORTING AT THE BORDER

#### *Currency reporting at the border*

32. (1) Any person who leaves or arrives in the Fiji Islands with more than \$10,000, or such other amount as may be prescribed, in currency or negotiable bearer instruments on his or her person or in his or her baggage without first having reported the fact to the Fiji Islands Revenue and Customs Authority commits an offence and is liable on conviction to a fine not exceeding \$60,000 or imprisonment for a term not exceeding 10 years or both.

(2) For the purpose of this Part:

"authorised officer" means:

- (a) within a customs area, a proper officer within the meaning of the Customs Act 1986;
- (b) not within a customs area:
  - (i) a police officer;
  - (ii) a proper officer within the meaning of the Customs Act 1986;
  - (iii) an officer of the Immigration Department; or
  - (iv) an employee of the Unit;

"customs area" has the meaning given in the Customs Act 1986;

"negotiable bearer instrument" means a document representing ownership of debts or obligations, including bills of exchange, promissory notes or certificates of deposit, whether made payable to the bearer or not.

(3) Where a person is about to depart from the Fiji Islands or is entering the Fiji Islands, an authorised officer who has reasonable grounds to suspect that an offence under subsection (1) may have been or is being committed may, for the purpose of determining whether the person has in his or her possession any currency or negotiable bearer instrument in respect of which a report under subsection (1) of this section is required, exercise any of the powers of a proper officer under the Customs Act 1986, including the powers to question, detain, arrest, inspect and search.

(4) Where an authorised officer has reasonable grounds to believe that any currency or negotiable bearer instrument found in the course of an inspection or search may be evidence of the commission of an offence under this section or of a serious offence, a money laundering offence or an offence of the financing of terrorism, the officer may seize and detain the currency or negotiable bearer instrument.

*Seizure and detention of currency and negotiable instruments*

33. (1) An authorised officer may seize and detain any currency or negotiable bearer instrument which is being imported or exported from the Fiji Islands if the officer has reasonable grounds for suspecting that it is:

- (a) derived from a serious offence, a money laundering offence or an offence of the financing of terrorism; or
- (b) intended by any person for use in the commission of a serious offence, a money laundering offence or an offence of the financing of terrorism.

(2) An authorised officer who has seized and detained currency or a negotiable bearer instrument under subsection (1) or section 32 must report the seizure and detention to the Unit and deliver the currency or negotiable bearer instrument into custody of the relevant authorised officer as affording evidence as to the commission of an offence.

*Retention and release of currency and negotiable instruments seized*

34. (1) Subject to subsection (5), any currency or negotiable bearer instrument seized and detained under section 32(4) or section 33 within a customs area may be retained and released in accordance with the provisions for retention and release of goods liable to forfeiture under the Customs Act 1986 and regulations.

(2) Any currency or negotiable bearer instrument seized and detained under section 32(4) or section 33 outside a customs area must not be detained for more than 48 hours after seizure, unless a judge grants an order of continued detention for a period not exceeding 3 months from the date of seizure, upon being satisfied that:

- (a) there are reasonable grounds to suspect that it was derived from a serious offence, a money laundering offence or an offence of the financing of terrorism or is intended by any person for use in the commission of a such an offence; and
- (b) its continued detention is justified while its origin or derivation is further investigated.

(3) A judge may subsequently order, after a hearing with notice to all parties concerned, the continued detention of the currency or negotiable bearer instrument if satisfied of the matters mentioned in subsection (2) but the total period of a detention order must not exceed 2 years from the date of the order.

(4) Subject to subsection (5), any currency or negotiable bearer instrument detained under subsection (2) or (3) must be released in whole or in part to the person from whom it was seized or to other persons claiming an interest in the currency or negotiable bearer instrument:



- (a) by order of a judge that its continued detention is no longer justified, upon application by or on behalf of that person and after considering any contrary views of the Fiji Islands Revenue and Customs Authority; or
  - (b) by an authorised officer, if satisfied that its continued detention is no longer justified.
- (5) No currency or negotiable bearer instrument detained under this section is to be released while it is relevant to an investigation, prosecution or proceeding under the Proceeds of Crime Act 1997, the Mutual Assistance In Criminal Matters Act 1997, or any written law relating to the financing of terrorism.

## PART 6: ESTABLISHMENT OF NATIONAL ANTI-MONEY LAUNDERING COUNCIL

### *Establishment of National Anti-Money Laundering Council*

35. (1) This section establishes the National Anti-Money Laundering Council, consisting of:

- (a) the Chief Executive Officer responsible for the Ministry of Justice, as Chairperson;
  - (b) the Director of the Unit;
  - (c) the Director of Public Prosecutions;
  - (d) the Commissioner of Police;
  - (e) the Governor of the Reserve Bank of Fiji; and
  - (f) the Chief Executive officer of the Fiji Islands Revenue and Customs Authority.
- (2) The Council may invite other persons to attend a meeting but such persons shall have no right to vote.
- (3) The functions of the Council are:
- (a) to advise the Unit and the Minister on any matters relating to the prevention of money laundering or the financing of terrorism;
  - (b) to make recommendations to the Unit and the Minister on any matter relating to the prevention of money laundering or the financing of terrorism;
  - (c) to assist the Unit and the Minister in the formulation of policies or strategies relating to the prevention of money laundering or the financing of terrorism; and
  - (d) to assist the Unit in coordination between various Government departments and with statutory corporations.
- (4) Except for the purpose of the performance of his duties or the exercise of his functions under this Act or when lawfully required to do so by any court, a member of the Council must not disclose any information or matter which has been obtained by him in the performance of his duties or the exercise of his functions under this Act, except:
- (a) for the detection, investigation or prosecution of a serious offence, a money laundering offence or an offence of the financing of terrorism; or
  - (b) for the enforcing of the Proceeds of Crime Act 1997.

## Part 7: MISCELLANEOUS

### *Obligations of supervisory authority*

36. The relevant supervisory authority of a financial institution may:

- (a) adopt any necessary measures to prevent or avoid any person who is unsuitable from controlling, or participating, directly or indirectly, in the directorship, management or operation of the financial institution;
- (b) examine and supervise the financial institution, and regulate and verify, through regular examinations, that a financial institution complies with the requirements of this Act;
- (c) issue guidelines to assist financial institutions in detecting suspicious patterns of behaviour in their customers; and
- (d) co-operate with the Unit in any investigation, prosecution or proceedings relating to a serious offence, a money laundering offence, an offence of the financing of terrorism or any offence under this Act.

### *Overriding of secrecy*

37. A financial institution must comply with the requirements of this Act notwithstanding any obligation as to secrecy or other restriction on the disclosure of information imposed by any written law or otherwise.

### *Account in anonymous, numbered only, fictitious, false or incorrect name*

38. (1) A person who opens, operates or authorizes the opening or the operation of an account with a financial institution in an anonymous, numbered only, fictitious, false or incorrect name commits an offence and is liable on conviction:

- (a) for an individual: to a fine not exceeding \$30,000 or to a term of imprisonment not exceeding 5 years or both; or
  - (b) for a body corporate: to a fine not exceeding \$150,000.
- (2) Where a person is commonly known by 2 or more different names, the person must not use one of those names in opening an account with a financial institution unless the person has previously disclosed the other name or names to the financial institution.
- (3) Where a person using a particular name in his dealings with a financial institution discloses to it a different name or names by which he or she is commonly known, the financial institution must make a record of the disclosure and must, at the request of the Unit, provide a copy of that record to the Unit.
- (4) For purposes of this section:
- (a) a person opens an account in a false name if the person, in opening the account, or becoming a signatory to the account, uses a name other than a name by which the person is commonly known;
  - (b) a person operates an account in a false name if the person does any act or thing in relation to the account (whether by way of making a deposit or withdrawal or by way of communication with the financial institution concerned or otherwise) and, in doing so, uses a name other than a name by which the person is commonly known.

*Liabilities of employers or principals*

39. For the purposes of this Act, any act done or omitted by a person:

- (a) as an employee must be treated as done or omitted by that persons employer provided that the employee was acting within the course of his employment;
- (b) as an agent must be treated as done or omitted by that persons principal provided that the agent was acting with the actual or ostensible authority of the terms of his agency:

whether or not it was done with the knowledge or approval of the employer or principal.

*Liabilities of directors, controllers and officers*

40. Where any body corporate is convicted of an offence under this Act or any regulations made under this Act, every director, controller or officer concerned in the management of the body corporate must be guilty of the offence where it is proved that the act or omission that constituted the offence took place with that persons knowledge, authority, permission, or consent.

*Power of Minister to delegate*

41. The Minister may delegate his powers, functions or duties under this Act subject to sections 31A to 31C of the Interpretation Act.

*Regulations*

42. The Minister may make regulations to give effect to the provisions of this Act and in particular, without limiting the generality of the foregoing, for:

- (a) the requirements, policies and procedures for customer identification, record keeping and reporting obligations and internal controls under this Act;
- (b) where it is necessary to determine whether or not the amount of currency exceeds any prescribed amount, the manner and method of determining whether any cash denominated in a foreign currency is taken to be the equivalent in the domestic currency;
- (c) prescribing the relevant supervisory authority of a class of financial institution; or
- (d) prescribing forms and fees for the purposes of this Act.

SCHEDULE

*(Section 2 Interpretation of "financial institution")*

The business or activity of:

- (a) banking under the Banking Act 1995 and includes any person who carries on the business of accepting deposits and other repayable funds from the public;
- (b) an insurer, an insurance intermediary, or a superannuation fund, including underwriting and placement of life insurance and other investment related insurance;

- (c) lending, consumer credit, mortgage credit, credit of any other nature, factoring (with or without recourse) and financing of commercial transactions;
- (d) financial leasing;
- (e) exchanging cash or the value of money;
- (f) money transmission services, and includes any person:
  - (i) collecting, holding, exchanging or remitting funds or the value of money, or otherwise negotiating transfers of funds or the value of money, on behalf of other persons;
  - (ii) delivering funds; or
  - (iii) issuing, selling or redeeming travellers cheques, money orders or similar instruments;
- (g) issuing, administering, selling or redeeming means of payment such as credit cards and debit cards, travellers cheques, electronic money, money orders and bankers drafts;
- (h) participating in securities issues and the provision of financial services related to such issues and including a broker, a dealer, an investment adviser and a mutual trust scheme, as defined in the Capital Markets Development Authority Act 1996 and an investment company, a unit trust, a money broker and a broker or dealer of any other financial services;
- (i) issuing financial guarantees and commitments;
- (j) investing, administering, managing or keeping safe custody of, funds or money on behalf of other persons;
- (k) trading in money market instruments (such as cheques, bills, certificates of deposit), foreign exchange, financial futures and options, exchange and interest rate and index instruments, commodity futures trading and transferable securities;
- (l) individual and collective portfolio management and advice;
- (m) a trustee administrator or investment manager of a superannuation fund other than a closed-ended fund;
- (n) a trustee, or manager of a unit trust;
- (o) a trust or company service provider:
  - (i) forming legal persons or legal arrangements including trusts, partnerships, and unincorporated associations;
  - (ii) acting as, or arranging for another person to act as, a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons or legal arrangements;
  - (iii) providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or legal arrangement;
  - (iv) acting as, or arranging for another person to act as, a trustee of an express trust;
  - (v) acting as, or arranging for another person to act as, a nominee shareholder for another person;
- (p) a legal practitioner or an accountant when preparing or carrying out transactions for clients relating to:
  - (i) buying or selling real estate;
  - (ii) managing client money, securities or other assets;
  - (iii) managing bank, savings or securities accounts;
  - (iv) organising contributions for the creation, operation or management of companies;
  - (v) creating, operating or managing legal persons or legal arrangements including trusts, partnerships, and unincorporated associations and buying and selling business entities;
- (q) a real estate agent or company when such a person is involved in a transaction for a customer in relation to the buying or selling of real estate;
- (r) a pawnbroker, in relation to transactions carried on by its customer above the prescribed threshold;
- (s) dealing in bullion, in relation to transactions carried on by its customer above the prescribed threshold;
- (t) collecting money, or holding currency collected on behalf of another person, preparing payrolls on behalf of another person in whole or in part from currency collected, and delivering currency, including credit union, check cashier or payrolls, in relation to transactions carried on by its customer above the prescribed threshold;
- (u) a common gaming house as defined in the Gaming Act (Cap 273), a casino or lottery including a person who carries on such a business through the internet, in relation to transactions carried on by its customer above the prescribed threshold;
- (v) a bookmaker, in relation to transactions carried on by its customer above the prescribed threshold;
- (w) dealing in art, antiques, precious metals, precious stones or jewels, in relation to transactions carried on by its customer above the prescribed threshold;
- (x) travel agency, in relation to transactions carried on by its customer above the prescribed threshold;
- (y) dealing in motor vehicles, aircraft or other vessels, in relation to transactions carried on by its customer above the prescribed threshold;
- (z) any other prescribed business or activity.

Passed by the House of Representatives this 2<sup>nd</sup> day of December 2004.

Passed by the Senate this 15<sup>th</sup> day of December 2004.