



Financial Transactions Reporting Regulations 2017

Tom Marsters

His Excellency, Tom Marsters

Queen's Representative

Order in Executive Council

At Avarua, Rarotonga this *18th* day of *July*, 2017

Present:

His Excellency the Queen's Representative in Executive Council

Pursuant to section 64 of the Financial Transactions Reporting Act 2016, His Excellency the Queen's Representative, acting on the advice and with the consent of the Executive Council, makes the following regulations—

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Financial Transactions Reporting Regulations 2017

Regulations

- 1 **Title**
These regulations are the Financial Transactions Reporting Regulations 2017.
- 2 **Commencement**
These regulations come into force on the day after the date on which they are made.

Part 1 Preliminary Matters

- 3 **Interpretation**
 - (1) In these regulations, unless the context otherwise requires,—
Act means the Financial Transactions Reporting Act 2017
conveyancing transaction means a transaction that facilitates the legal process of transferring ownership of land (leasehold or freehold or native freehold) in the Cook Islands or in any other country whether or not the land is improved in any way and includes—
 - (a) purchase:
 - (b) a sale:
 - (c) the grant of any lease or sublease:
 - (d) the grant of any mortgage or other charge:and for the avoidance of doubt does not include any statutory or customary process relating to alienation, or determination of interests and entitlements of native freehold land
high value items means personal property of high worth and includes—
 - (a) motor vehicles:
 - (b) antiques:
 - (c) art:
 - (d) pearls:
 - (e) precious stones:
 - (f) precious metals:**offshore entity** has the same meaning as in the Trustee Companies Act 2014.
 - (2) Any term or expression that is defined in the Act and used, but not defined, in these regulations has the same meaning as in the Act.
- 4 **Specified activity prescribed**
 - (1) A person engages in a specified activity by doing 1 or more of the following—
 - (a) accepting deposits and other repayable funds from the public:
 - (b) lending, including consumer credit, mortgage credit, factoring (with or without recourse), and financing of a commercial transaction (including forfeiting):
 - (c) financial leasing:

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- (d) providing transfer of money or value, including any 1 or more of the following activities—
 - (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:
 - (iii) issuing, selling or redeeming travellers' cheques, money orders or similar instruments:
 - (iv) engaging in virtual currency business:
- (e) issuing and administering means of payment (for example, credit and debit cards, cheques, travellers' cheques, money orders and bankers' drafts and all forms of electronic money):
- (f) entering into or issuing financial guarantees and commitments:
- (g) trading in 1 or more of the following—
 - (i) money market instruments (for example cheques, bills, certificates of deposit):
 - (ii) foreign exchange:
 - (iii) commodity futures and options trading:
 - (iv) exchange and interest rate instruments:
 - (v) transferable securities:
- (h) participation in securities issues and the provision of financial services related to those issues:
 - (i) individual and collective portfolio management:
 - (j) safekeeping, custody and administration of currency, liquid investments and securities on behalf of other persons:
 - (k) otherwise investing, administering or managing funds on behalf of other persons):
 - (l) underwriting or placement of life insurance and other investment related insurance, including insurance undertakings and acting as an insurance intermediary (agents and brokers):
- (m) money and currency changing:
- (n) acting as trustee administrator or investment manager of a superannuation scheme (excluding closed-ended schemes):
- (o) acting as investment adviser:
- (p) money-broking:
- (q) operating a gambling house, casino or lottery, including an operator who carries on operations through the internet or based on a ship:
- (r) dealing in real estate:
- (s) acting as a trust and company service provider, in relation to—
 - (i) the formation, registration or management of offshore entities and other legal persons or legal arrangements; or
 - (ii) acting as (or arranging for another person to act as) a director, partner, secretary or other similar position in relation to an offshore entity or other legal person or legal arrangement; or

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- (iii) providing a registered office, business address or accommodation, correspondence or administrative address for an offshore entity or other legal person or legal arrangement; or
- (iv) acting as (or arranging for another person to act as) a trustee of an express trust; or
- (v) acting as (or arranging for another person to act as) a nominee shareholder for another person:
- (t) acting as a lawyer, notary public, other independent legal professional, or an accountant (but does not include those professionals that are employed in an in-house capacity for public authorities or other organisations) in carrying out transactions of the following sort—
 - (i) conveyancing transactions; or
 - (ii) managing client money, securities or other assets other than by passive receipt and holding of funds in a solicitor's trust account as required by the Law Practitioner's Act 1994; or
 - (iii) managing bank, savings or securities accounts; or
 - (iv) creating, operating or managing legal persons or legal arrangements; or
 - (v) buying and selling business entities:
- (u) dealing in high value items that have a value equal to, or greater than the threshold amount.

Part 2 Customer Due Diligence

5 Required identification information for standard due diligence

- (1) For the purposes of section 25 of the Act a reporting institution must obtain the following identification information for—
 - (a) a natural person—
 - (i) full name including any aliases; and
 - (ii) residential address; and
 - (iii) date and place of birth; and
 - (iv) nationality; and
 - (v) if the person is not the customer, the person's relationship to the customer; and
 - (vi) an official personal identification number or other unique identifier contained in a current and valid official document:
 - (b) a legal person—
 - (i) the name of the legal person including any trading names; and
 - (ii) date and country of incorporation, registration, or establishment (as may be appropriate); and
 - (iii) its legal form and the powers that regulate and bind the legal person; and
 - (iv) official identification number; and

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- (v) registered office or business address; and principal place of business or operations if this differs from the registered office; and
 - (vi) identification information on each ultimate principal of the legal person and any natural person acting on behalf of the legal person:
- (c) a legal arrangement—
- (i) name of trust; and
 - (ii) date of establishment or registration if registered; and
 - (iii) the powers that regulate and bind the legal arrangement;
 - (iv) official identification number if applicable; and
 - (v) identification information on each ultimate principal and any natural person acting on behalf of the legal arrangement.

6 Additional due diligence requirements for legal arrangements and foundations

- (1) A reporting institution must also identify and take reasonable steps to verify—
- (a) in the case of a legal arrangement,—
 - (i) the trustees if not already identified or any other person having power to direct the customer's activities;
 - (ii) the settlor or other person by whom the legal arrangement is made or on whose instructions the legal arrangements is formed;
 - (iii) any known beneficiaries;
 - (b) in the case of a foundation—
 - (i) the council members (or equivalent);
 - (ii) any known beneficiaries;
 - (iii) the founder and any other dedicator.
- (2) For the purposes of subclause (1) known beneficiaries means a natural person who is entitled to a vested interest in the assets of the legal arrangement or foundation other than those beneficiaries to which subclause (3) applies.
- (3) If the legal arrangement or foundation is a discretionary or charitable legal arrangement or foundation, or if it has more than 10 beneficiaries, then a reporting institution must—
- (a) obtain sufficient information about the beneficiaries characteristics or class to satisfy itself that it will be able to identify and verify the identity of a beneficiary in accordance with the procedures under Part 3 of the Act before making a distribution to such beneficiary; and
 - (b) if the objects of the legal arrangement or foundation is charitable, a description of the objects of that legal arrangement or foundation.

7 Required identification information for simplified due diligence

- (1) For the purposes of section 27 of the Act a reporting institution must obtain the following identification information for—
- (a) a natural person—
 - (i) full name; and
 - (ii) residential address; and
 - (iii) date and place of birth; and

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- (iv) if the person is not the customer, the person's relationship to the customer; and
 - (v) an official personal identification number or other unique identifier contained in a current and valid official document:
- (b) a legal person—
 - (i) the name of the legal person including any trading names; and
 - (ii) date and country of incorporation, registration, or establishment (as may be appropriate); and
 - (iii) official identification number; and
 - (iv) registered office or business address.
- (2) A reporting institution must not conduct simplified due diligence on a legal arrangement or similar arrangement including a foundation.

8 Requirements for undertaking enhanced due diligence

- (1) For the purposes of section 29 of the Act a reporting institution must do the following—
 - (a) take reasonable measures to establish the source of wealth of the customer and any ultimate principal of the customer; and
 - (b) consider whether additional identification information should be obtained and verified.

9 Requirements for due diligence for life insurance beneficiaries

- (1) If a reporting institution distributes life insurance policies (whether on behalf of another institution or not)—
 - (a) a reporting institution must, as soon as a beneficiary of a life insurance policy is designated by characteristics, class or other means, obtain sufficient information concerning the beneficiary characteristic, class or other means to satisfy itself it will be able to identify and verify the beneficiary at the time of payout; and
 - (b) a reporting institution must, as soon as a beneficiary of a life policy is identified to the reporting institution, conduct the procedures under sections 25 and 31.

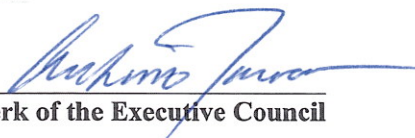
10 Exemption from requirements of the Act for transactions relating to native freehold land

- (1) Where a reporting institution is dealing with a conveyancing transaction in which the seller(s) of the land interest is a person(s) who is recognised by the Court or in accordance with custom as having rights to that land on the basis of their familial or blood connection, a reporting institution is not required to meet the requirements of the Act in relation to that person for that conveyancing transaction.
- (2) Subsection (1) does not apply to a conveyancing transaction in which a further assignment of land is undertaken by a person who does not have a familial or blood connection to that land but has a right to sell their interest in the land.

Part 3
Miscellaneous

11 Appointment of the MLRO

- (1) A person appointed as the MLRO for a reporting institution in accordance with section 13 of the Act and who is not a member of senior management of the reporting institution must have, whether in or outside the Cook Islands, at least 3 years work experience—
- (a) in the reporting institution that he or she is to be appointed; or
 - (b) in a business or organisation that undertakes the same or similar kinds of activities as the reporting institution that he or she is to be appointed.
- (2) A person's work experience referred to in subclause (1) must be of the kind appropriate to enable the person to undertake the role of MLRO.


Clerk of the Executive Council

These regulations are administered by the Financial Supervisory Commission.
These regulations were made on the 18th day of July 2017.

