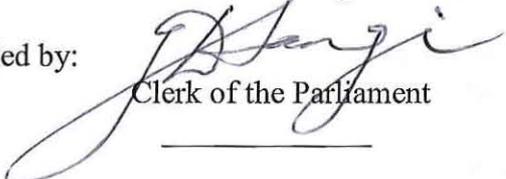


Examined and certified by:

  
 Clerk of the Parliament

In the name and on behalf of Her Majesty Queen Elizabeth the Second I hereby assent to this Act this sixteenth day of June, 2015


  
 Queen's Representative

### Contents

1	Title	3
2	Commencement	3
<b>Part 1</b>		
<b>Preliminary matters</b>		
3	Purposes	3
4	Interpretation	3
5	Act binds the Crown	6
<b>Part 2</b>		
<b>Organisation and governance of Financial Intelligence Unit</b>		
<b>Subpart 1—Financial Intelligence Unit</b>		
6	Financial Intelligence Unit	6
7	Financial Intelligence Unit is part of Financial Supervisory Commission	6
8	Board to appoint Head	6
9	Head to hold no other office	6
10	Removal of Head or suspension from office	7
11	Head to perform functions, duties, and powers of FIU	7
12	Head's power to delegate	7
13	Limitations on powers of delegation	7
14	Powers of delegate	8
15	Effect of delegation on Head	8
16	Revoking a delegation	9
<b>Subpart 2—Functions, duties and powers of FIU</b>		
17	Functions of FIU	9
18	Duties of FIU	9
19	Powers of the FIU	10
20	Court Proceedings	10
21	Compliance visits	11
<b>Part 3</b>		
<b>Powers of the FIU to obtain information</b>		
22	Purpose for which FIU has power to obtain information	11
23	Information	11
24	Information to be provided regarding business and transactions of reporting institution	12
25	Procedure where information to be provided	12

26	Entry and search of premises by warrant	12
27	Powers in respect of information	13
28	Retention of records	13
29	Warrants for communications	13
30	Police Officer to make arrests	14

#### **Part 4**

#### **Compliance Powers**

31	Powers to enforce compliance—Financial Transactions Reporting Act 2004	14
32	Reporting institution rights of response and appeal	14
33	Specific powers to enforce compliance	15

#### **Part 5**

#### **Responses to Financial Misconduct**

#### **Interpretation**

34	Power to control transactions involving financial misconduct	15
35	Recoverable money	16
36	Duration of instruction relating to recoverable money	17
37	Recourse by person affected	17

#### **Part 6**

#### **Other general powers and protection**

38	Information sharing arrangements	18
39	Information sharing with counterpart agencies	18
40	Mutual legal assistance	19
41	Costs of investigation recoverable	19
42	Indemnity	19
43	Overriding of secrecy	20

#### **Part 7**

#### **Offences**

44	Offence of providing false information under compulsion	20
45	Offences relating to compulsory provision of information	20
46	Offences in relation to investigations	20
47	Offence of failing to provide information	21
48	Offence of tampering with information	21
49	Defence of innocent destruction	22
50	Breach of Forfeiture Order	22
51	Penalties for offences	22

#### **Part 8**

#### **Other matters**

52	Act to prevail if conflict with other specified Acts	22
53	Audit of FIU	23
54	Confidential information	23
55	Forms	23

#### *Regulations*

56	Regulations	23
----	-------------	----

#### *Consequential amendments*

57	Amendments to other enactments	24
----	--------------------------------	----

#### **Schedule 1**

#### **Amendments to Acts**

---

**An Act to enhance the operation of the Financial Intelligence Unit.**

**The Parliament of the Cook Islands enacts as follows—**

**1 Title**

This Act is the Financial Intelligence Unit Act 2015.

**2 Commencement**

This Act comes into force on the day after the date on which it receives the assent by the Queen's Representative.

**Part 1  
Preliminary matters**

**3 Purposes**

The purpose of this Act is to continue the FIU as a national, central unit to—

- (a) administer and enforce certain statutes that concern financial misconduct; and
- (b) conduct related inquiries, investigations, analysis, and enforcement oversight; and
- (c) provide enhanced powers for the FIU as an independent unit of the FSC.

**4 Interpretation**

In this Act, unless the context otherwise requires—

**allocated employee** means an FSC employee who is allocated by the Commissioner to undertake work for the FIU

**by or under** in relation to this Act means—

- (a) by this Act or by an oversight act;
- (b) by regulations or other delegated legislation made under this Act or under an oversight act;
- (c) by any guideline or direction made under this Act or under an oversight act;
- (d) by an order of the Court made under this Act or under an oversight act

**Board** means the board of the FSC appointed under section 4 of the Financial Supervisory Commission Act 2003

**Commissioner** means the Commissioner appointed as the administrative head of the FSC under section 13 of the Financial Supervisory Commission Act 2003

**compliance visit** means an inspection that is—

- (a) undertaken by the FIU; and
- (b) is agreed to by a reporting institution; and
- (c) is undertaken to monitor compliance, by that reporting institution, with one or more oversight acts

**confidential information**—

- (a) means all information that is acquired by the FIU in the exercise of its powers under this Act and the oversight acts; but

- (b) does not include information that—
- (i) is in the public domain at the time it is acquired by the FIU; or
  - (ii) comes into the public domain in a lawful manner after it is acquired by the FIU

**counterpart agency** means each of the following—

- (a) any other agency or institution of the Crown;
- (b) an agency or institution of a foreign state that has powers and duties in respect of financial misconduct that are similar to those of the FIU;
- (c) an international organisation that has functions, powers or duties relating to financial misconduct that are similar to those of the FIU

**Court** means the High Court of the Cook Islands

**Crown** includes—

- (a) every department, instrument, servant and agent of the Crown; and
- (b) any body corporate or organisation that is wholly owned or controlled by the Crown

**currency** includes the following—

- (a) the coin and paper money of the Cook Islands or of a foreign country that is designated as legal tender and which is customarily used and accepted as a medium of exchange in the country of issue;
- (b) coin money of any sort, whether or not designated as legal tender or used and accepted as a medium of exchange, where that coin, by reason of its precious metal content, rarity, or other intrinsic or extrinsic characteristic, has value on the open market;
- (c) monetary instruments (whether issued to bearer or not) that may be exchanged for money, including cheques, travellers' cheques, money orders, and negotiable instruments in a form in which title passes on delivery;
- (d) precious metal, precious stone, pearls (natural or cultivated and all associated products) or jewellery made of precious metal or stone:

and wherever used in this Act the word “currency” includes mixed currency

**currency report** means a report, declaration, or return that—

- (a) relates to currency; and
- (b) is made in accordance with an oversight act

**digital format** has the same meaning as in the Digital Registers Act 2011

**financial misconduct** means—

- (a) a breach of 1 or more of the oversight acts;
- (b) misconduct by any person relating to money laundering;
- (c) fraud involving cross-border financial transactions;
- (d) the financing of terrorism;
- (e) the financing of proliferation of weapons of mass destruction;
- (f) the financing or facilitating of bribery and other corrupt practices of any sort;
- (g) tax evasion (whether or not relating to taxes payable in the Cook Islands)

**FIU** means the Financial Intelligence Unit established under the provisions of the Financial Transactions Reporting Act 2004 and continued under section 6

**FSC** means the Financial Supervisory Commission established under section 3 of the Financial Supervisory Commission Act 2003

**FIU contractor** means a person who is contracted by FSC to undertake work for the FIU

**hard copy format** has the same meaning as in the Digital Registers Act 2011

**Head** means the Head of the FIU appointed under section 8

**information** includes—

- (a) facts;
- (b) opinions;
- (c) representations;
- (d) information of any other sort;
- (e) a record;
- (f) the answer to a question

**investigation** means an investigation conducted by the FIU

**investigator** means—

- (a) the Head; and
- (b) an allocated employee or FIU contractor who is delegated powers of investigation under section 12

**mixed currency** means currency of any form that is intermingled with currency of one or more other forms

**oversight act**—

- (a) means—
  - (i) the Mutual Assistance in Criminal Matters Act 2003;
  - (ii) the Financial Transactions Reporting Act 2004;
  - (iii) Proceeds of Crime Act 2003;
- (b) includes any regulation, order, delegated legislation, guidelines, or similar instruments made under an act specified in paragraph (a)

**person** means—

- (a) a natural person;
- (b) a legal person

**powers of investigation** means the powers that may be exercised by an investigator—

- (a) under section 19;
- (b) as otherwise specified in this Act or any other act

**provide** in respect of information means to provide—

- (a) in a digital format approved for that purpose by the FSC;
- (b) in legible hard copy format in the English language;
- (c) in the case of a question asked orally, includes an oral response

**reporting institution** has the same meaning as in section 2 of the Financial Transactions Reporting Act 2004

**supervisory authority** means a body or authority established in the Cook Islands that has the authority to regulate or supervise a reporting institution

**transaction** has the same meaning as in section 2 of the Financial Transactions Reporting Act 2004

**transaction report** means—

- (a) a currency report;
- (b) a suspicious transaction report within the meaning of section 2 of the Financial Transactions Reporting Act 2004;
- (c) any other report, declaration, or return that—
  - (i) relates to a transaction; and
  - (ii) is made in accordance with an oversight act.

**5 Act binds the Crown**

This Act binds the Crown.

**Part 2**

**Organisation and governance of Financial Intelligence Unit**

**Subpart 1—Financial Intelligence Unit**

**6 Financial Intelligence Unit**

- (1) The FIU continues as an agency of the Crown.
- (2) The FIU is the same agency as that—
  - (a) established by section 20 of the Financial Transactions Reporting Act 2003; and
  - (b) continued by section 20 of the Financial Transactions Reporting Act 2004.

**7 Financial Intelligence Unit is part of Financial Supervisory Commission**

- (1) In intelligence, investigation and related operational matters, the FIU acts independently of the FSC.
- (2) In those matters it is for the Head to decide the extent to which the FSC is briefed on those matters.
- (3) For all other purposes the FIU is part of the FSC.

**8 Board to appoint Head**

- (1) The Board must appoint a natural person to be the Head.
- (2) The Board may make that appointment on terms and conditions as it thinks fit.

**9 Head to hold no other office**

- (1) The Head must not be—
  - (a) a member of Parliament;
  - (b) employed in the service of the Crown (other than as the Head);
  - (c) employed in the service of an agency of the Crown (other than as the Head);
  - (d) a director, officer, or employee of a reporting institution;

- (e) a person who is in any way involved or interested in the ownership, control, or management of a reporting institution.
- (2) Unless the Head has obtained the prior written approval of the Board to do so, the Head must not—
  - (a) hold any other office:
  - (b) undertake any other occupation.

#### **10 Removal of Head or suspension from office**

The Board may remove or suspend the Head from office if 1 or more of the following is proved to the satisfaction of the Board—

- (a) disability affecting the performance of duty:
- (b) neglect of duty:
- (c) incompetence:
- (d) misconduct (whether or not that amounts to the breach of any law):
- (e) conduct that brings the FIU, the FSC or the Cook Islands Government into disrepute.

#### **11 Head to perform functions, duties, and powers of FIU**

- (1) The Head—
  - (a) must carry out the functions and duties of the FIU; and
  - (b) may exercise the powers of the FIU.
- (2) Subject to section 7, the Head is accountable to the Board for carrying out the functions, duties, and exercising the powers, of the FIU.

#### **12 Head's power to delegate**

- (1) This section is subject to section 13 and applies to the functions, powers and duties of—
  - (a) the FIU; and
  - (b) the Head.
- (2) The Head may delegate any—
  - (a) function:
  - (b) duty:
  - (c) power.
- (3) The delegation—
  - (a) must be in writing; and
  - (b) may be either general or specific; and
  - (c) may be made only to—
    - (i) an allocated employee:
    - (ii) an FIU contractor.

#### **13 Limitations on powers of delegation**

- (1) The Head must not delegate—
  - (a) any function, duty or power that is specified in an act as not being capable of delegation:
  - (b) the Head's power of delegation under section 12.

- (2) The Head must not delegate any power to apply for a search warrant except—
  - (a) as needed due to the Head's absence from the Cook Islands or inability to act due to illness or other incapacity; and
  - (b) in terms that are limited for the term of that absence or inability to act.
- (3) The Head must not delegate any function, power or duty to—
  - (a) a member of Parliament;
  - (b) a director, officer or employee of a reporting institution;
  - (c) a person who is in any way involved or interested in the ownership, control or management of a reporting institution.
- (4) The Head may delegate a power of investigation only if the Head is satisfied the delegate has—
  - (a) the skills and experience necessary to investigate financial misconduct;
  - (b) the necessary qualifications and training to do so.
- (5) The Commissioner must give written approval to the Head before the Head delegates any substantial part of the functions, duties or powers of—
  - (a) the FIU;
  - (b) the Head.
- (6) In this section a **substantial part** has the meaning given to it from time to time by the Commissioner in writing to the Head.

#### **14 Powers of delegate**

- (1) The acts of a delegate appointed under section 12 must be treated as being the same as if the delegate were, as the case requires—
  - (a) the FIU;
  - (b) the Head.
- (2) The delegate must comply with those provisions of the Act that bind, as the case requires—
  - (a) the FIU;
  - (b) the Head.
- (3) The delegate—
  - (a) must produce evidence of the delegate's authority to act, if reasonably requested to do so; and
  - (b) must not delegate any function, duty, or power.
- (4) A delegate must be treated as acting within the terms of a delegation under section 12 until that is proved not to be the case.

#### **15 Effect of delegation on Head**

A delegation under section 12—

- (a) does not affect the power of—
  - (i) the FIU;
  - (ii) the Head;
- (b) does not relieve the Head of responsibility for the actions of any delegate while that delegate acts within the terms of that delegation;
- (c) is not affected by any change in appointment of the Head.

**16 Revoking a delegation**

A delegation under section 12 may be revoked at any time by—

- (a) the Head giving written notice to the delegate; or
- (b) any other method provided for in the delegation.

### Subpart 2—Functions, duties and powers of FIU

**17 Functions of FIU**

The functions of the FIU are—

- (a) to administer and enforce the oversight acts;
- (b) to investigate financial misconduct;
- (c) to conduct related inquiries, investigations, analysis, and enforcement oversight.

**18 Duties of FIU**

(1) The FIU has the duties imposed by—

- (a) this Act; and
- (b) the oversight acts.

(2) Without limiting subsection (1), the FIU has the following specific duties—

- (a) to receive and analyse transaction reports; and
- (b) to carry out any investigation needed as a result of that analysis; and
- (c) to receive information and reports that, under an oversight act, fall for consideration by the FIU, including reports provided by any—
  - (i) agency of another country or jurisdiction;
  - (ii) supervisory authority;
  - (iii) law enforcement agency in the Cook Islands or elsewhere;
  - (iv) government agency or institution in the Cook Islands or elsewhere;
  - (v) person if the information or reports concerns financial misconduct; and
- (d) to analyse and assess that information and those reports; and
- (e) to distribute to the relevant authorities in the Cook Islands—
  - (i) that information;
  - (ii) those reports;
  - (iii) analysis and assessments of that information and those reports; and
- (f) to compile statistics and records relating to—
  - (i) financial misconduct;
  - (ii) compliance with the oversight acts; and
- (g) to make available to third parties, subject to the restrictions of this Act—
  - (i) information and reports received;
  - (ii) statistics and records compiled from information and reports received; and
- (h) to issue guidelines to reporting institutions about—
  - (i) customer identification;

- (ii) record keeping and reporting obligations;
- (iii) identifying suspicious transactions or suspicious activities; and
- (i) to provide feedback, at its discretion, regarding outcomes in cases that relate to the reports or information obtained by or under this Act.

## **19 Powers of the FIU**

- (1) The FIU has the powers conferred by this Act and by the oversight acts.
- (2) Without limiting subsection (1), the FIU has the following specific powers—
  - (a) the powers that are necessary for the FIU to carry out its duties in section 18; and
  - (b) to investigate any suspected financial misconduct that comes to the attention of the FIU; and
  - (c) to act on behalf of the Crown for the purposes of this Act and the oversight acts in seeking information from any foreign—
    - (i) government agency;
    - (ii) law enforcement agency;
    - (iii) supervising authority;
    - (iv) counterpart agency;
    - (v) auditing authority; and
  - (d) to provide training programmes to reporting institutions about—
    - (i) customer identification;
    - (ii) record keeping and reporting obligations;
    - (iii) the identification of suspicious transactions or suspicious activities; and
  - (e) to obtain information from a reporting institution that the FIU needs to analyse a report the FIU has received; and
  - (f) to conduct research into trends and developments in financial misconduct; and
  - (g) to publish and disseminate statistical and other information relating to financial misconduct; and
  - (h) to educate the public and create awareness on matters relating to financial misconduct.
- (3) The powers of the FIU under any other act have full effect despite any provision of this Act that might otherwise limit or reduce those powers.
- (4) The FIU may exercise any power conferred by or under this Act on 1 or more occasions.

## **20 Court Proceedings**

- (1) The Head may bring and defend proceedings in the Court.
- (2) The Head may bring proceedings in the Court if in the Head's opinion it is necessary or desirable to do so—
  - (a) to enforce compliance with any provision of—
    - (i) this Act;
    - (ii) oversight act;
  - (b) to punish or remedy non-compliance with any provision of that sort;

- (c) to take action in any matter involving financial misconduct.

## 21 Compliance visits

- (1) The FIU may undertake compliance visits.
- (2) When it undertakes a compliance visit, the FIU may, with the agreement of the relevant reporting institution, exercise 1 or more of the following powers—
  - (a) inspect the premises, business and assets of that reporting institute:
  - (b) review its procedures, systems and controls:
  - (c) examine and make copies of its documents:
  - (d) access and use its computer systems:
  - (e) use its copying equipment:
  - (f) seek information from its officers and employees.
- (3) However, the FIU may exercise the powers set out in subsection (2) only so far as is reasonably necessary to confirm compliance, by the reporting institution, with the relevant oversight act.
- (4) This section does not limit any other provision of this Act.

## Part 3

### Powers of the FIU to obtain information

#### 22 Purpose for which FIU has power to obtain information

- (1) The powers of the FIU under this part apply to its functions, powers and duties that—
  - (a) relate to a reporting institution and its compliance with any obligation imposed by or under this Act:
  - (b) relate to the investigation of financial misconduct:
  - (c) arise under any other provision of this Act or an oversight act.
- (2) The FIU may exercise its powers under this part by the Head or by any investigator who has been authorised by name, in the notice.
- (3) An investigator must—
  - (a) carry evidence of the investigator's delegated authority when exercising the delegate powers; and
  - (b) produce that evidence if reasonably requested to do so.

#### 23 Information

In this part **respondent** means—

- (a) a reporting institution:
- (b) a compliance officer of a reporting institution appointed as required by the Financial Supervisory Commission Act 2003:
- (c) a money laundering reporting officer of a reporting institution as required by the Financial Transactions Reporting Act 2004:
- (d) a director or manager of a reporting institution:
- (e) a person who appears to be in possession of information regarding the business and transactions of, or undertaken by, a reporting institution.

**24 Information to be provided regarding business and transactions of reporting institution**

- (1) A respondent must provide information to the FIU if required to do so under this section.
- (2) Any information sought must be relevant to a consideration of transactions of a reporting institution that—
  - (a) are subject to the provisions of an oversight act;
  - (b) involve or amount to financial misconduct.

**25 Procedure where information to be provided**

If it wishes to exercise its power under section 24, the FIU must give a notice to the respondent specifying—

- (a) the time and place at which the respondent must provide information; and
- (b) a description of the information the respondent must provide; and
- (c) whether or not the respondent is to be present at that time and place to answer any question.

**26 Entry and search of premises by warrant**

- (1) A Judge may grant a warrant under this section if satisfied it is reasonable to suspect—
  - (a) a respondent has not complied with a notice under this Act that requires the respondent to provide information;
  - (b) information provided in response to a notice is not complete;
  - (c) if a respondent were to be given a notice under this Act requiring the respondent to provide information, it would not be complied with;
  - (d) if a respondent were to be given a notice under this Act requiring that respondent to provide information, there is a material risk that records might instead be removed, tampered with or destroyed;
  - (e) the FIU or its delegate or any investigator has been or may be obstructed in the exercise of a power under this Act to require information or has been denied access to premises at which information is located.
- (2) The FIU must apply for the warrant and its application must be supported by information on oath.
- (3) The warrant may authorise a police officer, together with any other person named in the warrant to—
  - (a) enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;
  - (b) search the premises and obtain information that could be the subject of a notice served under section 25;
  - (c) take possession of that information if it takes the form of records;
  - (d) take steps to preserve that information and those records;
  - (e) take steps to prevent interference with that information or those records;
  - (f) take copies of, or extracts from, those records;
  - (g) require any person named in the warrant—
    - (i) to provide an explanation of those records;

(ii) to answer questions that could be required answered under section 24:

(h) if records are not provided, to require any respondent appearing to be in possession of information as to their whereabouts or access, to provide information, to the best of that respondent's knowledge and belief, as to—

(i) where the records are located:

(ii) how the records may be retrieved.

## **27 Powers in respect of information**

(1) This section applies to information provided to the FIU under this Act or under an oversight act—

(a) in hard copy format:

(b) in digital format.

(2) The FIU may—

(a) retain information:

(b) copy information:

(c) take extracts from information.

(3) The FIU may question a respondent on the following matters—

(a) to seek an explanation of any information provided to it:

(b) to seek an explanation as to why information sought under any notice under section 25 or under a warrant issued under section 26 has not been provided to it.

(4) A respondent must answer all questions truthfully to the best of that respondent's knowledge and belief. However, a respondent may decline to answer a question if to do so would incriminate the respondent.

## **28 Retention of records**

(1) The FIU may retain the original copy of a record provided for the longer of the following periods—

(a) one year; or,

(b) if within that year proceedings to which that original copy is relevant are commenced against a person, until the conclusion of those proceedings.

(2) If the FIU retains the original copy of a record provided, it must provide the person providing that record with a duplicate copy of that record within a reasonable time of being requested to do so.

## **29 Warrants for communications**

(1) If a person is under investigation for financial misconduct (including attempted financial misconduct) the Head may seek and obtain a search warrant to obtain the records and accounts of that person's communications.

(2) That search warrant may be issued against any telecommunications provider operating in the Cook Islands.

(3) Despite subsection (2), if a telecommunications provider is also a reporting institution, it must provide information regarding any transaction processed by it on the request of the Head or any investigator.

- (4) In this section, **communications**—
- (a) means communication of every sort whether spoken or written and however transmitted and received; and
  - (b) includes communications that take the form of radio, telephone (mobile or landline), internet, or other electronic communication such as (but not limited to) emails and text messaging.

**30 Police Officer to make arrests**

- (1) A Police Officer may arrest a person without a warrant if the Head suspects that person has committed an offence against this Act or any oversight act that is punishable by a term of imprisonment for 3 months or more.
- (2) The Criminal Procedure Act 1981 applies to every arrest made under this section.

## **Part 4 Compliance Powers**

**31 Powers to enforce compliance—Financial Transactions Reporting Act 2004**

- (1) If a reporting institution has failed to comply with an obligation under the Financial Transactions Reporting Act 2004, the Head may do 1 or more of the following—
  - (a) issue a warning;
  - (b) give directions to ensure future compliance;
  - (c) enter into an agreement as to how compliance will be achieved;
  - (d) seek orders under section 33;
  - (e) prosecute or take any other action authorised by or under—
    - (i) this Act;
    - (ii) an oversight act.
- (2) Before doing so, the Head must give the reporting institution written notice of—
  - (a) the Head's intention to take that action; and
  - (b) the reasons for that decision.
- (3) However, the Head need not disclose information—
  - (a) that the Head considers is confidential information, the disclosure of which would prejudice a third party; or
  - (b) the disclosure of which the Head considers would be contrary to the public interest.
- (4) The Head must take all reasonable steps to ensure the reporting institution is given notice under this section as soon as practicable.

**32 Reporting institution rights of response and appeal**

- (1) A reporting institution has 30 days to respond in writing to a written notice of the Head given under section 31(2).

- (2) The Head must review that response and within 15 days notify the reporting institution of the Head's decision either to affirm, amend, or revoke the instruction.
- (3) No right of judicial review arises from that decision. However, the reporting institution may exercise a right of appeal to the Court.
- (4) An appeal must be filed in the Court by that reporting institution within 15 days of receiving notice of that decision.
- (5) The appeal is by way of rehearing, and the Court may—
  - (a) affirm, amend or revoke the instruction; and
  - (b) make such further consequential orders (including as to costs) as it thinks fit.

### **33 Specific powers to enforce compliance**

- (1) Without limiting section 31 the Head may apply to the Court for an order to secure compliance if a reporting institution fails, without reasonable excuse, to comply with any obligation imposed by or under—
  - (a) this Act:
  - (b) an oversight act.
- (2) The Court has jurisdiction to make—
  - (a) orders that the Court believes appropriate to secure compliance; and
  - (b) ancillary orders it thinks necessary or desirable in the circumstances of the case.
- (3) Those orders may be directed to—
  - (a) the reporting institution:
  - (b) named officers, employees, or agents of that reporting institution.
- (4) A breach of an order made under this section is a contempt for which the Court may, in those proceedings, impose a financial penalty of up to \$1,000 for each day of non-compliance.
- (5) The power of the Court under subsection (4) is not affected by any prosecution brought under this Act or an oversight act.

## **Part 5 Responses to Financial Misconduct**

### Interpretation

#### **34 Power to control transactions involving financial misconduct**

- (1) This section applies if—
  - (a) the Head has reasonable grounds to suspect an ongoing or anticipated transaction may involve financial misconduct; and
  - (b) a reporting institute is or may become involved with that transaction.
- (2) The Head may instruct the reporting institution either—
  - (a) to proceed with the transaction in a particular way; or
  - (b) to hold off proceeding with the transaction for a period.
- (3) That instruction must—

- (a) be in writing; and
  - (b) be signed by the Head or a delegate; and
  - (c) specify the grounds on which the Head acts; and
  - (d) give details of any action to be taken by the reporting institution; and
  - (e) must specify the period (to be not more than 28 days) of any instruction to hold off proceeding with the transaction.
- (4) If the Head wishes to extend the period beyond 28 days in total, the Head must apply to the Court for that further extension.
- (5) The Head may make successive applications to the Court if circumstances require that even if an earlier application has been declined.
- (6) On any application made by the Head under this section the Court may either—
- (a) grant the application, with or without conditions; or
  - (b) grant a further extension for a greater or lesser period than applied for, with or without conditions; or
  - (c) decline the application.

### **35 Recoverable money**

- (1) The Head may exercise the powers under this section if the Head believes money, either in the Cook Islands or elsewhere—
- (a) is or may be—
    - (i) the subject of financial misconduct;
    - (ii) the proceeds of financial misconduct;
    - (iii) the subject of an investigation or proceeding that relates in any way to this Act or an oversight act; and
  - (b) should be detained to allow one or more of the following to happen—
    - (i) the relevant Cook Islands or overseas law enforcement authority to undertake or complete an investigation or prosecution;
    - (ii) the FIU to undertake or complete its own investigation;
    - (iii) the FIU or some other person to seek an order from the Court to restrain or forfeit the money;
    - (iv) the relevant reporting institution either to comply with section 24 or with an order under section 33.
- (2) If a reporting institution has custody of that money or control over it, the Head may instruct that reporting institution to—
- (a) segregate the money (including interest) in an interest bearing account controlled by the FSC;
  - (b) take steps to make sure that money (and any interest) is not—
    - (i) paid out;
    - (ii) transferred;
    - (iii) allowed to pass out of the custody and control of that reporting institution.
- (3) That instruction must—
- (a) be in writing; and

- (b) be signed by the Head or a delegate; and
  - (c) specify the grounds on which the Head acts; and
  - (d) give details of any action to be taken by the reporting institution; and
  - (e) incorporate or attach a copy of this section and section 39;
  - (f) must specify the period (to be not more than 60 days) during which the instruction remains in effect.
- (4) As soon as it is practical to do so, the reporting institution must advise at least one of the persons on whose behalf it holds that money—
- (a) of the instruction received by it; and
  - (b) of action taken by the reporting institution.

**36 Duration of instruction relating to recoverable money**

- (1) A reporting institution that receives an instruction issued under section 35(2) must comply with the instruction for the period specified in the instruction.
- (2) The Head may extend the period one or more times by notice in writing to the reporting institution provided that, in total, those periods do not exceed 60 days.
- (3) If the Head wishes to extend the period beyond 60 days in total, the Head must apply to the Court for that further extension.
- (4) The Head may make successive applications to the Court if circumstances require that.
- (5) On any application made by the Head under this section the Court may either—
- (a) grant the application, with or without conditions; or
  - (b) grant a further extension for a greater or lesser period than applied for, with or without conditions; or
  - (c) decline the application.

**37 Recourse by person affected**

- (1) If the Head gives an instruction under section 35(2) then the following persons have recourse under this section—
- (a) if the reporting institution held the money to the account of a sole client or signatory, that person;
  - (b) if the reporting institution held the money to the account of multiple clients or signatories, a representative nominated by those persons.
- (2) A person who has recourse under this section has the right to object to the instruction. That objection must be—
- (a) in writing; and
  - (b) given to the Head within 20 days after the Head has given the instruction.
- (3) The Head must review the person's objection and within 15 days notify the Head's decision either to affirm, amend, or revoke the instruction.
- (4) No right of judicial review arises from that decision. However, the person may exercise a right of appeal to the Court.
- (5) An appeal must be filed in the Court by that person within 15 days of receiving notice of that decision.

- (6) The appeal is by way of rehearing, and the Court may—
- (i) affirm, amend or revoke the instruction; and
  - (ii) make such further consequential orders (including as to costs) as it thinks fit.

## Part 6

### Other general powers and protection

#### 38 Information sharing arrangements

- (1) The Head may report financial misconduct to—
- (a) the FSC;
  - (b) the Attorney-General;
  - (c) the Solicitor-General;
  - (d) the Police.
- (2) The Head may share that information as to financial misconduct with third parties.
- (3) Despite subsections (1) and (2), all reporting and information sharing arrangements authorised by this section are subject to the confidentiality requirements imposed by this Act and the oversight acts.
- (4) A person must not disclose any information, except in accordance with this Act, that would directly or indirectly identify—
- (a) an individual who has provided a report or information to the FIU;
  - (b) a person or an entity about whom a report or information was provided under this Act, or who is being investigated by the FIU.
- (5) The Head may disclose a report or information to any department, office, or agency of the Cook Islands Government.
- (6) However, the Head may exercise the powers to share information that are given under this section only if in the Head's opinion, it is necessary or desirable to do so having regard to the powers, functions, and duties of the FIU.

#### 39 Information sharing with counterpart agencies

- (1) The Head may disclose a report or information that relates to financial misconduct to a counterpart agency—
- (a) on the terms and conditions regarding disclosure of that sort that are set out in an agreement or arrangement between the FIU and the counterpart agency; or
  - (b) if there is no agreement or arrangement addressing disclosure, then on terms and conditions agreed upon by the FIU and the counterpart agency at the time of disclosure.
- (2) The information exchanged under subsection (1) must be limited to information that the FIU, or the counterpart agency, has reasonable grounds to believe would be relevant to the investigation or prosecution of financial misconduct.

- (3) The Head, with the approval of the Board, may enter into a formal agreement or arrangement, in writing, with a counterpart agency regarding the exchange of information between the FIU and that counterpart agency.
- (4) Agreements or arrangements entered into under subsection (3) must include the following terms—
  - (a) a restriction on the use of the report or information to purposes that are relevant to investigating or prosecuting financial misconduct; and
  - (b) a stipulation that the report or information be treated as confidential and not be further disclosed without the prior written consent of the FIU.

#### **40 Mutual legal assistance**

- (1) At the request of another counterpart agency, the FIU may—
  - (a) conduct an investigation;
  - (b) make enquiries.
- (2) That other counterpart agency must be lawfully engaged, under the laws of its jurisdiction of origin, to investigate financial misconduct.
- (3) When acting under this section, the FIU may exercise all powers conferred on it by and under this Act.
- (4) The Head may refer the matter to another counterpart agency (whether in the Cook Islands or in another jurisdiction) if the Head forms the view that the matter is more appropriately dealt with by that other agency.
- (5) The Head has no obligation to monitor the matter further once it has been referred to that other agency.

#### **41 Costs of investigation recoverable**

- (1) This section applies if, as the result of an investigation a person is convicted of an offence under—
  - (a) this Act;
  - (b) an oversight act.
- (2) At the time of conviction or at any time afterwards, the Court may order that person to pay the expenses of the investigation to the extent specified by the Court.
- (3) The Court may exercise that power in those proceedings or in any other proceedings (civil or criminal).
- (4) The expenses of the investigation include any sum the FSC may calculate are the costs of its staff and overheads in the investigation.

#### **42 Indemnity**

- (1) No action lies against any protected party in respect of anything done (or not done) in good faith by or under this Act, including—
  - (a) the discharge of any duty;
  - (b) the performance of any function;
  - (c) the exercise of any power.
- (2) In this section each of the following is a **protected party**—
  - (a) any minister of the Crown;

- (b) a person acting on behalf of any minister including the Solicitor-General;
- (c) the FSC;
- (d) a person acting on behalf of the FSC;
- (e) the Head;
- (f) a person appointed by the Head to conduct an investigation under this Act;
- (g) every other person who performs a duty or exercises a power of the FIU under this Act whether as—
  - (i) an allocated employee;
  - (ii) an FIU contractor;
  - (iii) a delegate;
  - (iv) an agent.

#### **43 Overriding of secrecy**

- (1) The following must comply with the disclosure requirements of this Act—
  - (a) a reporting institution; and
  - (b) a respondent within the meaning of Part 3;
  - (c) the Crown; and
  - (d) every instrumentality of the Crown.
- (2) Subsection (1) applies despite any obligation as to secrecy or other restriction on the disclosure of information that may arise under common law or be imposed by any written law except—
  - (a) legal professional privilege;
  - (b) the deliberations of Cabinet.

### **Part 7 Offences**

#### **44 Offence of providing false information under compulsion**

A person commits an offence if that person—

- (a) is compelled by or under this Act to provide information; and
- (b) knowingly or recklessly provides information that is false, misleading or incomplete in a material particular.

#### **45 Offences relating to compulsory provision of information**

A person who has been given a notice to provide information by or under this Act commits an offence if that person without reasonable excuse—

- (a) fails to comply with a requirement imposed on that person by the notice;
- (b) obstructs another person in that person's exercise of a power that is notified in that notice.

#### **46 Offences in relation to investigations**

A person commits an offence if that person does one or more of the following in respect of an investigation under part 3—

- (a) when required to produce a record to the investigator, fails to do so without reasonable excuse:
- (b) when required to produce a record to the investigator, destroys the record or in any other way renders the information it contains incapable of ready access and understanding:
- (c) when required to produce a record to the investigator, alters the record in any way to make the information it contains false, misleading or incomplete in a material way:
- (d) when required to assist or attend before the investigator, fails to do so without reasonable excuse:
- (e) when required to answer a question put to the person by the investigator either—
  - (i) fails to do so without reasonable excuse; or
  - (ii) fails to answer truthfully:
- (f) obstructs the investigator in the exercise of the investigator's powers:
- (g) causes or allows any other person to do any of those things.

**47 Offence of failing to provide information**

A person commits an offence if, without reasonable excuse, that person—

- (a) fails to comply with a requirement imposed on the person in a warrant issued under—
  - (i) section 26:
  - (ii) section 29; or
- (b) obstructs another person exercising powers conferred in the warrant.

**48 Offence of tampering with information**

(1) This section applies to a person who has information and is—

- (a) required to provide that information under section 24:
- (b) required to provide that information under a warrant issued under—
  - (i) section 26:
  - (ii) section 29:
- (c) required to provide that information to an investigator under section 25.

(2) This section also applies to a person who anticipates being required to provide information to an investigator.

(3) A person commits an offence if—

- (a) that person has information; and
- (b) it is reasonable to suspect that information would be relevant to an investigation; and
- (c) the person does any of the following with that information—
  - (i) falsifies it:
  - (ii) conceals it:
  - (iii) destroys it:
  - (iv) disposes of it in any other way:
  - (v) causes or allows any other person to do any of those things.

- (4) In this section—
- (a) if a person renders information incapable of ready access and understanding that information is to be treated as destroyed:
  - (b) if a person alters information so that it becomes false, misleading or incomplete in a material way, that information is to be treated as falsified.

**49 Defence of innocent destruction**

- (1) In the case of information that has been destroyed or disposed of, it is a defence to a charge under any one or more of sections 46, 47, and 48 that the person charged had no intent to deprive an investigator of that information.
- (2) The onus of proving that defence lies on the person charged.

**50 Breach of Forfeiture Order**

- (1) A person commits an offence if that person—
  - (a) fails or refuses to deliver up forfeited property to the Crown as ordered by the Court:
  - (b) fails or refuses to permit the Crown to take possession of forfeited property.
- (2) That person commits an offence under subsection 1(b) by failing or refusing to comply with the request of a police officer who acts under the delegated authority of the Solicitor General.

**51 Penalties for offences**

A person who commits an offence under this Act or regulations is liable on conviction,—

- (a) in the case of an individual, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years, or both; or
- (b) in any other case, to a fine not exceeding \$100,000.

## **Part 8 Other matters**

**52 Act to prevail if conflict with other specified Acts**

This Act prevails if there is a conflict between the provisions of this Act and any of the following acts—

- (a) Trustee Companies Act 2014:
- (b) International Companies Act 1981-82:
- (c) International Partnership Act 1984:
- (d) International Trusts Act 1984:
- (e) Insurance Act 2008:
- (f) Limited Liability Companies Act 2008:
- (g) Money Changing & Remittance Business Act 2009:
- (h) Banking Act 2011:
- (i) Foundations Act 2012:
- (j) Captive Insurance Act 2013:

(k) the oversight acts.

**53 Audit of FIU**

- (1) The FIU is subject to examination and audit by the Director of the Public Expenditure Review Committee and Audit.
- (2) However, the Director's powers do not extend to a right to inspect information that may jeopardise an on-going investigation or prosecution.

**54 Confidential information**

- (1) Confidential information held by the FIU must not be disclosed except as permitted by this section.
- (2) A person who acquires confidential information must not further transmit or disclose that confidential information unless—
  - (a) performing duties or exercising functions under this Act or the oversight acts; or
  - (b) lawfully required to do so by any court.
- (3) A person who wilfully discloses information in breach of subsections (1) and (2) commits an offence.
- (4) The Head must ensure that every allocated employee, FIU contractor and any other person acting on behalf of the FIU takes an oath of confidentiality.
- (5) This section applies to any person who comes into possession of confidential information from the FIU, whether as an allocated employee or FIU contractor or in any other capacity, and both during and after any term of employment, appointment, or engagement with or for the FIU.

**55 Forms**

- (1) The Head may approve forms to deal with any matter of administration or enforcement that arises by or under this Act that is not addressed by this Act or regulations.
- (2) A form approved by the Head is to be treated as authorised by this Act unless it is inconsistent with—
  - (a) this Act or its regulations;
  - (b) an oversight act or its regulations.

*Regulations*

**56 Regulations**

- (1) The Queen's Representative by Order in Executive Council may make regulations to prescribe for 1 or more of the following—
  - (a) forms to be used for the purposes of this Act;
  - (b) the recovery of investigation costs;
  - (c) the circumstances in which the FIU may recover the costs of an investigation and the principles to be applied in fixing those costs;
  - (d) grounds for an exemption from fees or costs recovery, in whole or in part;
  - (e) procedures to be followed in cases of financial misconduct;

- (f) any other subject matter for which regulations are necessary or incidental to the performance of any function or the exercise of any power or duty by any person under this Act.
- (2) The power to make regulations under subsection (1) must be exercised only on the advice of the Minister with the portfolio of Finance, given in accordance with a recommendation of the FSC.

*Consequential amendments*

**57 Amendments to other enactments**

The Acts listed in Schedule 1 are amended as set out in that schedule.

## Schedule 1 Amendments to Acts

### Financial Supervisory Commission Act 2003

Section 35(4) is repealed.

### Financial Transactions Reporting Act 2004

The Long Title is amended by repealing paragraph (a).

Section 2(1) is amended by repealing the definition of “FIU” and substituting the following definition—

“**FIU** means the Financial Intelligence Unit continued in existence by section 6 of the Financial Intelligence Unit Act 2014”.

Section 2(1) is amended by repealing the definition of “Head” and substituting the following definition—

“**Head** means the Head of the FIU appointed under section 8 of the Financial Intelligence Unit Act 2014”.

Part 4 is repealed.

Section 36 is amended by repealing paragraph (d) and substituting the following paragraph:

“(d) Banking Act 2011;”

Section 41(2), (3), and (4) is repealed.

---

This Act is administered by the Financial Supervisory Commission.  
Printed under the authority of the Cook Islands Parliament—2015

---

