



## Financial Transaction Reporting (Maritime Cook Islands) Regulations 2017

His Excellency, Tom Marsters

Queen's Representative

### Order in Executive Council

At Avarua, Rarotonga this *1<sup>st</sup>* day of *December*, 2017

Present:

### His Excellency the Queen's Representative in Executive Council

Pursuant to section 64 of the Financial Transactions Reporting Act 2017, 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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#### Regulations

## Financial Transaction Reporting (Maritime Cook Islands) Regulations 2017

- 1 **Title**  
These regulations are the Financial Transactions Reporting (Maritime Cook Islands) Regulations 2017.
- 2 **Commencement**  
These regulations come into force on the day after the date on which they receive assent.
- 3 **Application**  
These regulations apply to Maritime Cook Islands and any succeeding or subsequent entity that undertakes the same or similar functions, regardless of such entity being an instrument of the Crown or not.
- 4 **Interpretation**  
In these regulations, unless the context otherwise requires,—  
**controlling principal** means—
  - (a) unless paragraph (b) applies the owner of the vessel;
  - (b) a ship manager or bareboat charterer (or any other person) who has assumed responsibility for the operation of the vessel**registration** means provisional or permanent registration of a vessel on the Cook Islands shipping register  
**vessel** means any type of boat or craft used in navigation, whether or not it has any means of propulsion; and includes—
  - (c) a barge, lighter, or other like vessel; or
  - (d) a hovercraft or other thing deriving full or partial support in the atmosphere from the reaction of air against the surface of the water over which it operates; or
  - (e) a submarine or other submersible**specified entity** has the meaning given in section 3 of the Countering Terrorism and the Proliferation of Weapons of Mass Destruction Act 2004  
**reporting institution** means Maritime Cook Islands and any succeeding or subsequent entity(s) that undertakes the same or similar function.

### Part 1

#### Due diligence requirements

- 5 **Due diligence**
  - (1) The reporting institution must establish, maintain and operate adequate procedures to ensure it conducts due diligence on the controlling principal of a vessel before it is registered to determine whether the vessel is connected to a specified entity.
  - (2) The procedures in subsection (1) must ensure that the reporting institution—
    - (a) Obtain adequate due diligence information on the person(s) referred to in subsection (1); and
    - (b) that information is verified on the basis of documents, data, or information issued by a reliable and independent source;

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- (c) that information is reviewed and evaluated for the purpose of identifying whether such is or may be a specified entity.
- (3) The reporting institution must take reasonable steps to understand the nature of business that is, or will be undertaken on the vessel by the controlling principal.
- (4) The requirements under this regulation do not apply to any vessel owned by a company incorporated under the International Companies Act 1981-82.

### 6 Record keeping

- (1) The reporting institution must retain all information obtained under regulation 5 (**records**) for a period of 6 years from the date of its receipt.
- (2) The records must—
  - (a) be in English or kept with an English translation; and
  - (b) have sufficient security and back up procedures
- (3) The records may be kept—
  - (a) in hard copy format or digital format; and
  - (b) outside the Cook Islands, provided a copy of such information to can accessed within 3 working days when requested.

### 7 Reliance on third parties

- (1) The reporting institution may rely on a third party to undertake due diligence and record keeping procedures as required by regulations 5 and 6 if the following requirements are met:
  - (i) the reporting institution obtains sufficient information about the third party to understand fully the nature of its business; and
  - (ii) it determines from publicly available information—
    - (A) the reputation of the third party; and
    - (B) whether it has been subject to investigation or regulatory action in respect of a serious offence; and
  - (iii) it clearly understands and has documented the respective responsibilities of each party; and
  - (iv) is satisfied the third party is able and willing to provide, without unreasonable delay, upon the reporting institution's request any data, documents or information obtained by the third party with respect to the due diligence measures applied, which the reporting institution would be required or would want to obtain.
- (2) Despite anything in clauses (1), the reporting institution relying on the third party to conduct the due diligence and record keeping, and not the third party, is responsible for ensuring that these requirements are carried out in compliance with these regulations.



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**Part 2  
Compliance Requirements**

**8 Ongoing compliance**

- (1) The requirements in these regulations are ongoing.
- (2) The reporting institution must ensure it reviews, updates and maintains as necessary the following—
  - (a) its due diligence and record keeping procedures; and
  - (b) information obtained under regulation 5; and
  - (c) information obtained under regulation 7.

**9 Powers to enforce compliance**

The FIU may exercise its powers under the Financial Intelligence Act 2015 to do 1 or more of the following—

- (a) regulate and enforce compliance with these regulations; or
- (b) carry out functions which relate to investigate financial misconduct; or
- (c) carry out functions which arise under an oversight act.

**10 Reporting to FIU**

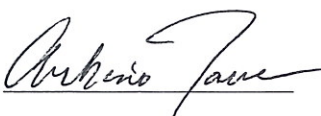
A suspicious activity report must be made to the FIU if the reporting institution has reasonable grounds to suspect the controlling principal of a vessel—

- (a) is a specified entity or is connected to a specified entity; or
- (b) has, or is intending to use the vessel to commit a serious offence; or
- (c) is connected to a List A jurisdiction through 1 or more of the following:
  - (i) being resident or incorporated in; or
  - (ii) being ultimately owned by a person in; or
  - (iii) being their place of business.

**Part 3  
Offences and Penalties**

**11 Offences**

If the reporting institution breaches a requirement of these regulations, that reporting institution commits an offence and is liable to the penalties in section 63 of the Act.

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Clerk of the Executive Council

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These regulations are administered by the Financial Supervisory Commission.

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These regulations were made on the 1<sup>st</sup> day of December 2017.

