

# FINANCIAL TRANSACTIONS REPORTING ACT 2009

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## **FINANCIAL TRANSACTIONS REPORTING**

**An Act to provide for the reporting of certain transactions and the keeping of certain records, and for related purposes.**

### **1) PART 1 – PRELIMINARY**

#### **1. Short title and Commencement**

- 1) This Act may be cited as the Financial Transactions Reporting Act 2009
- 2) This Act comes into force on a date to be determined

#### **2. Definitions**

(1) In this Act, unless the context otherwise requires, -

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

- (a) accepts deposits of currency;
- (b) allows withdrawals of currency;
- (c) pays cheques or payment orders drawn on the reporting institution, or collects cheques or payment orders on behalf of a person other than the reporting institution, and includes any facility or arrangement for a safety deposit box or for any other form of safe deposit;

"business relationship" means a continuing relationship between two or more parties at least one of whom is a reporting institution acting in the course of that reporting institution's business in providing services to that other party;

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

"Court" means the Supreme Court of the Republic of Palau;

"customer" includes -

- (a) a person engaged in a business relationship; or
- (b) the person in whose name a transaction or account is arranged, opened, or undertaken; or
- (c) a signatory to a transaction or account; or 3

- (d) any person to whom a transaction has been assigned or transferred; or
- (e) any person who is authorised to conduct a transaction; or
- (f) any person on whose behalf the account or transaction is being conducted;  
or
- (g) any other person that may be prescribed;

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

"document" means a record of information in any form, including-

- a) a written or printed thing (including a map, plan, graph or drawing); and
- b) a computer file, including a record that is kept in electronic form and can be accessed in the Republic of Palau; and
- c) a photograph; and
- d) a disk, tape, film soundtrack or other thing in which sound or other data is embodied; and
- e) a film, negative, tape or other thing in which a visual image is embodied;
- f) any other means of recoding that may be prescribed

"financing of terrorism" means an offence against section 11 of the Terrorism Suppression Act 2004;

Financial Intelligence Unit means the Financial Intelligence Unit established under the Financial Intelligence Unit Act 2009;

"Minister" means the Minister of Finance;

"money laundering offence" means an offence against section of the Money Laundering and Proceeds of Crime Act 2009;

"Money Laundering Reporting Officer" means a person who -

- (a) is a member of the management of the reporting institution;  
and
- (b) has been approved by the Financial Intelligence Unit after consultation with the Financial Institutions Commission.

"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, senior government, judicial or military official, a senior executive of state owned corporations, and any important political party official and includes the family members or close associates of any such person;

"property" means

- (a) assets of every kind, whether corporeal or incorporeal, moveable or immoveable, tangible or intangible; and
- (b) legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including but not

limited to bank securities, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit

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

"reporting institution" means any person or entity who conducts as a business one or more of the following activities for or on behalf of a customer -

- (a) accepting deposits and other repayable funds from the public or banking business as defined in the Banking Act ???;
- (b) lending, including consumer credit, mortgage credit, factoring (with or without recourse), and financing of commercial transaction;
- (c) financial leasing;
- (d) providing transfer of money or value, including:
  - (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;
- (e) issuing and administering means of payment (for example, credit cards, travellers' cheques and bankers' drafts);
- (f) entering into or issuing guarantees and commitments;
- (g) trading in money market instruments (for example cheques, bills, certificates of deposit), foreign exchange, financial and commodity futures and options, exchange and interest rate instruments, and transferable securities;
- (h) participation in securities issues and the provision of financial services related to those issues;
- (i) money-broking;
- (j) providing portfolio management and advice;
- (k) safekeeping and administration of cash, liquid investments and securities;
- (l) providing safe custody services;
- (m) underwriting or placement of life insurance and other investment related insurance, including insurance intermediation;
- (n) trustee administrator or investment manager of a superannuation scheme but excluding closed-ended schemes;
- (o) dealing in bullion;

- (p) operating a gambling house, casino or lottery, including an operator who carries on operations through the internet;
- (q) acting as a trust or company service provider, including acting as a trustee company as defined in the Trustee Companies Act 1981, in relation to:
  - (i) the formation or management of legal persons;
  - (ii) acting as (or arranging for another person to act as) a director or secretary of a company, a partner in a partnership or a similar position in relation to some other legal persons or arrangements;
  - (iii) providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or some other legal persons or arrangements;
  - (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;
- (r) acting as a lawyer, a notary or some other independent legal profession, or an accountant, when they prepare or carry out transactions for their clients in relation to –
  - (i) buying and selling of real estate;
  - (ii) management of client money, securities or other assets;
  - (iii) management of bank, savings or securities accounts;
  - (iv) organisation of contributions for the creation, operation or management of companies; or
  - (v) creation, operation or management of legal persons or arrangements, and buying and selling of business entities;
- (s) dealing in real estate
- (t) dealing in motor vehicles or high-value items above a prescribed threshold, including antiques, pearls, precious stones and precious metals;
- (u) otherwise investing, administering or managing funds or money on behalf of another person;
- (v) money and currency changing;
- (w) acting as investment advisers;
- (x) any other legal entity that is registered or incorporated in the Republic of Palau pursuant to the Companies Act ??? and carrying on any type of business referred to in this subsection;
- (y) any other business that may be prescribed by the Minister;

“serious offence” means –

- a) Acts or omissions that constitute an offence against the law of the Republic of Palau punishable by imprisonment for not less than 12 months or the imposition of a fine of more than \$5,000; or
- b) Acts or omissions that constitute an offence against the law of another country that, had those acts or omissions occurred in the Republic of Palau, they would have constituted an offence against the law of the Republic of Palau punishable by imprisonment for not less than 12 months or the imposition of a fine of more than \$5,000;

“supervisory authority” means any institution or authority established in the Republic of Palau to regulate or supervise a reporting institution;

“suspicious transaction report” means a report required to be made under section...of this Act

### **3. Meaning of transaction**

- (1) A transaction means any deposit, withdrawal, exchange or transfer of funds (in whatever currency) whether:
  - (a) in cash; or
  - (b) by cheque, payment order or other instrument; or
  - (c) by electronic or other non-physical means.
- (2) Without limiting subsection (1), a transaction includes any payment made in satisfaction, in whole or in part, of any contractual or other legal obligation.
- (3) Without limiting subsection (1), a transaction includes the following:
  - (a) the opening of an account;
  - (b) the use of a safety deposit box or any other form of safe deposit;
  - (c) the entering into of a fiduciary relationship;such other transactions as may be prescribed.

### **4. Application**

- (1) This Act applies in relation to a transaction conducted by a reporting institution on or after the commencement of this Act.
- (2) A reporting institution must comply with the provisions of this Act, despite any other Act or law to the contrary.

## **PART 2 – OBLIGATION TO REPORT SUSPICIOUS TRANSACTIONS**

### **5. Reporting institutions to report suspicious transactions**

- (1) This section applies if a reporting institution suspects that a transaction or attempted transaction is or may be relevant to:
  - (a) the detection, investigation or prosecution of a person for a money laundering offence, a financing of terrorism offence or any other serious offence; or
  - (b) the commission of a money laundering offence, a financing of terrorism offence or any other serious offence; or
  - (c) an act preparatory to a money laundering or financing of terrorism offence; or
  - (d) the enforcement of this Act, the Money Laundering and Proceeds of Crime Act 2009 and the Counter-Terrorism Act 2007 or any other Act prescribed by the regulations.

- (2) The reporting institution must prepare a report of the transaction or attempted transaction and send the report to the Financial Intelligence Unit as soon as possible, but no later than 2 working days after forming the suspicion.
- (3) If a reporting institution fails without reasonable excuse to comply with subsection (1), the reporting institution is guilty of an offence punishable on conviction:
  - (a) in the case of an individual – by a fine not exceeding \$250,000 or imprisonment for a term not exceeding 5 years, or both; or
  - (b) in the case of a body corporate – by a fine not exceeding \$ 1 million.

#### **6. Transactions by prescribed entities**

- (1) If a prescribed entity conducts or seeks to conduct a transaction through or by using a reporting institution (whether or not the transaction or attempted transaction involves cash), such transaction or attempted transaction is deemed to be a suspicious transaction.
- (2) The reporting institution must prepare a report of the transaction or attempted transaction and send it to the Financial Intelligence Unit established by the Financial Intelligence Unit Act 2009 as soon as possible, but not later than 24 hours after becoming aware of the transaction.
- (3) If a reporting institution fails without reasonable excuse to comply with subsection (2), the reporting institution is guilty of an offence punishable on conviction:
  - (a) in the case of an individual – by a fine not exceeding \$ 250,000 or imprisonment for a term not exceeding 5 years, or both; or
  - (b) in the case of a body corporate - by a fine not exceeding \$ 1 million.

#### **7. Transactions involving terrorist property**

- (1) This section applies if a reporting institution has information in its possession concerning any transaction or attempted transaction which it suspects involves terrorist property, property linked to terrorists or terrorist organisations.
- (2) The reporting institution must report the transaction or attempted transaction, and the information, to the Financial Intelligence Unit as soon as possible, but no later than 2 working days after forming the suspicion.
- (3) If a reporting institution fails without reasonable excuse to comply with subsection (2), the reporting institution is guilty of an offence punishable on conviction:
  - (a) in the case of an individual – by a fine not exceeding \$ 250,000 or imprisonment for a term not exceeding 5 years, or both; or
  - (b) in the case of a body corporate – by a fine not exceeding \$ 1 million.

#### **8. Reporting institutions to report certain transactions with no legitimate purpose**

- (1) This section applies if a reporting institution suspects that a transaction or attempted transaction:
  - (a) is complex, unusual or large and does not have any apparent or visible economic or lawful purpose; or
  - (b) is part of an unusual pattern of transactions that does not have any apparent or visible economic or lawful purpose.

- (2) The reporting institution must prepare a report of the transaction or attempted transaction and give the report to the Financial Intelligence Unit as soon as possible, but no later than 2 working days after forming the suspicion.
- (3) If a reporting institution fails without reasonable excuse to comply with subsection (1), the reporting institution is guilty of an offence punishable on conviction:
  - (a) in the case of an individual – by a fine not exceeding \$ 250,000 or imprisonment for a term not exceeding 5 years, or both; or
  - (b) in the case of a body corporate – by a fine not exceeding \$ 1 million.

### **9. Supervisory body or auditor to report suspicious transactions**

- (1) This section applies if a supervisory body or an auditor of a reporting institution has reasonable grounds to suspect that a transaction or an attempted transaction, or information that it has in its possession concerning any transaction or attempted transaction, is or may be relevant to:
  - (a) the detection, investigation or prosecution of a person for a money laundering offence, a financing of terrorism offence or any other serious offence; or
  - (b) the commission of a money laundering offence, a financing of terrorism offence or any other serious offence; or
  - (c) an act preparatory to a financing of terrorism offence; or
  - (d) the enforcement of this Act, the Money Laundering and Proceeds of Crime Act 2009, the Counter-Terrorism Act 2007 or any other Act prescribed by the regulations.
- (2) The supervisory body or the auditor of the reporting institution must report the transaction or attempted transaction, or the information, to the Financial Intelligence Unit as soon as possible, but no later than 2 working days after forming the suspicion.
- (3) If a person fails without reasonable excuse to comply with subsection (2), the person is guilty of an offence punishable on conviction:
  - (a) in the case of an individual – by a fine not exceeding \$ 250,000 or imprisonment for a term not exceeding 5 years, or both; or
  - (b) in the case of a body corporate – by a fine not exceeding \$ 1 million.

### **10. Form and content of reports**

- (1) A report under section 5, 6, 7, 8 or 9 must:
  - (a) subject to subsection (2), be in the prescribed form and may be given by way of fax or electronic mail; and
  - (b) contain a statement of the grounds on which the person making the report:
    - (i) in the case of a report under section 5, 7, 8 or 9, holds the suspicion; or
    - (ii) in the case of a report under section 6, became aware of the transaction; and
  - (c) be signed or otherwise authenticated by the person making the report.
- (2) A report may be made orally, including by telephone, but a written report must be prepared in accordance with subsection (1) within 24 hours after the oral report is made.
- (3) If a person fails without reasonable excuse to comply with subsection (1) or (2), the reporting institution is guilty of an offence punishable on conviction:



- (a) in the case of an individual – by a fine not exceeding \$ 250,000 or imprisonment for a term not exceeding 2 years, or both; or
- (b) in the case of a body corporate – by a fine not exceeding \$ 1 million.

**11. Additional information**

- (1) This section applies to a person if the person has made a report or provided information about a transaction or attempted transaction under section 5, 6, 7, 8 or 9 to the Financial Intelligence Unit.
- (2) The person must give to the Financial Intelligence Unit any further information that the person has about the transaction or attempted transaction, or the parties to the transaction if requested to do so by the Financial Intelligence Unit.
- (3) If the person fails without reasonable excuse to comply with subsection (2), the person is guilty of an offence punishable on conviction:
  - (a) in the case of an individual – by a fine not exceeding \$ 250,000 or imprisonment for a term not exceeding 2 years, or both; or
  - (b) in the case of a body corporate – by a fine not exceeding \$ 1 million.”

**12. Disclosure of reports and other information**

- (1) A person must not disclose to any other person:
  - (a) that a reporting institution, or the supervisory body or auditor of a reporting institution, has formed a suspicion in relation to a transaction or an attempted transaction; or
  - (b) that a report under this Act has been, or is likely to be, made to the Financial Intelligence Unit; or
  - (c) that information under this Act has been, or is likely to be, given to the Financial Intelligence Unit; or
  - (d) any other information from which the person to whom the information is disclosed could reasonably be expected to infer any of the circumstances in paragraph (a), (b) or (c).
- (2) Subsection (1) does not apply to a disclosure made to:
  - (a) an officer, employee or agent of a person who has made or is required to make a report or provide information under this Act for any purpose connected with the performance of that person's duties; or
  - (b) a lawyer for the purpose of obtaining legal advice or representation in relation to the disclosure; or
  - (c) the supervisory body of the relevant reporting institution; or
  - (d) an assisting entity or any other person by the Financial Intelligence Unit under this Act.
- (3) A person referred to in subsection (2)(b) to whom information to which subsection (1) applies has been disclosed must not disclose that information except to another person of the kind referred to in that paragraph, 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 disclosure.
- (4) Nothing in this section prevents the disclosure of any information in connection with, or in the course of, proceedings before a court if the court is satisfied that the disclosure of the information is necessary in the interests of justice.

- (5) If a person contravenes subsection (1), the person is guilty of an offence punishable on conviction:
- (a) in the case of an individual – by a fine not exceeding \$ 250,000 or imprisonment for a term not exceeding 5 years, or both;
  - (b) in the case of a body corporate – by a fine not exceeding \$ 1 million.
- (6) If a person contravenes subsection (1):
- (a) with intent to prejudice an investigation of a money laundering offence, a financing of terrorism offence or another serious offence; or
  - (b) for the purpose of obtaining directly or indirectly an advantage or a pecuniary gain for himself or herself or any other person;
- the person is guilty of an offence punishable on conviction:
- (c) in the case of an individual – by a fine not exceeding \$250,000 or imprisonment for a term not exceeding 10 years, or both; or
  - (d) in the case of a body corporate – by a fine not exceeding \$ 2 million.

### **13. Protection of identity of persons and information in suspicious transaction and other reports**

- (1) A person must not disclose any information that identifies or is likely to identify any person who has:
- (a) handled a transaction in respect of which a suspicious transaction report or other report under this Act has been made; or
  - (b) prepared a suspicious transaction report or other report under this Act; or
  - (c) given a suspicious transaction report or other report under this Act, or information under this Act, to the Financial Intelligence Unit;
- except for the purposes set out in subsection (2).
- (2) The purposes are:
- (a) the detection, investigation or prosecution of a person for a money laundering offence, a financing of terrorism offence or any other serious offence; or
  - (b) the enforcement of this Act, the Money Laundering and Proceeds of Crime Act 2009, the Counter-Terrorism Act 2007 or any other Act prescribed by the regulations.
- (3) Nothing in this section prevents the disclosure of any information in connection with, or in the course of, proceedings before a court if the court is satisfied that the disclosure of the information is necessary in the interests of justice.
- (4) If a person contravenes subsection (1), the person is guilty of an offence punishable on conviction:
- (a) in the case of an individual – by a fine not exceeding \$ 250,000 or imprisonment for a term not exceeding 5 years, or both; or
  - (b) in the case of a body corporate – by a fine not exceeding \$ 1 million.”

### **14. Protection of persons reporting suspicious transactions**

- (1) No civil or criminal proceedings are to be taken against:
- (a) a reporting institution; or
  - (b) an officer, employee or agent of the reporting institution acting in the course of that person's employment or agency;

in relation to any action by the reporting institution or the officer, employee or agent taken under this Part in good faith or in compliance with a direction give by the Financial Intelligence Unit under this Act.

- (2) Subsection (1) does not apply in respect of proceedings for an offence against a section in this Part.

#### **15. Protection of auditor and supervisory body**

- (1) No civil or criminal proceedings are to be taken against:

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

in relation to any action by the auditor or the supervisory body or the officer, employee or agent taken under this Part in good faith or in compliance with a direction given by the Financial Intelligence Unit under section this Act.

- (2) Subsection (1) does not apply in respect of proceedings for an offence against a section in this Part.

#### **16. False or misleading statements**

If a person in making a report or providing information required under this Part:

- (a) makes any statement that the person knows is false or misleading in a material particular; or
- (b) omits from any statement any matter or thing without which the person knows that the statement is false or misleading in a material particular;

the person is guilty of an offence punishable on conviction:

- (c) in the case of an individual – by a fine not exceeding \$ 250,000 or imprisonment for a term not exceeding 2 years, or both; or
- (d) in the case of a body corporate – by a fine not exceeding \$ 1 million.

#### **17. Legal professional privilege**

- (1) Nothing in this Act requires a lawyer or notary to disclose information which is subject to legal professional privilege.

- (2) For the purposes of this Act, a communication is privileged communication if:

- (a) it is a confidential communication, whether orally or in writing between:
  - (i) a lawyer or notary in his or her professional capacity and another lawyer or notary in such capacity; or
  - (ii) a lawyer or notary in his or her professional capacity and his or her client, whether made directly or indirectly through an agent; and
- (b) it is made for the purpose of obtaining or giving legal advice or assistance; and
- (c) it is not made for the purpose of committing or furthering the commission of a serious offence.

#### **18. Other preventative measures by reporting institutions**

- (1) A reporting institution must establish and maintain internal procedures:

- (a) to make the institution's officers and employees aware of the laws in The Republic of Palau about money laundering and financing of terrorism; and

- (b) to make the institution's officers and employees aware of the procedures, policies and audit systems adopted by the institution to deal with money laundering and financing of terrorism; and
  - (c) to train the institution's officers and employees to recognise and deal with money laundering and financing of terrorism.
- (2) A reporting institution must establish and maintain internal procedures:
  - (a) to implement the reporting requirements under this Part and Part 2A; and
  - (b) to implement the customer identification requirements, record keeping and retention requirements under Part 3.
- (3) A reporting institution must:
  - (a) appoint a person as a compliance officer who is responsible for ensuring the reporting institution's compliance with the requirements of this Act and the regulations; and
  - (b) establish an audit function to test its anti-money laundering and financing of terrorism procedures and systems.
- (4) A person may be appointed as a compliance officer on a full time or part time basis and may be an existing member of staff.
- (5) Subsections (1) to (4) 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.
- (6) A reporting institution must give the Financial Intelligence Unit a copy of its internal procedures referred to in subsections (1) and (2) if requested to do so in writing by the Financial Intelligence Unit.
- (7) If a reporting institution contravenes subsection (1), (2), (3) or (6), the reporting institution is guilty of an offence punishable on conviction:
  - (a) in the case of an individual – by a fine not exceeding \$ 1 million or imprisonment for a term not exceeding 1 years, or both; or
  - (b) in the case of a body corporate - by a fine not exceeding \$ 5 million.

## **PART 2 – FINANCIAL TRANSACTIONS REPORTING**

### **19. Reporting institution to report financial transactions**

- (1) A reporting institution must report to the Financial Intelligence Unit:
  - (a) any single transaction of an amount in cash exceeding \$ 10,000 or its equivalent in a foreign currency, or such other amount as may be prescribed, unless the originator and beneficiary of the transaction are reporting institutions carrying on the business set out in section 2(b) of this Act (relating to a meaning of reporting institution) and acting on their own behalf; and
  - (b) the transmission out of the Republic of Palau of an electronic or other funds transfer of an amount exceeding \$ 10,000 or its equivalent in a foreign currency, or such other amount as may be prescribed, in the course of a single transaction; and
  - (c) the receipt from outside the Republic of Palau of an electronic or other funds transfer of an amount exceeding \$ 10,000 or its equivalent in a foreign currency, or such other amount as may be prescribed, in the course of a single transaction.

- (2) Subsection (1)(b) does not apply if the reporting institution sends an electronic or other funds transfer to a person in the Republic of Palau, even if the final recipient is outside the Republic of Palau.
- (3) Subsection (1)(c) does not apply if the reporting institution receives an electronic or other funds transfer from a person in the Republic of Palau, even if the initial sender is outside the Republic of Palau.
- (4) The report must:
  - (a) be in the prescribed form and may be given by way of fax, electronic mail or other means; and
  - (b) be signed or otherwise authenticated by the reporting institution; and
  - (c) be given:
    - (i) in the case of a transaction or transfer in dollars, within 15 days after the transaction or transfer is made; and
    - (ii) in the case of a transaction or transfer in a foreign currency, within 2 days after the transaction or transfer is made.
- (5) If a reporting institution contravenes subsection (1) or (4), the reporting institution is guilty of an offence punishable on conviction:
  - (a) in the case of an individual – by a fine not exceeding \$ 250,000 or imprisonment for a term not exceeding 2 years, or both; or
  - (b) in the case of a body corporate – by a fine not exceeding \$ 1 million.
- (6) The Financial Intelligence Unit may on the application of a reporting institution exempt in writing the reporting of transactions referred to in subsection (1)(a) if the transactions are deposits or withdrawals by an established customer of a reporting institution using an account of the customer with the reporting institution.

## **20. Avoidance of section 19**

- (1) This section applies to a person who conducts two or more transactions or electronic or other funds transfers that are of an amount below the threshold set out in section 19 (a), (b) or (c).
- (2) If the person conducts the transactions or transfers for the sole or dominant purpose of ensuring, or attempting to ensure, that a report in relation to the transactions or transfers will not be made under section 19 (1), the person is guilty of an offence punishable on conviction:
  - (a) in the case of an individual – by a fine not exceeding \$ 250,000 or imprisonment for a term not exceeding 2 years, or both; or
  - (b) in the case of a body corporate – by a fine not exceeding \$ 1 million.
- (3) Without limiting subsection (2), the following may be taken into account by a court in deciding whether a person has committed an offence against that subsection:
  - (a) the manner and form in which the transactions or transfers were conducted;
  - (b) the value of the currency involved in each transaction or transfer;
  - (c) the aggregate value of the currency involved in the transactions or transfers;
  - (d) the period of time over which the transactions or transfers occurred;
  - (e) the interval of time between the transactions or transfers;
  - (f) the locations at which the transactions or transfers were initiated or conducted;

- (g) any explanation made by the persons concerned as to the manner or form in which the transactions or transfers were conducted.

### **PART 3 – OBLIGATIONS TO KEEP RECORDS AND VERIFY IDENTITY**

#### **21. Reporting institutions to keep records**

- (1) A reporting institution must keep such records of every transaction that is conducted through the reporting institution as are reasonably necessary to enable the transaction to be readily reconstructed at any time by the Financial Intelligence Unit.
- (2) Without limiting subsection (1), such records must contain the following information:
  - (a) the nature of the transaction;
  - (b) the amount of the transaction and the currency in which it was denominated;
  - (c) the date on which the transaction was conducted;
  - (d) the name, address and occupation, business or principal activity, as the case requires, of each person:
    - (i) conducting the transaction; and
    - (ii) for whom, or for whose ultimate benefit, the transaction is being conducted, if the reporting institution has reasonable grounds to believe that the person is undertaking the transaction on behalf of any other person;
  - (e) the type and identifying number of any account with the reporting institution involved in the transaction;
  - (f) if the transaction involves a negotiable instrument other than currency:
    - (i) the drawer of the instrument; and
    - (ii) the name of the institution on which it is drawn; and
    - (iii) the name of the payee (if any); and
    - (iv) the amount and date of the instrument; and
    - (v) the number (if any) of the instrument and details of any endorsements appearing on the instrument;
  - (g) the name and address of the reporting institution, and of each officer, employee or agent of the reporting institution who prepared the relevant record or a part of the record;
  - (h) such other information as may be prescribed.
- (3) A reporting institution must keep the records for a period of 6 years after the completion of the transaction.
- (4) If a reporting institution contravenes subsection (1) or (3), the reporting institution is guilty of an offence punishable on conviction:
  - (a) in the case of an individual – by a fine not exceeding \$ 250,000 or imprisonment for a term not exceeding 2 years, or both; or
  - (b) in the case of a body corporate - by a fine not exceeding \$ 1 million.

#### **22. Records in relation to reports and certain enquiries**

- (1) In addition to the requirements under section 21, a reporting institution must keep:
  - (a) a record of any suspicious transaction report or other report made under Part 2 by the reporting institution to the Financial Intelligence Unit; and

- (b) a record of any enquiry relating to money laundering or the financing of terrorism made by the reporting institution to the Financial Intelligence Unit.
- (2) A reporting institution must keep the records referred to in subsection (1) for a period of 5 years after the date on which the report or the enquiry was made.
- (3) If a reporting institution contravenes subsection (1) or (2), the reporting institution is guilty of an offence punishable on conviction:
  - (a) in the case of an individual – by a fine not exceeding \$ 250,000 or imprisonment for a term not exceeding 2 years, or both; or
  - (b) in the case of a body corporate – by a fine not exceeding \$ 1 million.

**23. Form in which records to be kept**

- (1) Records under sections 9 and 9A must:
  - (a) subject to subsection (2), be kept in a machine-readable form; and
  - (b) be kept with appropriate back-up and recovery procedures.
- (2) Records may be kept in an electronic form if a paper copy can be readily produced.

**24. Records to be made available**

A reporting institution must make available any of its records referred to in section 21 and 22 to the Financial Intelligence Unit if requested to do so in writing by the Financial Intelligence Unit.

**25. Reporting institutions to monitor transactions**

- (1) A reporting institution must:
  - (a) conduct ongoing due diligence on its relationship with each of its customers; and
  - (b) conduct ongoing scrutiny of any transaction undertaken by each of its customers to ensure that the transaction being conducted is consistent with the reporting institution's knowledge of the customer, the customer's business and risk profile, including where necessary, the source of funds.
- (2) A reporting institution must pay special attention to:
  - (a) business relations and transactions with persons in jurisdictions that do not have adequate systems in place to prevent or deter money laundering or the financing of terrorism; and
  - (b) electronic funds transfers, other than an electronic funds transfer referred to in this Act, that do not contain complete originator information.
- (3) In relation to subsections (1) and (2), a reporting institution must:
  - (a) examine as far as possible the background and purpose of the transactions, business relations and transfers, and record its findings in writing; and
  - (b) upon a request in writing by the Financial Intelligence Unit, make available such findings to the Financial Intelligence Unit or an assisting entity, to assist the Financial Intelligence Unit or the assisting entity in any investigation relating to a money laundering offence, a financing of terrorism offence or any other serious offence.
- (4) If a reporting institution fails to comply with a request under subsection (3) (b), the reporting institution is guilty of an offence punishable on conviction:
  - (a) in the case of an individual – by a fine not exceeding \$ 500,000 or imprisonment for a term not exceeding 1 year, or both; or

- (b) in the case of a body corporate – by a fine not exceeding \$ 1 million.

**25. Originator information**

- (1) A reporting institution must include accurate originator information on an electronic funds transfer and on any other form of funds transfer, and such information is to remain with the transfer.
- (2) Subsection (1) does not apply to an electronic funds transfer that results from a transaction carried out using a credit or debit card if the credit or debit card number is included in the information accompanying such a transfer.
- (3) Despite subsection (2), if a money transfer is effected from the use of a credit or debit card as means of payment, then subsection (1) does apply to the transfer.
- (4) Subsection (1) does not apply to an electronic funds transfer or settlement between reporting institutions where the originator and beneficiary of the funds transfer are reporting institutions acting on their own behalf.
- (5) If a reporting institution contravenes subsection (1), the reporting institution is guilty of an offence punishable on conviction:
  - (a) in the case of an individual – by a fine not exceeding \$ 500,000 or imprisonment for a term not exceeding 1 year, or both; or
  - (b) in the case of a body corporate – by a fine not exceeding \$ 1 million.”

**26. Reporting institutions to verify customers' identity**

- (1) If a person:
  - (a) opens an account with a reporting institution; or
  - (b) engages the services of a reporting institution or enters into a business relationship with a reporting institution;the reporting institution must identify and verify the identity of the person.
- (2) If a person conducts or attempts to conduct a transaction through or by using a reporting institution, the reporting institution must identify and verify the identity of the person.
- (3) If:
  - (a) a person conducts or attempts to conduct a transaction through or by using a reporting institution; and
  - (b) the reporting 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 (2), the reporting institution must identify and verify the identity of the other person or persons for whom, or for whose ultimate benefit, the transaction is being conducted.
- (4) If a reporting institution contravenes subsection (1), (2) or (3), the reporting institution is guilty of an offence punishable on conviction:
  - (a) in the case of an individual – by a fine not exceeding \$ 250,000 or imprisonment for a term not exceeding 2 years, or both; or
  - (b) in the case of a body corporate – by a fine not exceeding \$ 1 million.

**27. Customer identification – other situations**

- (1) A reporting institution must identify and verify the identity of a customer if the reporting institution:



- (a) carries out an electronic funds transfer for the customer, other than an electronic funds transfer referred to in section 25(2) or (4); or
  - (b) suspects the customer is involved in a money laundering offence or a financing of terrorism offence; or
  - (c) has doubts about the veracity or adequacy of the customer identification and verification documentation or information it had previously obtained.
- (2) If a reporting institution contravenes subsection (1), the reporting institution is guilty of an offence punishable on conviction:
- (a) in the case of an individual – by a fine not exceeding \$ 250,000 or imprisonment for a term not exceeding 2 years, or both; or
  - (b) in the case of a body corporate – by a fine not exceeding \$ 1 million.

## **28. Exceptions**

Sections 26(2) and (3), and section 27(1)(a) do not apply:

- (a) if the person conducting the transaction is a reporting institution that is subject to prudential regulation by the Financial Intelligence Unit or the Republic of Palau Financial Institutions Commission; or
- (b) if the transaction is part of an established business relationship with a person and the person has already produced satisfactory evidence of identity, unless the reporting institution suspects the transaction is suspicious or unusual; or
- (c) if the transaction is an occasional transaction not exceeding \$ 10,000 or such other amount as is prescribed, other than an electronic funds transfer, unless the reporting institution suspects the transaction is suspicious or unusual.

## **29. Identification details**

(1) Without limiting section 26 or 27, a reporting institution must:

- (a) if the customer is an individual, adequately identify and verify his or her identity, including obtaining information relating to:
  - (i) the individual's name, address and occupation; and
  - (ii) the national identity card or passport or other applicable official identifying document; and
- (b) if the customer is a legal entity, adequately verify its legal existence and structure, including obtaining information relating to:
  - (i) the customer's name, legal form, address and its directors; and
  - (ii) the principal owners and beneficiaries and control structure; and
  - (iii) provisions regulating the power to bind the entity; and
  - (iv) the authorisation of any person purporting to act on behalf of the customer, and identify the persons; and
- (c) when entering into a business relationship, obtain information on the purpose and intended nature of the business relationship.
- (d) 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 reporting institution must:
  - (i) take reasonable measures to establish the source of wealth and funds; and

- (ii) obtain the approval of senior management before establishing a business relationship with the customer; and
- (iii) conduct regular and ongoing enhanced monitoring of the business relationship.

### **30. Cross border correspondent banking**

(1) This section applies to a reporting institution if the institution carries out cross border correspondent banking or has other similar relationships.

(2) The reporting institution must, in addition to its other obligations under this Act, do all of the following:

- (a) adequately identify and verify the person with whom it conducts such a business relationship;
- (b) gather sufficient information about the nature of the business of the person;
- (c) determine from publicly available information the reputation of the person and the quality of supervision the person is subject to;
- (d) assess the person's anti-money laundering and terrorist financing controls;
- (e) obtain approval from senior management before establishing a new correspondent relationship;
- (f) document the responsibilities of the reporting institution and the person.

(3) If the reporting institution allows the person with whom it carries out cross border correspondent banking relationship to establish accounts in the reporting institution for use by that person's customers, the reporting institution must, in addition to its other obligations under this Act, be satisfied that that person:

- (a) has verified the identity of and is performing on-going due diligence on that person's customers that have direct access to accounts of the reporting institution; and
- (b) will be able to provide to the reporting institution customer identification data of the customers referred to in this subsection upon request.

### **31. Intermediaries or third parties**

If a reporting institution relies on an intermediary or a third party to undertake its obligations under any provision of this Part, or to introduce business to it, the reporting institution must:

- (a) satisfy itself that the intermediary or third party is regulated and supervised, and has measures in place to comply with the requirements set out in this Part; and
- (b) ensure that copies of identification data and other relevant documentation relating to the requirements set out in this Part will be made available to it from the intermediary or the third party upon request without delay; and
- (c) immediately obtain the information required by this Part.

### **32. Means to identify and verify identity of customers**

(1) A reporting institution must:

- (a) identify a customer on the basis of official or other identifying documents; and
- (b) verify the identity of a customer on the basis of reliable and independent source documents, data or information, or such other evidence as is reasonably capable of verifying the identity of the customer.

(2) The regulations may prescribe all or any of the following:

- (a) the official or identifying documents, or the reliable and independent source documents, data or information or other evidence that is required for identification or verification of any particular customer or class of customers;
  - (b) the timing of the identification and verification requirements of any particular customer or class of customers;
  - (c) the threshold for, or the circumstances in which, the provisions of this Part apply in relation to any particular customer or class of customers.
- (3) If a reporting institution contravenes subsection (1), the reporting institution is guilty of an offence punishable on conviction:
- (a) in the case of an individual – by a fine not exceeding \$ 500,000 or imprisonment for a term not exceeding 1 year, or both; or
  - (b) in the case of a body corporate – by a fine not exceeding \$ 1 million.

**33. Necessity of identification to conduct transaction**

- (1) If satisfactory evidence of the identity of a person is not produced to or obtained by a reporting institution under this Part, the reporting institution must prepare a suspicious transaction report of any transaction attempted to be conducted by the person and give it to the Financial Intelligence Unit as if the transaction were a suspicious transaction under section 5.
- (2) The reporting institution must not proceed any further with the transaction unless directed to do so by the Financial Intelligence Unit.
- (3) If a reporting institution contravenes subsection (1) or (2), the reporting institution is guilty of an offence punishable on conviction:
- (a) in the case of an individual – by a fine not exceeding \$ 250,000 or imprisonment for a term not exceeding 2 years, or both; or
  - (b) in the case of a body corporate – by a fine not exceeding \$ 1 million.

**34. Reporting institutions to maintain account in true name**

- (1) A reporting institution must maintain an account in the true name of the account holder.
- (2) A reporting institution must not open, operate or maintain any anonymous account or any account which is in a fictitious, false or incorrect name.
- (3) If a reporting institution contravenes subsection (1) or (2), the reporting institution is guilty of an offence punishable on conviction:
- (a) in the case of an individual – by a fine not exceeding \$ 250,000 or imprisonment for a term not exceeding 2 years, or both; or
  - (b) in the case of a body corporate – by a fine not exceeding \$ 1 million.

**35. Reporting institution to retain customers' records**

- (1) A reporting institution must retain:
- (a) if evidence of a person's identity ("the identified person") is obtained under this Part – a record that indicates the kind of evidence that was obtained, and comprises either a copy of the evidence or information that enables a copy of it to be obtained; and
  - (b) a record of all correspondence between the identified person and the reporting institution.
- (2) The records mentioned in subsection (1) must be retained for a period of 6 years after the evidence was obtained or the date of the correspondence, as the case requires.

- (3) If a reporting institution contravenes subsection (1) or (2), the reporting institution is guilty of an offence punishable on conviction:
- (a) in the case of an individual – by a fine not exceeding \$250,000 or imprisonment for a term not exceeding 2 years, or both; or
  - (b) in the case of a body corporate - by a fine not exceeding \$ 1 million.

## **PART 5 – OTHER MATTERS**

### **36. Opening accounts in false names etc.**

- (1) A person must not open or operate an account with a reporting institution in a false, fictitious or incorrect name.
- (2) If a person is commonly known by two or more different names, the person must not use one of those names in opening an account with a reporting institution unless the person has previously disclosed the other name or names to the reporting institution.
- (3) If a person using a particular name in his or her dealings with a reporting institution discloses to it a different name or names by which he or she is commonly known, the reporting institution must make a record of the disclosure and must give the Financial Intelligence Unit a copy of that record if requested to do so in writing by the Financial Intelligence Unit.
- (4) For purposes of this section, a person opens an account in a false name if:
- (a) 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; or
  - (b) 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 reporting institution concerned or otherwise) and, in doing so, uses a name other than a name by which the person is commonly known.
- (5) If a person contravenes subsection (1) or (2), the person is guilty of an offence punishable on conviction by:
- (a) in the case of an individual – imprisonment for a term of not more than 1 years imprisonment or a fine of not more than \$ 500,000, or both; or
  - (b) in the case of a body corporate – a fine of not more than \$ 1 million.

### **37. Immunity**

No civil or criminal proceedings are to be taken against the Attorney General, the Manager or any member or agent of the Financial Intelligence Unit or any person acting under the direction of the Attorney General or the Manager for any act done or omission made in good faith in the discharge or purported discharge of any of the Financial Intelligence Unit's powers, duties or functions under this Act.

### **38. Overriding of secrecy**

- (1) A reporting institution and an officer, employee or agent of the reporting institution must comply with the requirements of this Act despite any obligation as to secrecy or other restriction on the disclosure of information imposed by any written law or otherwise.
- (2) No civil or criminal proceedings are to be taken against a reporting institution or an officer, employee or agent of the reporting institution for complying with its or his or her obligations under this Act despite any written law to the contrary.

### **39. Liability of directors or officers of bodies corporate**

- 1) If a body corporate is convicted of an offence under this Act, any director or officer concerned in the management of the body corporate is guilty of the offence if it is proved that the act or omission that constituted the offence took place with his or her knowledge, authority, permission, or consent.
- 2) Criminal proceedings may be taken against any director or officer of a body corporate without the body corporate being convicted of an offence

**40. Regulations**

The Minister may make regulations consistent with this Act:

- (a) for or with respect to any matter that by this Act is required or permitted to be prescribed; or
- (b) that is necessary or convenient to be prescribed for carrying out or giving effect to this Act