



**FINANCIAL SUPERVISORY COMMISSION**

**OF THE**

**COOK ISLANDS**

**ANNUAL REPORT**

**2008-2009**

# REPORT ON ACTIVITIES

2008-09

The year ended 2009 was the sixth year of the Commission's operations.

The Commission's work for the year is essentially set by the Statement of Corporate Intent that is provided to the Minister of Finance by 31 March of the preceding year. During the year the Commission was able to achieve, with one exception, all the activities outlined in the Statement of Corporate Intent for 2008-09.

The Commission was able to fulfil its obligations under the prudential supervision programme that had been set for the year with all banks undergoing on-site inspections under the Banking Act and the Financial Transactions Reporting Act. Registrations of companies and trusts continued to be dealt with in a timely manner. Legislation was developed and enacted for the regulation of money-changing and remittance business with the passage of the *Money-changing and Remittance Businesses Act 2009*.

The year was marked by the finalisation of proceedings in the long-running case *WSBC Bank v FSC*, which proved extremely time consuming for the Commissioner and staff and also weighed heavily on the Commission's financial resources since 2004. The costs of this case impacted severely on the amount of excess funds that were available for the Commission to pay to the Crown accounts. The cost to the FSC of obtaining professional services in relation to this case in 2008-09 was \$571,754, of which \$131,011 was recovered by way of costs. The time spent in bringing this case to finality meant that the Commission was unable to devote resources to further refinement of its regulatory procedures. Settlement was achieved in March 2009, with Consent Orders from the Chief Justice of the High Court revoking WSBC Bank's banking licence in the Cook Islands with effect from 31 December 2009, or such earlier date when all liabilities of the bank have been met.

The other significant event for 2009 was the Mutual Evaluation of the Cook Islands by the Asia Pacific Group on Money Laundering (APG) and the Offshore Group of Banking Supervisors. The Commission was closely involved in preparing the Mutual Evaluation Questionnaire that was used by the Evaluation Team. The Team was present in the Cook Islands from 2-16 February 2009 and met with the FSC Board, the Commissioner and staff. Following the visit of the Evaluation Team the Commission had substantial input into commenting on the draft report prepared as a result of the visit and which was eventually adopted by the APG Plenary in Brisbane, 6-10 July 2009. A copy of the final report for the Cook Islands is available at [www.apgml.org](http://www.apgml.org).

The report's recommendations will form the basis of a work programme for the Commission over the next 2 years in the area of Anti Money Laundering, to be developed in conjunction with the Financial Intelligence Unit.

## **Supervisory Activities**

### ***Banking***

The Commission bases its supervisory approach on the Basel Core Principles for Banking Supervision. The Commission continues to update its supervisory approach, taking into account issuances from the Basel Committee on Banking Supervision. Banking supervision is performed using off-site examinations of reports provided by banks and on-site inspections. The Commission also undertakes an annual on-site inspection for each bank for compliance with Part 2 of the *Financial Transactions Reporting Act 2004*, carried out under delegation from the Financial Intelligence Unit.

During the year a new Prudential Statement, Prudential Statement 09-2008, *Policy for Management of Liquidity Risk*, was issued. This was considered timely in view of the impact of the global financial crisis on banks and the importance of liquidity management during the crisis.

Much of the supervisory capacity of the Commission during the year was directed towards the WSBC Bank case which limited the amount of time available for development of further regulatory standards, enhanced methodology and staff training.

In February 2009, the Cook Islands Government introduced the *Banking Amendment Bill 2009* into Parliament. The effect of this Bill, when enacted, will be to abolish 'stand-alone' international banks in the Cook Islands. An international banking licence will be permitted to be held only by an institution that also holds a domestic banking licence.

The Commission continued to liaise closely with the Australian Prudential Regulation Authority (APRA) in relation to the branches of the two Australian banks that make up a significant part of the Cook Islands' banking sector. The guarantee of deposits in Australian banks by the Australian Government extended to the branches of the Australian banks in the Cook Islands, which provided assurances to local depositors during the global financial crisis.

At 30 June there were 3 domestic banks licensed in the Cook Islands and 5 international banks. One bank had dual licences.

### ***Insurance***

The Insurance Act 2008 came into effect on 1 January 2009. Delays in finalising the subordinate legislation meant that the transitional provisions for implementation of the Act had to be extended.

However, with the assistance of an IMF technical adviser, work continued on preparation for implementation of the new legislation, particularly the arrangements for licensing insurers and insurance intermediaries.

The number of insurers remained at 3.

### **Registrar's Office**

The number of trustee companies remained at 6. The Commission conducted on-site inspections of most trustee companies under Part 2 of the Financial Transactions Reporting Act during the year. Based on the results of previous year's inspections, it was decided that not all trustee companies need to be inspected annually and for some the inspection cycle is now each 18 months. Trustee companies were encouraged to operate in accordance with the Statement of Best Practice issued by the Offshore Group of Banking Supervisors.

#### *International Companies*

The number of international companies at 30 June 2009 was 877, an increase of 46 from the previous year.

#### *International Trusts*

The number of international trusts at 30 June 2009 was 2467, an increase of 58 from the previous year

The Government decided during the year to establish a Financial Services Development Authority, principally to assist develop the offshore financial industry. To fund this initiative, it was decided to increase the cost of registering or renewing the registration of an international trust by \$US100 from 1 March 2009, with the additional portion of the fees being paid to the Crown. This FSC Board has agreed that this money will be paid to the Crown as excess funds on a quarterly basis.

#### *Limited Liability Companies*

Limited liability companies were first offered in the Cook Islands in 2008-09. As at 30 June 2009 70 companies had been registered.

### **Financial Position**

Revenue for the year was \$1,389,484, an increase of 31.2%. The increased revenue includes the additional amount that resulted from the increase in fees for international trusts. Expenditure for the year was \$1,185,872, an increase of 47.4% from the previous year. The increase in expenditure can be directly attributed to the cost of the *WSBC*

*Bank v FSC* proceedings. The Commission recorded a surplus of \$203,612 for the year, a reduction of 20.1% from 2007-08.

An amount of \$148,313 was paid to the Crown as surplus funds, pursuant to section 24(2) of the *Financial Supervisory Commission Act 2003*. Of this amount, \$73,313 was the net (of VAT) amount derived from the increase in the fees for registering, or renewing the registration of, an international trust and the remaining \$75,000 was surplus funds.

### **The FSC Board**

Mr Trevor Clarke, Mr Raymond Newnham and Mrs Tina Browne were re-appointed to the Board for 2 years with effect from 1 July 2008.

During the year the FSC Board met on 12 occasions. The Board was able to deal with all matters before it on a timely basis.

### **The Offshore Industry**

In June 2009 the Cook Islands Government introduced legislation to establish the Financial Services Development Authority (FSDA) that has as its objectives the encouragement, promotion and development of the Cook Islands financial services industry to achieve sustained growth, which is economically beneficial, socially responsible and reputable.

The Commission was closely involved in the development of legislation to establish the FSDA. The FSC Commissioner is a Director of the FSDA, as provided for by the *Financial Services Development Authority Act 2009*.

### **Personnel**

As at 30 June 2009, the staff of the Commission comprised the Commissioner, the Manager – Supervision, 3 supervisory staff, the Registrar of International and Foreign Companies and 2 support staff. A new position of Manager – Offshore Services was created with the aim of providing more support to the offshore services industry and to work with the FSDA in the provision of technical assistance. This position was not filled until after 30 June 2009.

The Commission was well served by its staff during the year and thanks them for their continuing contribution.

An on-going challenge for the Commission is in the area of human resources. Recruitment of personnel with qualifications that make them suitable to be trained as financial analysts for the banking and insurance sectors continues to be difficult.

In 2008-09 there was again a strong emphasis on technical training of staff. Assistance was received from the International Monetary Fund (IMF) and the Pacific Financial Technical Assistance Centre, Suva, Fiji (PFTAC). The IMF again sent an advisor to provide general training and other technical assistance in insurance in preparation for the implementation of the *Insurance Act 2008*. An adviser from PFTAC provided assistance in re-designing the Commission's off-site returns for banks.

Two staff members were able to take advantage of training opportunities offered by the Australian Prudential Regulation Authority (APRA) during the year. One staff member was able to participate in an APRA-led on-site Operational Risk inspection of a bank in Fiji and the other was able to participate in an inspection of an insurance company in Fiji.

The technical training and support provided by the IMF, PFTAC, and APRA is invaluable to the Commission and is greatly appreciated.

Supervisory staff are also encouraged to make use of on-line training provided by the Financial Stability Institute, a programme to which the Commission subscribes.

The Commissioner attended the International Banking Supervisors Conference in Brussels, Belgium, in September 2008. The Conference focussed on liquidity issues and the causes of the global financial crisis. The Commissioner also attended the annual meeting of the Offshore Group of Banking Supervisors, to which the Commission has observer status, which was held in Brussels at the same time.

The Commissioner and the Head of the Financial Intelligence Unit attended the Plenary of the Asia Pacific Group on Money Laundering in Bali, Indonesia, in July 2008.

The Commissioner accompanied the Minister of Finance to a conference on Deepening Financial Capacity in the Pacific Region, held in Sydney, Australia in August 2008. The conference focussed on the importance of improving financial literacy in Pacific countries.

The Manager – Supervision attended an IMF training workshop on Financial Stability Indicators in Fiji in September 2008 as part of a project to improve the statistics collected from the finance industry.

The Manager – Supervision also attended a workshop on Onsite & Offsite Examinations for ASEAN Insurance Regulators and Supervisors conducted by the ASEAN Insurance Training and Research Institute in Kuala Lumpur in April 2009.

### **Other Matters**

No policy directives were received from Government during the year.

For and on behalf of the Board

Trevor C. Clarke  
**Chairman**