



**INTERNATIONAL COMPANIES
(EVIDENCE OF IDENTITY) REGULATIONS 2004**

LAURENCE MURRAY GREIG, Chief Justice of the High Court of the Cook Islands

ORDER IN EXECUTIVE COUNCIL

At Avarua, Rarotonga, this 18th day of February 2004

Present:

**HIS HONOUR THE CHIEF JUSTICE OF THE HIGH COURT OF
THE COOK ISLANDS IN EXECUTIVE COUNCIL**

PURSUANT to Article 7(1) of the Constitution and sections 15(10), 35A(4) and 221 of the International Companies Act 1981-82 (as inserted by sections 4 and 5 of the International Companies Amendment Act 2003), the Chief Justice of the High Court, acting by and with the advice and consent of the Executive Council, makes the following regulations.

ANALYSIS

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|----------------------------|--------------------------|
| 1. Title and commencement | 4. Customer verification |
| 2. Interpretation | 5. Offences |
| 3. Verifying documentation | |

REGULATIONS

1. Title and commencement – (1) These regulations may be cited as the International Companies (Evidence of Identity) Regulations 2004.

(2) These regulations come into force 5 days after the date that the Chief Justice signs the Order in Executive Council making these regulations.

2. Interpretation – (1) In these regulations, unless the context otherwise requires, –

“Act” means the International Companies Act 1981-82;

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“approved agent” means -

- (a) a regulated financial institution;
- (b) a lawyer, an accountant, or a member of a professional body, carrying on business in an approved jurisdiction;

“approved jurisdiction” means a jurisdiction that is not identified by the FATF (Financial Action Task Force on Money Laundering) as a Non-Cooperative Country or Territory in the fight against money laundering;

"approved stock exchange" shall have the meaning given to it by section 126A of the Act;

“association” means any incorporated or unincorporated association of persons, and includes any company, corporation, firm, partnership, society, joint venture, mutual fund, statutory body, association, organisation, state or agency of a state (but excludes a trust);

“certified” means in respect of any document, where a certifier has certified in writing on the document that the document is a true and correct copy;

“certifier” means –

- (a) a notary public exercising his or her office; or
- (b) a Registrar or Deputy Registrar of a court; or
- (c) a Justice of the Peace; or
- (d) a postmaster; or
- (e) a legal practitioner; or
- (f) an officer or employee of a regulated financial institution;

“director” includes, in relation to any body corporate, any person performing the functions or occupying a position, by whatever title, commonly performed by, or comparable to, a director of a company;

“licensed financial institution” has the same meaning as in the Financial Supervisory Commission Act 2003;

“FIU” means the Financial Intelligence Unit established by section 20 of the Financial Transactions Reporting Act 2003;

"mutual fund" means any unit trust, group investment fund, pension fund, superannuation fund, and any other form of collective investment scheme comprising 10 or more investors whereby -

- (a) investor funds are collected and pooled for the purposes of collective investment; and

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- (b) shares, units or interests are issued to investors that entitle the investor to receive an amount computed by reference to the value of a proportionate interest in the whole or in a part of the assets of the scheme;

“regulated financial institution” means -

- (a) a licensed financial institution; or
- (b) a person resident, based, carrying on business, or incorporated in or formed under the laws of an approved jurisdiction which acts in the course of a business comparable to that carried on by a licensed financial institution,

and includes a wholly owned subsidiary thereof;

“significant interest holder” means any person holding more than 10% of the shares, membership or partnership interest, stock or voting rights in an association or who otherwise exercises, directly or indirectly, effective control of the association;

"settlor" means any person who settles assets on a trust;

“trust” includes a charitable trust and a purpose trust but does not include a mutual fund;

“trustee company” means a trustee company licensed pursuant to the Trustee Companies Act 1981-82;

“verifying documentation” means -

- (a) in respect of an individual, a certified copy of a valid photographic identification document (such as a passport or driving license) issued by a government, state, federal or governmental agency, together with one or more of the following -
 - (i) a bank reference from a regulated financial institution where the customer has maintained a current relationship for at least 12 months; and
 - (ii) an original or certified copy of a recent rates or utility bill that shows the person’s permanent residential address
 - (iii) a written introduction or reference from an employee of an approved agent; or
 - (iv) a certified credit reference agency search; or
 - (v) a certified entry in a register of electors; or
 - (vi) a certified entry in a telephone directory;

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- (b) in the case of an association, the following -
 - (i) a certified copy of the certificate of incorporation or comparable document under which the association was incorporated, established, registered or otherwise created; and
 - (ii) verifying documentation in respect of each director and significant shareholder;
- (c) in the case of a trust, the following -
 - (i) a certified copy of the certificate of registration or other document by which the trust was established, settled, registered or otherwise created; and
 - (ii) verifying documentation in respect of each settlor and trustee;
- (d) in any other case, such documentation as may be required by the Financial Intelligence Unit.

(2) Unless the context otherwise requires, words and expressions used in these regulations bear the same meaning as in the Act.

3. Verifying documentation – A trustee company or a custodian that is required to obtain evidence of identity under section 15(10) or section 35A(4) of the Act must obtain in respect of the person for whom a share is held on trust or in respect of the bearer of a bearer instrument as the case may be, the following information –

- (a) in the case of an individual, the full name, date and place of birth, nationality, permanent address, and occupation;
- (b) in the case of an association -
 - (i) the name of the association, place and date of incorporation, address of registered office, and principal place of business; and
 - (ii) a description of the nature of the business carried out by the association; and
 - (iii) the full name, occupation, place and date of birth and permanent residential address of each significant interest holder and each officer;
- (c) in the case of a trust -
 - (i) the name of the trust, the address of any registered office, and the address for service of the trust; and
 - (ii) an explanation of the nature of the trust and description of its purpose or beneficiaries; and
 - (iii) the full name, occupation, date and place of birth and permanent residential address of each settlor and trustee.

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4. Customer Verification – A trustee company that is required to required to obtain evidence of identity under section 15(10) or section 35A(4) of the Act must obtain verifying documentation in respect of the person for whom a share is held on trust or in respect of the bearer of a bearer instrument as the case may be (in this regulation referred to as “the customer”), unless –

- (a) the customer remits funds by bank cheque or letter of credit issued by a regulated financial institution, or from an account in the name of the customer held with a regulated financial institution; or
- (b) the customer is a central or local government, statutory body or a state or government agency; or
- (c) the customer is an association listed on an approved stock exchange; or
- (d) the customer is an existing customer that has already provided verifying documentation that accords with these regulations; or
- (e) the customer is an existing customer, and the activity involves a transaction of less than \$10,000.

5. Offences – (1) Every person who refuses, or fails without reasonable excuse, to comply with these regulations commits an offence punishable by -

- (a) in the case of an individual, to a fine of up to \$10,000;
- (b) in the case of a body corporate, to a fine of up to \$50,000.

(2) In proceedings for an offence under these regulations, it is a defence for that person to show that he, she or it, took all reasonable steps and exercised all due diligence to avoid committing the offence.

Clerk of the Executive Council

These regulations are administered by the Financial Supervisory Commission

BY AUTHORITY:
Cook Islands Government - 2004