

TRUSTEE COMPANIES (DUE DILIGENCE)

REGULATIONS 1996

Compiled By: Southpac Trust Limited (November 1996)

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ANALYSIS

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REGULATIONS

1. Short Title - These Regulations may be cited as the Trustee Companies (Due Diligence) Regulations 1996.

2. Interpretation - In these Regulations “the Act” means the International Trusts Act 1984.

3. Forms in schedule to be used - Subject to Regulation 5, the forms listed in the First and Second Schedules may be used for the purpose of satisfying the due diligence requirements imposed upon trustee companies under these regulations.

4. Information obtained by trustee company - Prior to registration of an international trust pursuant to the Act, and upon any disposition to that trust thereafter, a trustee company shall be satisfied that:
 - (a) the settlor of an international trust has full right and title to transfer the assets to the trust;
 - (b) the settlor remains solvent and able to pay reasonably anticipated debts after the transfer of the assets to the trust;
 - (c) the assets being transferred to the trust are not derived from any of the activities specified in the annexure to the Second Schedule;
 - (d) any financial or other information provided by the settlor is true and correct; and
 - (e) the settlor has provided full disclosure of all existing or reasonably anticipated legal proceedings against him.

For the purposes of these Regulations and the Act, the information referred to in Regulation 4, received by facsimile, or by an agent or attorney for the trustee company, shall be sufficient for the purposes of satisfying this regulation.

5. Directions in forms - A form prescribed in these Regulations shall be completed

in accordance with such directions as are specified thereon, or alternatively a form prepared by the trustee company, in like or similar form provided there is compliance with Regulation 4.

6. Compliance - a trustee company may discharge its obligation of obtaining the information in Regulation 4 herein if the settlor has provided sworn evidence to the trustee company to that effect and where it is consistent with this Regulation prior to registration of an international trust pursuant to the Act.

7. Offence and penalty - a trustee company which acts in the registration of an international trust in breach of these Regulations commits an offence and shall be liable on conviction to a fine not exceeding \$15,000.00.

FIRST SCHEDULE

AFFIDAVIT OF SOLVENCY

I, _____ of _____ make oath and say as follows:

1. That to the best of my knowledge and belief the information provided, and all attachments thereto, is true and correct.

2. That there are no pending or threatened claims or proceedings that I reasonably anticipate may result in a judgement against me, and I am not a named defendant in any law suit or involved in any administrative proceedings as of this date, or a judgement debtor [other than as disclosed in this affidavit].

3. That I do not contemplate filing for relief under the provisions of the applicable bankruptcy or insolvency laws, nor am I involved in any situation that I reasonably anticipate would cause me to file for relief under the applicable bankruptcy or insolvency laws in the future.

4. That following any transfer of my property to the trust structure I will be solvent and able to pay my reasonably anticipated debts (including any claims or lawsuits against me) as they come due from the balance of my property after such transfer.

FURTHER AFFIANT SAYETH NOT.

SWORN at)
by the said)

Trustee Companies (Due Diligence) Regulations 1996

this day of)
199)

SECOND SCHEDULE

AFFIDAVIT AS TO TITLE AND SOURCE OF ASSETS

I, _____ of _____ make oath and say as follows:

- 1. That I have full right, title and authority to transfer the assets to the trust;
- 2. That I have read and understood the annexed description of unlawful activities, and confirm and represent that none of the assets which I may transfer to the trust has been derived from any of the activities described therein.

FURTHER AFFIANT SAYETH NOT.

SWORN at)
 by the said)
 this day of)
 199)

**ANNEXURE TO AFFIDAVIT AS TO TITLE AND SOURCE OF ASSETS,
RE: UNLAWFUL ACTIVITIES**

The law of a jurisdiction may contain legislation (the "legislation") making it criminal for anyone to conduct or attempt to conduct certain financial activities which involve the proceeds of unlawful activities. The transfer of assets into a limited partnership, trust, or other entity may constitute a criminal activity within the scope of such legislation if the assets transferred to such entities were derived from any of the unlawful activities specified in the legislation.

The unlawful activities under the legislation commonly consist primarily of drug-trafficking offences, financial misconduct and environmental crimes. Drug-trafficking offences include the manufacture, importation, sale, or distribution of controlled substances; the commission of acts constituting a continuing criminal enterprise; and transportation of drug paraphernalia.

Financial misconduct includes the concealment of assets from a receiver, custodian, trustee, marshal, or other officer of the court, from creditors in a bankruptcy proceeding, or from a statutory corporation or similar agency or person; the making of a fraudulent conveyance in contemplation of a bankruptcy proceeding or with intent to defeat the bankruptcy law; the giving of false oaths or claims in relation to a bankruptcy proceeding; bribery; the giving of commissions or gifts for the procurement of loans; theft, embezzlement, or misapplication of bank funds or funds of other lending, credit, or insurance institutions; the making of fraudulent bank or credit institution entries or loan or credit applications; and mail, wire, or bank fraud or bank or postal robbery or theft.

Environmental crimes include violations of statutory or regulatory laws. Other specified unlawful activities in such legislation could include counterfeiting, espionage, kidnapping or hostage-taking, copyright infringement, entry of goods by means of false statements, smuggling, removing goods from the custody of customs, illegally exporting arms, and

trading with a country's enemies.

This Act is administered by the Cook Islands Monetary Board.