

Draft Money Laundering Risk Analysis for the Cook Islands

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This document has been prepared four years after the International Monetary Fund’s Country Report 04/414, 2004, and after the numerous legislative and regulatory improvements made by the Cook Islands Government in response to that 2004 assessment.

The document follows the logic of Component 1 – “National risk assessment” – of the “Strategic Implementation Planning (SIP) Framework”, developed by the Asia Pacific Group’s “Implementation Issues Working Group (IIWG) and the World Bank (supported with additional funding from Australia, Canada, Malaysia and the World Bank). This Framework is described as “an implementation tool to prioritise your Mutual Evaluation Report”, but the risk assessment Component is specifically recommended for use prior to mutual evaluation, and was designed to:

- Guide jurisdictions to identify money laundering and terrorism financing (ML/TF) risk areas and vulnerabilities in their current AML/CFT system;
- Guide jurisdictions to allocate resources efficiently and effectively based on priorities/risk areas when implementing the required AML/CFT measures; and
- Enhance jurisdictions’ understanding of the Financial Action Task Force on Money Laundering (FATF) 40+9 Recommendations, and their implementation requirements in respect of both compliance and effectiveness.

Accordingly, in the preparation of this Report, the Cook Islands Financial Intelligence Unit has attempted to closely follow the format of SIP Template 1. Template 1 consists of the following sections (worksheets):

1. Prevailing Crime Type
2. Economic and Geographical Environment
3. Legal/Judicial/Institutional Framework
4. Reporting Institutions (Financial Institutions)
5. Reporting Institutions (DNFBPs).

A cost-benefit analysis has been appended to these sections.

Prevailing Crime Types

General Situation

In 2004, the IMF noted that "The general crime rate of the Cook Islands remains low. General crimes are burglary, petty theft and low-level fraud with an insignificant amount of property involved." There has been no significant change in the organised crime situation since 2004. No Suspicious Transaction Reports (STRs) have been received related to general crime. The risk presented by general crime in the Cook Islands is therefore LOW.

Organised crime

In 2004, the IMF noted that "There continues to be no evidence suggesting that the Cook Islands has problems of any major organized crime, drug trafficking or serious fraud, crimes which would generate large amount of revenue and create a domestic demand of money laundering services". There has been no significant change in the organised crime situation since 2004. No Suspicious Transaction Reports (STRs) have been received related to organised crime. The risk presented by organised crime in the Cook Islands is therefore LOW.

Terrorism

In 2004, the IMF noted that "The Cook Islands is not a party to the Vienna Convention and it has not signed, nor ratified the Palermo Convention. The Cook Islands signed the UN International Convention for the Suppression of the Financing of Terrorism on December 24, 2001, but has not ratified it yet. The Cook Islands enacted the UNSCRA to give effect to UN Security Council Resolutions on FT, including Resolution 1373, but has not yet issued any implementing regulations under the Act." There continues to be no evidence of any Terrorism problem in the Cook Islands. However, the Terrorism Suppression Act, conforming to the regional "Counter Terrorism and Transnational Organized Crime Model Provision 2003," a model law provided by the Pacific Islands Forum Secretariat, was implemented in 2004. No cases have been reported to police and no STRs received by the CIFIU in the most recent year (2006-7). The risk presented by terrorism in the Cook Islands is therefore LOW.

Human trafficking

There was no adverse reference to high levels of human trafficking in the 2004 IMF Assessment. There continues to be no evidence of any Human trafficking problem in the Cook Islands. No cases have been reported to police and no STRs received by the CIFIU in the most recent year (2006-7). The risk presented by human trafficking in the Cook Islands is therefore LOW.

Sexual exploitation

There was no adverse reference to high levels of Sexual exploitation in the 2004 IMF Assessment. There continues to be no evidence of any Sexual exploitation problem in the Cook Islands. No cases have been reported to police and no STRs received by the CIFIU in the most recent year (2006-7). The risk presented by sexual exploitation in the Cook Islands is therefore LOW.

Drug trafficking

In 2004, the IMF noted that ""There continues to be no evidence suggesting that the Cook Islands has problems of any major organized crime, drug trafficking or serious fraud, crimes which would generate large amount of revenue and create a domestic demand of money laundering services." There continues to be no evidence of any serious drug trafficking problem in the Cook Islands. Possibilities exist with both airline traffic and visiting sea cruises, but rather as transiting traffic, rather than bringing large quantities of drugs into the Cook Islands for sale. There continues to be no large scale market in the Cook Islands. One case of drug trafficking was reported to police, resulting in one STR received by the CIFIU in the most recent year (2006-7). In addition, only 13 other

drug offences, mostly possession, use, or growing cannabis, were recorded by police in that year. The risk presented by drug trafficking in the Cook Islands is therefore LOW.

Arms trafficking

There was no adverse reference to high levels of Arms trafficking in the 2004 IMF Assessment. There continues to be no evidence of any Arms trafficking problem in the Cook Islands. No cases have been reported to police and no STRs received by the CIFIU in the most recent year (2006-7). The risk presented by arms trafficking in the Cook Islands is therefore LOW.

Trafficking in stolen goods

There was no adverse reference to high levels of Trafficking in stolen goods in the 2004 IMF Assessment. There continues to be no evidence of any Trafficking in stolen goods problem in the Cook Islands. No cases have been reported to police and no STRs received by the CIFIU in the most recent year (2006-7). The risk presented by trafficking in stolen goods in the Cook Islands is therefore LOW.

Corruption/bribery

There was no adverse reference to high levels of Corruption/bribery in the 2004 IMF Assessment. Two cases in recent years involved fraud by government Ministers profiting from government purchases. STRs were received by the CIFIU in each case. Convictions have been obtained. Amounts involved totalled \$450. The risk presented by corruption/bribery in the Cook Islands is therefore LOW.

Fraud

In 2004, the IMF noted that "The general crime rate of the Cook Islands remains low. General crimes are burglary, petty theft and low-level fraud with an insignificant amount of property involved." There continues to be no evidence of any significant Fraud problem in the Cook Islands. Twelve cases have been reported to police and no STRs received by the CIFIU in the most recent year (2006-7). Maximum value recorded by Police was \$1000. The risk presented by fraud in the Cook Islands is therefore LOW.

Counterfeiting of currency

There was no adverse reference to high levels of Counterfeiting of currency in the 2004 IMF Assessment. There continues to be no evidence of any Counterfeiting of currency problem in the Cook Islands. Two cases have been reported to police and no STRs received by the CIFIU in the most recent year (2006-7). Maximum value recorded by Police was \$200. The risk presented by counterfeiting of currency in the Cook Islands is therefore LOW.

Counterfeiting and piracy of products

There was no adverse reference to high levels of Counterfeiting and piracy of products in the 2004 IMF Assessment. There continues to be no evidence of any Counterfeiting and piracy of products problem in the Cook Islands. No cases have been reported to police and no STRs received by the CIFIU in the most recent year (2006-7). The risk presented by Counterfeiting and piracy of products in the Cook Islands is therefore LOW.

Environmental crime

There was no adverse reference to high levels of Environmental crime in the 2004 IMF Assessment. Illegal Fishing is a problem in the Cook Islands zone. Three vessels were apprehended in 2006-07; two were from Taiwan, one from USA; catches valued around \$30,000 each. No STRs have been received by the CIFIU in the most recent year (2006-7), but at least \$90,000 of proceeds of crime would have been generated and potentially laundered in other countries. The ML/TF risk presented

by environmental crime in the Cook Islands is therefore LOW, but there are some associated risks in other countries which are not within the power of the Cook Islands to reduce.

Murder, grievous bodily injury

There was no adverse reference to high levels of Murder and grievous bodily injury in the 2004 IMF Assessment. There has been no significant change in this situation since 2004. No cases have been reported to police and no STRs received by the CIFIU in the most recent year (2006-7). The risk presented by Murder and grievous bodily injury in the Cook Islands is therefore LOW.

Kidnapping, illegal restraint, hostage-taking

There was no adverse reference to high levels of kidnapping, illegal restraint and hostage-taking in the 2004 IMF Assessment. There continues to be no evidence of any kidnapping, illegal restraint and hostage-taking problem in the Cook Islands. No cases have been reported to police and no STRs received by the CIFIU in the most recent year (2006-7). The risk presented by kidnapping, illegal restraint, and hostage-taking in the Cook Islands is therefore LOW.

Robbery/theft

There was no adverse reference to high levels of Robbery/theft in the 2004 IMF Assessment. 377 cases were reported to police and no STRs received by the CIFIU in the most recent year (2006-7). Only around ten cases involved losses greater than \$2000. The maximum single theft in recent years was valued at \$10,000 (2003-04 data), and the total proceeds of crime does not exceed \$100,000 per annum. The risk presented by robbery and theft in the Cook Islands is therefore LOW.

Smuggling

There was no adverse reference to high levels of Smuggling in the 2004 IMF Assessment. There continues to be no evidence of any Smuggling problem in the Cook Islands. No cases have been reported to police and no STRs received by the CIFIU in the most recent year (2006-7). The risk presented in the Cook Islands is therefore LOW.

Extortion

There was no adverse reference to high levels of Extortion in the 2004 IMF Assessment. There continues to be no evidence of any Extortion problem in the Cook Islands. No cases have been reported to police and no STRs received by the CIFIU in the most recent year (2006-7). The risk presented in the Cook Islands is therefore LOW.

Forgery

There was no adverse reference to high levels of Forgery in the 2004 IMF Assessment. There continues to be no evidence of any Forgery problem in the Cook Islands. No cases have been reported to police and no STRs received by the CIFIU in the most recent year (2006-7). The risk presented in the Cook Islands is therefore LOW.

Piracy

There was no adverse reference to high levels of Piracy in the 2004 IMF Assessment. There continues to be no evidence of any Piracy problem in the Cook Islands. No cases have been reported to police and no STRs received by the CIFIU in the most recent year (2006-7). The risk presented in the Cook Islands is therefore LOW.

Insider trading and market manipulation

There was no adverse reference to high levels of Insider trading and market manipulation in the 2004 IMF Assessment. This is not surprising as there is no Stock Market in the Cook Islands. There is therefore NO risk of Insider trading and market manipulation in the Cook Islands.

Attractiveness of the country for laundering

In 2004, the IMF noted that "While the risk of domestic money laundering is small, there continues to be a potentially significant risk of the Cook Islands offshore banking sector and trustee companies being abused by criminal elements." While the domestic risks have not changed since 2004, the risks presented by the Cook Islands offshore banking sector have been substantially reduced.

Laundering of domestic proceeds at home

The Cook Islands is a very small economy - \$US183.2 million GDP (2005) - ranked 217 of 229 countries (CIA World Fact Book). The proceeds of domestic crime are close to zero – there are effectively no funds to be laundered. The Cook Islands has a well-supervised financial industry. Any large ML transaction involving locally generated funds would be immediately noticed and reported to the CIFIU.

Laundering of domestic proceeds abroad

For the reasons stated above, any large ML international transaction involving locally generated funds would be immediately noticed and reported to the CIFIU.

Laundering of foreign proceeds - amounts generated abroad and laundered domestically

There has been significant change in this situation since 2004. The Cook Islands has tightened its legislation and regulations to international standards. The remaining risks come from other countries - particularly Asian countries - having lower standards of KYC, and providing false information to CI finance houses.

Economic and Geographical Environment

There were no significant economic or geographical issues raised in the 2004 IMF Assessment.

The Cook Islands total population as enumerated in the 2006 Census of Population and Dwellings was 19,569, an increase of 1542 over the 2001 count. However, in that period, the numbers of resident population have declined from 14,000 to 11,800, indicating an increasing proportion of non-residents. The working age population consists of 3,973 males and 3,747 females. The population is ethnically Cook Island Maori (Polynesian) 87.7%, part Cook Island Maori 5.8%, other 6.5% (2001 census), and predominantly (over 90%) of the Christian religion. Official languages are English and Maori.

The Cook Islands is ranked 215 of 227 countries in the CIA World Factbook 2007/08 ranking on GDP (\$US183,200,000, 2005 est.). In terms of GDP per capita, the Cook Islands are ranked 104th, at \$US9,100 per capita (2005 est.). GDP is derived principally from agriculture (copra, citrus, pineapples, tomatoes, beans, pawpaws, bananas, yams, taro, coffee; pigs, poultry): 15.1%, industry (fruit processing, tourism, fishing, clothing, handicrafts): 9.6%, and services: 75.3% (2004).

It is the 216th ranked merchandise exporting nation, (\$US5,222,000 in 2005, comprising copra, papayas, fresh and canned citrus fruit, coffee; fish; pearls and pearl shells; clothing), and the 212th ranked merchandise importing nation (\$US81,040,000 in 2005, comprising foodstuffs, textiles, fuels, timber, capital goods). Key export partners are Australia 34%, Japan 27%, NZ 25%, US 8% (2006), and import partners are NZ 61%, Fiji 19%, US 9%, Australia 6% (2006).

Yet it is ranked 65th in terms of its current account balance (\$US26,670,000 in 2005 – one of only 69 countries in positive balance. This is partly due to Economic aid of \$13.1 million (1995), of which

New Zealand continues to furnish the greater part. External debt in 1996 was estimated at \$US141 million. Government revenues: \$US70.95 million; expenditures: \$US69.05 million (FY05/06).

The CIA World Factbook says "Like many other South Pacific island nations, the Cook Islands' economic development is hindered by the isolation of the country from foreign markets, the limited size of domestic markets, lack of natural resources, periodic devastation from natural disasters, and inadequate infrastructure. Agriculture, employing about one-third of the working population, provides the economic base with major exports made up of copra and citrus fruit. Black pearls are the Cook Islands' leading export. Manufacturing activities are limited to fruit processing, clothing, and handicrafts. Trade deficits are offset by remittances from emigrants and by foreign aid, overwhelmingly from New Zealand.

The legal system is based on New Zealand law and English common law.

The Cook Islands have 1,479 Internet hosts (2007), 3,600 Internet users (2002). There are 9 airports, of which two have paved runways. There are 1600 Scheduled Flights between Cook Islands and NZ per annum; 260 to Papeete; around 130 to Los Angeles; 130 Fiji. There are around 33 Cruise ships visiting the Cook Islands per year, each with around 2000 passengers. Other shipping movements: (2008 data) - 38 container ships, 44 domestic, 22 tankers, 172 yachts, 294 fishing boats. The merchant marine consists of 25 ships (1000 GRT or over) 151,026 GRT/186,075 DWT, of which by type: cargo 12, chemical tanker 1, petroleum tanker 1, refrigerated cargo 9, roll on/roll off 2. Nineteen are foreign-owned: China 1, Lithuania 1, Netherlands 1, Nigeria 1, Norway 5, NZ 1, Sweden 9 (2008).

The gross turnover of the Cook Islands Finance and Business Services sector in 2006 was \$NZ30.255 million, which, while being an 8.5% increase over the previous year, was only slightly higher than the figure for 2004.

There is 100% formal access to financial services in the Cook Islands. The very small scale of operations suggests that any large or unusual transaction will attract attention. The small and interconnected community ensures that any unusual increase in wealth or income will attract attention. The small business community ensures that all players are personally known to regulators and law enforcement agencies. The Informal sector of the economy is not significant. Significant cash transactions are limited to normal banking of weekly business takings. Foreign currencies are not accepted in normal trading. Currency exchanges operate for travellers going overseas or returning with foreign currency.

There are numerous Christian Church non-profit-oriented groups - none considered to be any threat. There are no significant AML/CTF loopholes in neighbouring countries. All are FATF compliant.

There are no obvious economic or geographical factors that indicate high ML/FT risks. The risk presented in the Cook Islands is therefore LOW.

Legal/Judicial/Institutional Framework

Gaps in AML/CFT laws: Recommended serious offences not included in the AML law

In 2004, the IMF noted that "The new ML offense (2004) extends to all predicate offenses that are "serious offenses" and applies to both physical and corporate persons. "Serious crimes" were defined by threshold, as a result of which any offense punishable under Cook Islands law by imprisonment of not less than 12 months or a fine of more than \$NZ 5,000, whether committed in

the country or overseas, so qualifies. However, at present FT is not criminalized, and it is not a predicate offense for ML."

This loophole - the financing of terrorism - was criminalised in the Terrorism Suppression Act of 2004. The FATF noted in 2005 that "The Cook Islands, Indonesia, and the Philippines have AML systems that include strict customer identification, suspicious transaction reporting, bank examinations, and legal capacities to investigate and prosecute money laundering. All three countries have developed financial intelligence units (FIUs) - specialized units that analyze financial data, co-ordinate national efforts, and facilitate international co-operation." (FATF statement February 2005, <http://www.mfem.gov.ck/FATF.htm>). The risk presented in the Cook Islands is now therefore LOW.

Gaps in AML/CFT laws: Institutions, business and professions not included as reporting institutions

In 2004, the IMF noted that "Under Sections 10 and 11 of the FTRA, a broad range of financial institutions are required to submit ML-related reports to the FIU on suspicious transactions and cash or electronic transactions above \$NZ 10,000. The FIU has the authority to require reporting parties to supplement reports and has broad powers to obtain relevant information needed to combat ML, but it does not have FT-related functions at present".

The financing of terrorism was criminalised in the Terrorism Suppression Act of 2004 and is now included in reporting requirements. The CIFIU website now reports that "All persons or entities registered in the Cook Islands who conduct as a business one or more of the following activities for and on behalf of a customer are being captured under the title of a "Reporting Institution", such as Banks, Trustee Companies, International Insurance Companies, International Companies, Insurance Companies, Financial Service Providers, Real Estate Agents, Accountants, Lawyers, Motor Vehicle Dealers, Money Brokers, Investment & Portfolio Advisors, Gambling, Casino or lottery Operators, Pearl Dealers, Friendly Society/ Non Profit Organisations". (<http://www.cifiu.gov.ck/stakeholder.html>). The risk presented in the Cook Islands is now therefore LOW.

Other Gaps in AML/CFT laws if any

None apparent. ?? The risk presented in the Cook Islands is therefore LOW.

Other relevant laws, lack of which may create ML/TF risk

None apparent. ?? The risk presented in the Cook Islands is therefore LOW.

Law Enforcement & Compliance Resourcing

Total Ministry Appropriations for 2008-09: \$NZ86,561,480.

Total Justice: - \$NZ1,357,038 of which:

- Total Police: \$NZ3,786,660, of which "serious crime investigations" is allocated \$NZ100,000.
- Courts & tribunals \$NZ292,682.
- CIFIU - \$NZ331,272.

Marine resources – "investigation of illegal fishing operations within EEZ" – \$NZ100,000

Business Trade & Investment Board: - "Monitoring & compliance" – \$NZ704,806.

Court system

The SIP Framework requires consideration of Courts' ML/FT-related activities such as time taken to conclude cases, number of cases prosecuted, and number of convictions out of cases prosecuted. There are insufficient case numbers in the Cook Islands for meaningful analysis. # prosecutions, convictions in most recent year? The risk presented in the Cook Islands is therefore LOW.

Law enforcement agencies

The SIP Framework requires consideration of Law Enforcement agencies' ML/FT-related activities such as the range of powers available, time taken to investigate cases, and amounts of criminal assets frozen, seized and confiscated. There are insufficient case numbers in the Cook Islands for meaningful analysis. # cases, amounts frozen, seized and confiscated in most recent year? The risk presented in the Cook Islands is therefore LOW.

Financial Intelligence Unit

The Cook Islands FIU has been operational since 2002. The total number of STRs received by the CIFIU in the period 2002-2008 was 135 – an average of 22 per year. Of these, 89 involved International transactions, nine were outgoing transactions and 13 incoming (mostly expats' remittances and foreign business transactions). Five domestic transactions STRs were proceeded with, and nineteen resulted in no action. Close liaison between the CIFIU and reporting agencies ensures high quality. One case was referred to CI Police in late 2006 after SAR from Western Union relating to \$300,000 sent to NZ from CI. Two offenders were convicted and sentenced to 6mth prison for drug trafficking. The ML case is still awaiting police action. The risk presented in the Cook Islands is therefore LOW.

International cooperation

The Cook Islands are a member of the South Pacific Forum. Obstacles to international cooperation: - Other countries' FIUs place CI low on their priorities in responding for requests for assistance (e.g. Pakistan, India). Need to work via APG, Egmont to ensure cooperation. The risk presented in the Cook Islands is therefore MEDIUM, but it is not within the power of the Cook Islands to reduce this level of risk.

Customs and other border control

Border control is the responsibility of the Immigration Division of the Ministry of Foreign Affairs. A Audit Report of 2007 suggests that some resourcing issues exist:

"Audit has found that Immigration does not have a border management system to allow them to manage and monitor the entry of all travellers into the country. Audit found that a feasibility study was conducted in 2002 regarding the implementation of a border management system but the project was stalled due to a lack of specialist I.T personnel and the availability of continuous funding within the Ministry of Foreign Affairs and Immigration."

(<http://www.auditoffice.gov.ck/reports/Special%20reports%20to%20parliament/Special%20Review%20Report%20-%20Immigration.pdf>, Cook Islands Audit Office, Sept 2007 Special Review Report: Management Review of Operational Systems and Procedures at Immigration). The risk presented in the Cook Islands is therefore MEDIUM.

Reporting Institutions (Financial Institutions)

General Comments

Gross Turnover of the Cook Islands Finance and Business Services Sector was \$30,255,000 (CI Annual Statistical Bulletin, 2007). This is 5.8% of GDP; the industry has grown at the average rate of 5.2% per annum since 2001.

Banking institutions

There are three Domestic/Commercial banks in the Cook Islands – Westpac, ANZ and the Bank of the Cook Islands. Westpac focuses on tourism businesses, ANZ on the main food wholesalers and the BCI is mainly family account focused. All described their business as "medium cash intensive". More specific information was provided by the banks in response to a request from the CIFIU:

- Westpac, a subsidiary of Westpac Banking Corp Australia (subject to Australian compliance standards) - 45% of CI banking; 5,000 customers; Book value \$130m, Revenue turnover \$13m (\$6m after tax). WP - 20-30 international transactions per day, via CORE & SWIFT; soon introducing automatic AML/CTF monitoring via "Norkom". 5% of Westpac customers are non-residents; 3% are Politically exposed persons.
- ANZ - 40% of CI banking; 5,000 customers;
- Bank of the Cook Islands - 15% of CI banking; 28,000 customers.

In addition, there are four finance houses specialising in International business. Their customer numbers are: - Banktec 35; Capital Security Bank 473; Pacific Trade Bank 19; WSBC 625.

Since the Cook Islands tightened its banking legislation and regulations to international standards the remaining risks come from other countries - particularly Asian countries - having lower standards of KYC, and providing false information to CI finance houses. The small scale of operations suggests that any large or unusual transaction in the domestic banking sector will attract attention. No ML/TF cases have been reported to police and no STRs received by the CIFIU in the most recent year (2006-7). The risk presented by banking institutions in the Cook Islands is therefore LOW.

Offshore

"The Cook Islands is a small offshore center by international standards, but the sector makes a relatively significant contribution to government revenues and to GDP. Registration and license fees represent about 4 percent of government revenues, and industry estimates put the total contribution of the offshore sector in the range of 8 percent of GDP. Actually, the contribution of the offshore sector relative to GDP may have peaked with the establishment of a legal framework that requires the offshore sector to have a physical presence in the Cook Islands, and to be subject to a vigorous bank supervision regimen similar to traditional commercial banks, as some offshore institutions have indicated they do not intend to apply for a new license to conduct a banking business." (Breed, 2007)

There are currently five Offshore Banks and six Trustee companies with a combined total of 58 staff (expected to reduce with the contraction of the industry in 2008-09). They produce a Gross revenue of \$NZ9.5 million and pay a total of \$US849,608 Government Fees (a 9% reduction since the IMF's assessment in 2004). There are 2286 current international trusts and 800 current international companies (Breed, 2007).

Since the Cook Islands tightened its offshore banking legislation and regulations to international standards the remaining risks come from other countries - particularly Asian countries - having lower standards of KYC, and providing false information to CI finance houses. No ML/TF cases have been reported to police and no STRs received by the CIFIU in the most recent year (2006-7). The risk presented by offshore banking institutions in the Cook Islands is therefore – at most - MEDIUM.

Insurance industry

There are three insurance companies in the Cook Islands. All are focused mainly on Fire, Accident, Marine, Life Insurance, Motor, Travel, House and Contents insurance. Their small scale of operations suggests that any large or unusual transaction will attract attention. The risk presented in the Cook Islands is therefore LOW.

Money changers/exchange bureaux/Remittance service providers

Western Union provides these services to an average of 300 customers per week. All are cash transactions, and 90% are international transactions. The small scale of operations suggests that any large or unusual transaction will attract attention. The risk presented in the Cook Islands is therefore LOW.

Reporting Institutions (DNFBPs)

The Cook Islands have a total of 8 accountants' businesses, 19 pearl dealers, 7 lawyers' businesses (excluding lawyers in trust companies), 4 real estate agents, and 58 non-government organisations. All are known individually to public agencies including the FIU.

Real estate agents

Land, and the "things growing on or attached to land", cannot be "alienated" for a period of more than 60 years, according to Act 1915, section 469-471. This means that there can be no permanent transfer of ownership to non-Native Cook Islanders. The Leases Restrictions Act 1976 imposes further oversight of real estate dealings in the Cook Islands. This significantly reduces the risk of money laundering through real estate dealings. The largest real estate agency is Shekinah. Most of their business involves the construction and sale of holiday accommodation. They currently have 15 clients; \$100,000 pa turnover. Transactions are predominantly by Credit Card, cash and bank transfers. 80% of business is international, 20% local business. The risk presented in the Cook Islands is therefore LOW.

Dealers in precious metals and precious stones

Pearl Dealers - 5 businesses; combined turnover \$NZ622,800. Cash, Credit Card purchases. Only 1% estimated international sales. 70% non-resident buyers. The risk presented in the Cook Islands is therefore LOW.

Lawyers

Tim Arnold PC: 2 lawyers & secretary; \$250,000pa turnover.

John McFadzien: 1 professional & 2 support staff; Trust Accounts \$2-300,000; \$200,000 pa turnover. Up to 5% international transactions; up to 5% non-resident customers. The risk presented in the Cook Islands is therefore LOW.

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Accountants

Six accountancy businesses are listed in the Cook Islands Yellow Pages. Shekina reports having an average of ten clients and an annual \$25,000pa turnover. Tumutoa have 100 clients. KPMG report an annual \$480,000 turnover. Dyers specialise in small business and non-profit clubs, with less than \$10,000 annual turnover. Transactions are mostly by cheques and cash payments. International transactions are very rare; 1-2% of customers are non-residents. Their small scale of operations suggests that any large or unusual transaction will attract attention. The risk presented in the Cook Islands is therefore LOW.

Superannuation Fund

CINSF has 4515 members, with \$20 million funds under management; turnover \$4.8m pa. Transactions are via cheques, cash and direct credit. International transactions average once a month. The risk presented in the Cook Islands is therefore LOW.

Casinos (which also includes internet casinos)

Not applicable – no casino. The risk presented in the Cook Islands is therefore NIL.

A Cost-Benefit Analysis

In late 2004, an International Monetary Fund report noted that "In June 2000, the Cook Islands were placed on the Financial Action Task Force (FATF) list of non-cooperative countries and territories based on the absence of effective supervision of the offshore sector, the lack of an adequate

infrastructure to combat money laundering, and excessive secrecy provisions.”¹ Its generally positive assessment of progress since 2000 included the statements:

The AML-related laws enacted by the Cook Islands have been largely inspired by the model provisions of international organizations or the laws of other countries. The Cook Islands has virtually all the necessary legal means to prevent systemic ML. Law enforcement agencies will be able to use these powers in combating the financing of terrorism as well when the FT Act is passed in the near future. The current technical and human resources, however, do not meet the requirements of the new legislation.

In implementing AML-related laws, the FSC and FIU have been actively engaged in establishing the ML reporting system and maintaining close liaison with financial institutions. On the law enforcement side, however, the CLO, CIP, Immigration, and Customs are not fully familiar with the new AML related legislation. The agencies are not aware that there is wide range of investigative power available under the new legislation. Both the supervisory authorities and law enforcement agencies are understaffed.

It is interesting to consider these words in a cost-benefit context – in particular, the comments regarding under-resourcing and understaffing. Firstly, however, let us note that there has been no change in the potential for the Cook Islands’ domestic crime to generate significant and launderable proceeds of crime since 2004. The IMF Report noted:

21. The general crime rate of the Cook Islands remains low. General crimes are burglary, petty theft and low-level fraud with an insignificant amount of property involved. There is no evidence suggesting that the Cook Islands has problems of any major organized crime, drug trafficking or serious fraud, crimes which would generate large amount of revenue and create a domestic demand of money laundering services.

Since this remains the case in 2008, then arguably the Cook Islands obtain few domestic benefits of any kind from its AML/CTF regime, except that there may be some general crime-preventive effect derived from simply having these provisions in place and a possible economic benefit in having a well-regulated finance sector. However, the IMF report continues by stating:

22. While the risk of domestic money laundering is small, there is a potentially significant risk of the Cook Islands offshore banking sector and trustee companies being abused by criminal elements.

23. There is yet no successful investigation and prosecution of money laundering in the Cook Islands and thus there are no statistical data on the estimated volume of proceeds of crime. It is therefore not possible to estimate the amount of money laundering, if any, which might take place in or through the Cook Islands. The insignificant number of suspicious transactions reports made to the FIU is also insufficient to indicate any particular money laundering trend or typology.

The risk of which these paragraphs speak is clearly the risk that criminal elements in other countries can take advantage of financial services based in the Cook Islands to launder the proceeds of the crimes they have committed in other countries. It would be completely impossible for authorities in the Cook Islands to estimate the volume of criminal proceeds generated in other countries, and unreasonable to expect them to do so. The fact that there has been no successful investigation and

¹ Assessment of the Supervision and Regulation of the Financial Sector, Volume II: Detailed Assessment of Observance of Standards and Codes, Cook Islands, October 2004. (IMF,2004).

prosecution of money laundering can be attributed either to the lack of resources previously referred to, but equally to an actual lack of money laundering incidence in the Cook Islands.

As noted, the Cook Islands' AML/CTF regime has been much improved since 2000, including the setting up of a Financial Intelligence Unit with all the powers and responsibilities demanded of it by the Financial Action Task Force's 40+9 Recommendations. Of the 135 suspicious activity reports generated in the Cook Islands between 2002 and 2008, 89 have involved purely International transactions; nine have involved sending money from the Cook Islands, thirteen involved inward transactions (mostly ex-patriots' remittances to relatives in the Cook Islands or foreign business investments. Only five out of 24 reports that involved purely domestic transactions were proceeded with, with the remaining lacking any substance. These patterns support the contention that, if there is any serious risk of money laundering through the Cook Islands finance sector, then it is generated by persons whose crimes are committed in other countries, and who are trying to launder the proceeds through the Cook Islands.

The principal beneficiaries of the Cook Islands' AML/CTF regime are therefore the law enforcement agencies of those other countries that may be assisted in apprehending criminals as a result of information provided by the Cook Islands FIU.

Now let us examine the cost side of the equation. The responsibilities of the Cook Islands government are clearly set out in the FATF's 40+9 Recommendations, and the government's responses to these recommendations are examined in considerable detail in the "mutual assessments" conducted by various international agencies including the IMF, and the Asia Pacific Group on Money Laundering, of which the Cook Islands is a member. Past criticisms about deficiencies in the Cook Islands response have generally been addressed, and are still being addressed, with assistance from neighbouring FIUs including those of Australia and New Zealand. A recent independent² assessment noted that:

"Both the executive and legislative regulatory infrastructure have certainly progressed a long way since 2003, and thus far the FATF officials seem satisfied that it meets international standards. Whilst obviously one has to wonder whether there is an element of "over regulation" relative to the size of the industry, pragmatically speaking, in a 2008 environment, there is going to be a minimum level of infrastructure required by the market and the international community irrespective of how small the industry is".

"in summary, my view is that the current regulatory environment is up to international standards and whilst there are arguably some "level playing field" issues and anomalies in the legislation that may require remedial legislation, it is more imperative that the jurisdiction satisfy the international regulatory community that it is a properly regulated environment"

Here, the author is stating that the Cook Islands has no choice other than to implement the recommendations of the international regulatory community, regardless of the facts that dis-economies of small scale mean that the "minimum level of infrastructure" that needs to be allocated by the Cook Islands is out of proportion to the actual size of the industry – and therefore also out of proportion to the actual risks of money laundering.

Let us compare the resources allocated by the Cook Islands against the resources allocated to AML/CTF in other countries around the world – including those in which the majority of criminal proceeds appear to be generated. A measure of the burden placed on a country's economy by

² Breed, 2007, op. cit.

AML/CTF is the number of staff employed by the country's Financial Intelligence Unit, per billion US dollars of GDP. Figure 1 compares the Cook Islands with seventeen other countries on a logarithmic scale. The extent of the disparities is such that it can only be shown on a scale of this sort.

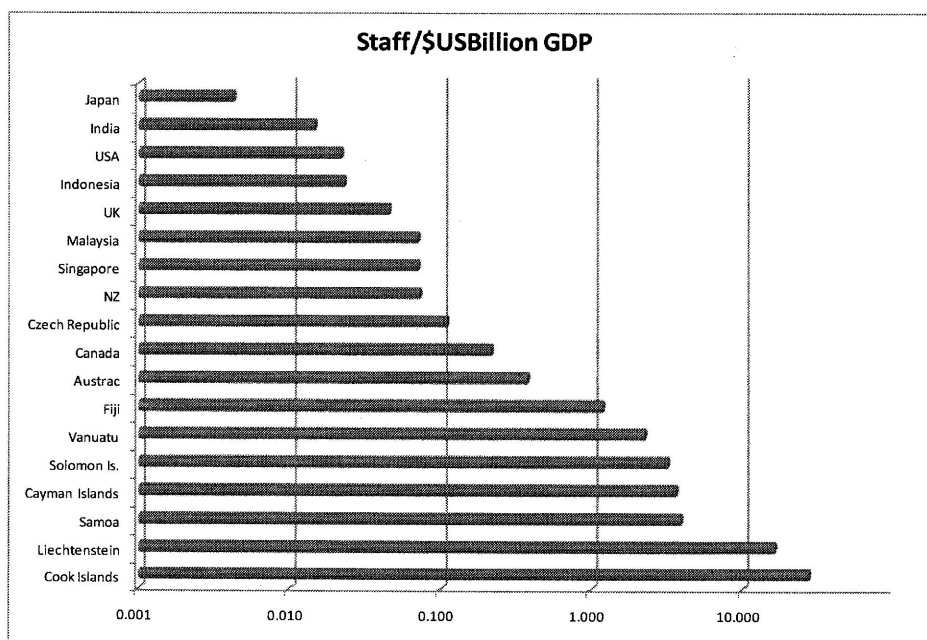
These calculations clearly show that the burden on the Cook Islands economy is far higher than any of these seventeen other countries, pro-rata to GDP. But the full extent of the burden on small countries is shown more systematically in figure 2. In this chart, each of the figures in the right hand column of Table 1 is divided by the figure for the USA (0.22). This expresses the burden on each country's GDP relative to the burden faced by the taxpayers of the USA. The ratios are presented in Figure 2 plotted on a horizontal axis measuring actual GDP. Again, logarithmic scales are used.

Figure 2 shows very clearly that the poorer countries face regulatory burdens far exceeding those faced by the developed countries. In fact there is a very clear and strong statistical relationship (Pearson R-squared=0.87) between GDP and regulatory burden, with costs increasing exponentially for the poorer countries.

While some of this effect may be regarded as the "normal" dis-economies of small scale, the extent of these diseconomies is grossly excessive. Furthermore, the simple "economies of scale" argument completely disregards the question of who benefits from the regulatory burden. In the Cook Islands' case, it is clearly not the Cook Islanders, whose taxpayers are required to pay over a thousand times more than the taxpayers of the USA. While some of the government revenues that pay for the Cook Islands' AML/CTF regime are derived from fees imposed on the finance sector, these do not appear to be sufficient to prevent the Cook Islands' from being characterised as under-resourcing and under-staffing their Financial intelligence Unit.

It is impossible to conclude other than that the true beneficiaries of the Cook Islands' AML/CTF regime – the wealthier countries of the world where the proceeds of crime are generated – should pay more for the services provided by the Cook Islands to ensure that their interests continue to be protected.

Figure 1. FIU Staff per \$USbillion GDP – Cook Islands and 17 Other Countries



Sources of Data: various FATF, APG, IMF and other mutual evaluation reports, and the CIA Factbook, 2008.

Table 1. FIU Staff per \$USbillion GDP – Cook Islands and 17 Other Countries

Country	FIU Staff	GDP (US\$ billion)	Staff/\$USBillion GDP
Cook Islands	5	\$ 0.183	27.293
Liechtenstein	29	\$ 1.786	16.237
Samoa	4	\$ 1.029	3.887
Cayman Islands	7	\$ 1.939	3.610
Solomon Is.	3	\$ 0.948	3.165
Vanuatu	2	\$ 0.897	2.230
Fiji	6	\$ 5.079	1.181
Australia	285	\$ 760.800	0.375
Canada	271	\$ 1,266.000	0.214
Czech Republic	27	\$ 248.900	0.108
New Zealand	8	\$ 111.700	0.072
Singapore	16	\$ 228.100	0.070
Malaysia	25	\$ 357.400	0.070
UK	96	\$ 2,137.000	0.045
Indonesia	19	\$ 837.800	0.023
USA	300	\$ 13,840.000	0.022
India	43	\$ 2,989.000	0.014
Japan	18	\$ 4,290.000	0.004

Figure 2. Staff/\$USBillion GPD Ratios compared to USA=1, by GDP

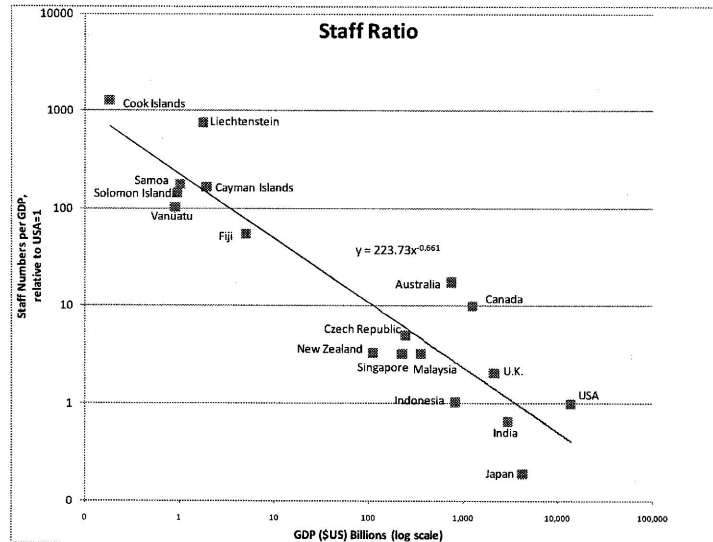


Table 2. Staff/\$USBillion GPD Ratios compared to USA=1.

Country	Staff Ratio
Cook Islands	1259
Liechtenstein	749
Samoa	179
Cayman Islands	167
Solomon Is.	146
Vanuatu	103
Fiji	54
Australia	17
Canada	10
Czech Republic	5
New Zealand	3
Singapore	3
Malaysia	3
UK	2
Indonesia	1.05
USA	1.00
India	0.66
Japan	0.19