

Examined and certified by:

*[Signature]*  
Clerk of the Parliament

In the name and on behalf of Her Majesty Queen Elizabeth the Second I hereby assent to  
this Act this *7th* day of *November*, 2014



*[Signature]*  
Queen's Representative

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##### Amendments to Acts

### **An Act to regulate companies that undertake trustee company business**

#### **The Parliament of the Cook Islands enacts as follows—**

#### **1 Title**

This Act is the Trustee Companies Act 2014.

**2 Commencement**

This Act comes into force on the day after the date on which it is assented to by the Queen's Representative.

## Part 1 Preliminary matters

**3 Act binds the Crown**

This Act binds the Crown.

**4 Interpretation**

In this Act, unless the context otherwise requires—

**associate** has the meaning given to it in section 8

**associated** means the relationship between 2 or more associates

**by or under** in relation to this Act means—

(a) by this Act:

(b) by regulations or other delegated legislation:

(c) by the conditions of a licence:

(d) by a direction:

(e) by an order of the Court made under this Act

**Commission** means the Financial Supervisory Commission established under the Financial Supervisory Commission Act 2003

**company** means a body corporate incorporated under the laws of the Cook Islands or any other country

**compliance officer** has the meaning given to it in section 7

**compulsory statement** has the meaning given to it in section 9

**Court** means the High Court of the Cook Islands

**digital format** has the same meaning as in the Digital Registers Act 2011

**direction** means a direction given by the Commission under part 5

**employee** includes a person who is negotiating employment with a prospective employer

**estate** means property, real or personal, administered or managed by a trustee company in 1 or more of the following capacities—

(a) executor:

(b) administrator:

(c) trustee:

(d) receiver:

(e) committee:

(f) guardian:

(g) agent

**financial misconduct** means—

(a) a breach of 1 or more of the oversight Acts:

(b) misconduct by a person relating generally to money laundering:

(c) fraud involving cross-border financial transactions:

- (d) the financing of terrorism:
- (e) the financing or facilitating of corrupt practices of any sort:
- (f) other similar conduct

**FIU** means the Financial Intelligence Unit established under the provisions of the Financial Transactions Reporting Act 2004

**hard copy format** has the same meaning as in the Digital Registers Act 2011

**independent contractor** includes a person who is negotiating a contract with a prospective principal

**information** includes—

- (a) facts:
- (b) opinions:
- (c) representations:
- (d) information of any other sort:
- (e) a record:
- (f) the answer to a question

**intervention ground** has the meaning given to it in section 10

**investigator** means a person appointed under section 64(2)

**involuntary shareholder controller** has the meaning given to it in section 6(3)

**Judge** means a judge of the Court

**judicial review** means review of a decision by the Court whether its jurisdiction to do that arises under statute or under common law

**key person** in respect of a trustee company means each of the following—

- (a) a principal person of that company; and
- (b) a compliance officer of that company

**licence** means a trustee company licence granted under Part 3

**Minister** means the minister responsible for finance

**offshore entity** means the following—

- (a) an international company incorporated under the International Companies Act 1981—82:
- (b) a foreign company registered as such under the International Companies Act 1981—82:
- (c) a partnership registered under the International Partnership Act 1984:
- (d) a limited partnership registered under the International Partnership Act 1984:
- (e) the holder of an international banking licence issued under the Banking Act 2011:
- (f) the holder of a restricted banking licence issued under the Banking Act 2011:
- (g) the holder of a Category C insurance licence under the Insurance Act 2008:
- (h) a trust or disposition registered under the International Trusts Act 1984:

- (i) a limited liability company incorporated under the Limited Liability Companies Act 2008:
- (j) a foundation registered under the Foundations Act 2012:
- (k) the holder of a captive insurance licence under the Captive Insurance Act 2013.

**oversight Act—**

- (a) means—
  - (i) the Mutual Assistance in Criminal Matters Act 2003:
  - (ii) the Financial Transactions Reporting Act 2004:
- (b) includes a regulation, order, delegated legislation, guidelines, or similar instruments made under an Act specified in paragraph (a)

**partner**, in relation to a partnership includes—

- (a) a silent partner:
- (b) a limited partner:
- (c) a person who is entitled to exercise rights similar to the rights of a partner

**person** means—

- (a) a natural person:
- (b) a legal person

**prescribed** means prescribed by regulations**principal person**, in respect of a company means—

- (a) a shareholder controller of that company:
- (b) a director of that company:
- (c) a person who exercises any degree of day to day executive control of that company:
- (d) a person who gives directions relating to executive control of that company either directly or indirectly with an expectation those directions are to be acted upon without regard for contrary advice given in a professional capacity:
- (e) a receiver or liquidator of that company

**provide** in respect of information means to provide—

- (a) in a digital format approved for that purpose by the Commission:
- (b) in legible hard copy format in the English language:
- (c) in the case of a question asked orally, includes an oral response.

**publish** means to make information generally known in any way—

- (a) to the public:
- (b) to a class of persons generally

**related company** has the same meaning as in the International Companies Act 1981—82**shareholder controller** has the meaning given to it in section 6**subsidiary** means

- (a) a subsidiary within the meaning of the International Companies Act 1981—82:

- (b) a company that is—
  - (i) not a subsidiary within the meaning of that Act; and
  - (ii) related, directly or indirectly to a trustee company; and
  - (iii) approved in writing by the Commission as a subsidiary for the purposes of section 14 of the Act.

**trustee company** means a company licensed under this Act to carry on trustee company business and **licensed** and **licensee** have corresponding meanings

**trustee company business** has the meaning given to it in section 5.

## 5 Trustee company business defined

- (1) In this Act, a company carries on trustee company business if it provides registration services to 1 or more offshore entities.
- (2) A company provides **registration services** to an offshore entity if it does 1 or more of the following—
  - (a) registers an offshore entity under any law of the Cook Islands;
  - (b) provides a person or service that must be provided, as a matter of the laws of the Cook Islands by a trustee company;
  - (c) provides trustee or fiduciary services.
- (3) Despite the previous subsections—
  - (a) an international company does not carry on trustee company business if it acts as the trustee, or 1 of the trustees, of not more than three trusts;
  - (b) a trustee not ordinarily resident in the Cook Islands does not carry on trustee company business if—
    - (i) it acts solely as the trustee of a trust or disposition registered under the International Trusts Act 1984; and
    - (ii) 1 or more of the other trustees of that trust or disposition is resident in the Cook Islands.

## 6 Shareholder controller defined

- (1) In this Act a shareholder controller of a company is a person who holds or controls 1 or more of the following—
  - (a) 10 per cent or more of its shares;
  - (b) 10 per cent or more of its issued share capital;
  - (c) the power of appointment and removal of a majority of those who exercise day to day management and control of it;
  - (d) 10 per cent or more of the voting power of its shareholders;
  - (e) shares or other interests of a sort that make it possible to exercise significant influence over its management.
- (2) The holding or control of a shareholder controller may arise in 1 or more of the following ways—
  - (a) alone;
  - (b) with an associate;
  - (c) directly;
  - (d) by the ownership or control of a holding company;
  - (e) indirectly in any other way.



- (3) In this Act an involuntary shareholder controller is a shareholder controller whose holding or control arises either—
- (a) by operation of law; or
  - (b) as the result of action taken by a third party over whom that person has no control.

**7 Compliance officer defined**

- (1) In this Act a person is a compliance officer of a trustee company if the person is employed or otherwise engaged by the company in the following capacities—
- (a) a compliance officer as required by the Financial Supervisory Commission Act 2003;
  - (b) a money laundering reporting officer as required by the Financial Transactions Reporting Act 2004.
- (2) In this Act a person is a money laundering reporting officer if the duties of that person to the trustee company include an obligation—
- (a) to monitor the conduct of its trustee company business to ensure compliance with the law of the Cook Islands relating to money laundering;
  - (b) to receive and evaluate reports from employees of the company in relation to activities that may constitute money laundering;
  - (c) where appropriate, to forward those reports to FIU.

**8 Associate defined**

- (1) Each of the following is the associate of a natural person—
- (a) that person's husband, wife (legal or de facto), child or stepchild, parent or step-parent;
  - (b) that person's partner;
  - (c) a company of which that person is a director;
  - (d) an employee of that person;
  - (e) an independent contractor of that person.
- (2) Each of the following is the associate of a legal person—
- (a) a director of that person;
  - (b) an employee of that person;
  - (c) a related company;
  - (d) a director of a related company;
  - (e) an employee of a related company;
  - (f) an independent contractor of a related company.
- (3) Without limiting the preceding subsections, 2 or more persons are associated (and each is an associate) if they are parties to an agreement, arrangement or other obligation to act together in either or both of the following ways—
- (a) in exercising voting power or control;
  - (b) in acquiring, holding or disposing of shares or other ownership interests or controlling interests in a company, partnership or other association.

**9 Compulsory statement defined**

In this Act a person makes a compulsory statement if that person makes a statement in any of the following circumstances—

- (a) to comply with a requirement imposed by a notice to do so given under this Act;
- (b) under compulsion to a person appointed to investigate the affairs of—
  - (i) a trustee company, or
  - (ii) a former trustee company;
- (c) to comply with a requirement imposed by a warrant to enter premises.

**10 Intervention ground defined**

(1) In this Act each of the following is an intervention ground—

- (a) a trustee company is either—
  - (i) not fit to carry on trustee company business; or
  - (ii) not fit to carry on a class of trustee company business;
- (b) a trustee company is in breach of a law;
- (c) a trustee company is in breach of a requirement imposed on it by a law;
- (d) 1 or more persons need to be protected from the actions of a trustee company for 1 or more of the following reasons—
  - (i) the company has or may transact business with a person needing protection;
  - (ii) a person needing protection may be affected by business that the company has or may transact with another person;
  - (iii) all or some part of the trustee company business of that company has become of doubtful financial viability for any reason;
  - (iv) the trustee company has become financially distressed.

(2) A breach may be—

- (a) continuing or complete; and
- (b) may arise by a combination of 1 or more acts and omissions.

(3) A trustee company is **financially distressed** in 1 or more of the following circumstances—

- (a) the company is unable (or deemed unable under applicable law), to pay its debts as they fall due;
- (b) a judgment against the company remains unsatisfied for a period of 31 days;
- (c) distress, execution or other enforcement action is taken against the property of the company;
- (d) the company suspends payment to its creditors;
- (e) the company convenes a meeting of its creditors;
- (f) the company proposes a scheme of arrangement with its creditors;
- (g) the company's financial position causes it either to stop carrying on its business or give notice of its intention to do so;
- (h) a receiver of any part of the property of the company is appointed;

- (4) The total liabilities (secured and unsecured) of the company to creditors exceed the total assets of the company.

#### **11 Fit and proper person**

In deciding whether a person is fit and proper for any purpose under this Act the Commission is entitled to consider the following factors as they relate to that person—

- (a) in every case—
  - (i) honesty:
  - (ii) integrity:
  - (iii) financial standing:
- (b) if that person is a natural person—
  - (i) experience and qualifications:
  - (ii) competence:
- (a) if that person is a legal person—
  - (i) structure:
  - (ii) organisation:
  - (iii) whether its ownership and control is held by fit and proper persons:
  - (iv) whether its business and undertaking is managed and undertaken by fit and proper persons.

### **Part 2**

#### **Restriction on carrying on trustee company business**

##### **12 Restriction on carrying on trustee company business**

- (1) A natural person must not carry on trustee company business in the Cook Islands.
- (2) A person who contravenes subsection (1) commits an offence.
- (3) A legal person must not carry on trustee company business in the Cook Islands unless—
  - (a) licensed to do so under this Act; or
  - (b) permitted to do so by or under this Act.
- (4) A legal person that contravenes subsection (3) commits an offence.
- (5) A person, natural or legal, carries out trustee company business for the purposes of this section if that person—
  - (a) advertises as carrying on trustee company business:
  - (b) holds out to another person as carrying on trustee company business:
  - (c) represents business that it carries out to be trustee company business.

##### **13 Trustee company may carry on trustee company business only in accordance with conditions of its licence**

- (1) A company licensed under this Act may—
  - (a) hold itself out as a trustee company; and
  - (b) carry on trustee company business.

- (2) However a trustee company must comply with any condition specified in its licence.
- (3) A company that contravenes subsection (2) commits an offence.

#### **14 Subsidiary may act for trustee company**

- (1) A trustee company may appoint 1 or more subsidiaries to undertake all or a part of its trustee company business.
- (2) A subsidiary must be approved in writing by the Commission unless it is—
  - (a) incorporated in the Cook Islands; and
  - (b) at all times wholly owned, managed and controlled by the trustee company.
- (3) A subsidiary may act without being licensed as a trustee company but—
  - (a) it must comply with all obligations imposed on the trustee company by or under this Act; and
  - (b) it must not delegate any part of the business of the trustee company to a subsidiary of its own.
- (4) If a subsidiary of a trustee company undertakes trustee company business contrary to this Act, the subsidiary and the trustee company are jointly and severally liable—
  - (a) for an offence that is committed by the subsidiary; and
  - (b) for the acts and omissions of the subsidiary in the course of that business.
- (5) Subsection (4) applies whether or not the provisions of subsection (1) are complied with.

#### **15 Delegation of functions by trustee companies**

- (1) If a trustee company wishes to delegate a function that it may exercise by or under this Act it must do so—
  - (a) by a written resolution signed by all its directors; and
  - (b) only to—
    - (i) a subsidiary that complies with section 14;
    - (ii) a director of the company;
    - (iii) a secretary of the company;
    - (iv) an officer of the company;
    - (v) an employee of the company.
- (2) The exact terms of the delegation must be specified in the resolution.
- (3) The delegation may be either general or in respect of a function or class of functions.
- (4) A trustee company may revoke or vary a delegation by a further written resolution signed by all its directors.

#### **16 Effect of delegation**

- (1) The trustee company exercises the function when its delegate does so, even if either or both the following have occurred—
  - (a) the delegate has exercised the function in a manner that breaches the terms of the delegation:

- (b) the delegation was made in breach of this section.
- (2) A trustee company may exercise a function despite delegating the exercise of that function under this section.

### **Part 3**

#### **Licence to carry on trustee company business**

##### **17 Application for a licence**

A company may apply to the Commission for a licence to carry on trustee company business if it is either—

- (a) incorporated under the Companies Act 1970-71; or
- (b) registered as an overseas company under Part XII of that act

##### **18 Commission may require further information**

- (1) Before determining an application for a licence the Commission may require the applicant to provide additional information regarding 1 or more of the following—

- (a) the applicant;
  - (b) any principal person of the applicant;
  - (c) any holding company of the applicant;
  - (d) any principal person of that holding company;
  - (e) any person who it is proposed be a principal person of either the applicant or of a holding company of the applicant;
  - (f) any proposed compliance officer of the applicant;
  - (g) the business plan for the proposed trustee company business of the applicant.
- (2) The Commission may require the applicant to provide a report in respect of—
    - (a) 1 or more of the persons referred to in subsection (1);
    - (b) the business plan.
  - (3) The Commission must specify the further information that it requires in respect of that report.
  - (4) The report must be provided to the Commission—
    - (a) by an auditor, accountant or other qualified person, in each case approved by the Commission for that purpose; and
    - (b) at the expense of the applicant

##### **19 Refusal of licence where applicant not fit and proper**

- (1) The Commission may refuse an application if the applicant does not satisfy the Commission it is a fit and proper person to carry on trustee company business.
- (2) In making that decision, the Commission may take into account—
  - (a) the description of the trustee company business that the applicant proposes to carry on;
  - (b) whether 1 or more of the following persons is not fit and proper—
    - (i) the applicant;

- (ii) a person associated with the applicant for the purposes of the applicant's business or proposed business:
- (iii) a principal person in relation to the applicant's business or proposed business.

**20 Other grounds for refusal**

- (1) The Commission may refuse an application on the following grounds—
  - (a) the applicant, whether or not in relation to the application, when required to provide information under this Act, has—
    - (i) failed to provide the information; or
    - (ii) provided information that was untrue, incomplete or misleading in a material particular:
  - (b) 1 or more disqualifying circumstances applies to 1 or more of—
    - (i) the applicant;
    - (ii) a person associated with the applicant:
  - (c) that to grant a licence to the applicant would not be in the best interests of—
    - (i) those who may transact trustee company business with the applicant;
    - (ii) the reputation and integrity of the Cook Islands in financial and commercial matters:
  - (d) the proposed trustee company business is of questionable financial viability:
  - (e) the applicant is financially disqualified.
- (2) In this section—
  - (a) a **disqualifying circumstance** is any of the following—
    - (i) failure to comply with a condition attached to a previous licence:
    - (ii) failure to comply with a direction:
    - (iii) conviction, in the Cook Islands or elsewhere, of a dishonesty offence.
  - (b) a **dishonesty offence** is an offence that involves 1 or more of the following elements—
    - (i) fraud:
    - (ii) dishonesty:
    - (iii) the mishandling of property of any sort:
    - (iv) the theft or misappropriation of property of any sort:
    - (v) financial misconduct.
  - (c) An applicant is **financially disqualified** in 1 or more of the following circumstances—
    - (i) the applicant does not hold the prescribed paid up share capital:
    - (ii) the applicant does not hold the prescribed financial resources:

- (iii) a circumstance exists satisfying the Commission, acting reasonably, that the applicant's financial resources are unlikely to be retained to sustain the on-going requirements of its trustee company business.

**21 Licence period**

- (1) A trustee company licence comes into force on the later of—
  - (a) the day it is granted;
  - (b) the day specified in the licence as the day it comes into force.
- (2) A trustee licence continues in force, subject to any condition imposed on that licence, until the trustee licence is revoked under section 22.

**22 Revocation of licence**

- (1) The Commission may revoke a licence if requested to do so by the licensee.
- (2) The Commission may also revoke a licence on the following grounds—
  - (a) the Commission becomes aware of a ground that would have entitled it to refuse the application for that licence if—
    - (i) that ground had existed at that time; or
    - (ii) existing at that time, had been brought to the attention of the Commission:
  - (b) the licensee—
    - (i) has not commenced trustee company business within 1 year of being licensed;
    - (ii) no longer carries on trustee company business;
    - (iii) has failed to comply with a requirement of a notice of objection given to the trustee company under section 33;
    - (iv) has failed to pay a fee the licensee is required to pay by or under this Act;
  - (c) a person has become a key person of the licensee contrary to section 31;
  - (d) a person has become a shareholder controller of the licensee contrary to section 34;
  - (e) a shareholder controller of the licensee has varied that shareholder's shareholding in the licensee contrary to section 36;
  - (f) A licensee has purported to assign or deal with its licence contrary to section 26.

**23 Commission to give notice of revocation of licence**

- (1) The Commission may decide to revoke a licence without—
  - (a) giving the licensee prior notification of an intention to make that decision;
  - (b) allowing the licensee an opportunity to make submissions as to that proposed decision.
- (2) However, the Commission must give notice of its decision to the licensee once that decision has been made.

**24 Conditions of licence**

- (1) The Commission may specify conditions in any licence it grants.
- (2) At any time after granting a licence, the Commission may vary that licence to—
  - (a) add a condition to an unconditional licence:
  - (b) add an additional condition to a conditional licence:
  - (c) amend a condition:
  - (d) revoke a condition.
- (3) Before taking action under subsection (2), the Commission must—
  - (a) give the licensee 28 days' notice in writing of the changes proposed; and
  - (b) consider any submission in response received from the licensee within 28 days following the Commission receiving that submission.
- (4) The Commission must give notice of its decision to the licensee once that decision has been made.
- (5) Without limiting the power of the Commission, it may grant a licence that expressly permits a trustee company to act as the trustee of 1 or more funds of the following sort—
  - (a) a provident fund:
  - (b) a benefit fund:
  - (c) a superannuation fund:
  - (d) a retirement fund.

**25 Display of licence**

- (1) The Commission may grant a licence subject to a condition requiring the licence to be publicly displayed or otherwise made available to the public.
- (2) If the Commission does so, the licence must set out in full the conditions of that licence and must be supplied to the licensee—
  - (a) in a hard copy format; and
  - (b) in a .pdf or similar digital format.
- (3) The licensee must display that hard copy format licence prominently in its premises in a place where it is most likely to draw the attention of third parties visiting those premises.
- (4) The licensee must publish the digital format licence on every website maintained by or for the licensee to which the public have access and must draw attention to at least 1 of those websites on all communications.

**26 Licence personal to licensee**

- (1) A licence is the property of the Commission and confers rights that are personal to the licensee.
- (2) A licence is not capable of being—
  - (a) assigned absolutely:
  - (b) assigned by way of security:
  - (c) dealt with by the licensee in any other way.
- (3) A purported assignment or dealing is—
  - (a) of no effect; and



- (b) a breach of the licence.

## **27 Rights of recourse in respect of licence**

- (1) An applicant has recourse to the Court under part 13 if the Commission makes a decision—
  - (a) refusing that applicant's application for a trustee company licence;
  - (b) granting that applicant's application subject to a condition that the applicant considers unreasonable or contrary to law.
- (2) A licensee has recourse to the Court under part 13 if the Commission makes a decision—
  - (a) exercising its powers under section 22 to revoke that licensee's licence;
  - (b) exercising its powers under section 24 to impose a condition that the licensee considers unreasonable or contrary to law.

## **28 Consequences of carrying on trustee company business contrary to Act**

- (1) If a person carries on trustee company business contrary to this Act, a contract entered into by that person in the course of that business is unenforceable by that person, against any other person.
- (2) Any other party to that contract is entitled to recover—
  - (a) any money paid;
  - (b) other property transferred;
  - (c) compensation for any loss sustained as a result of entering into that contract.
- (3) The Court may, for the benefit of any other party to that contract, exercise all the powers conferred by the Illegal Contracts Act 1987.
- (4) Subsections (2) and (3) do not apply to a person who—
  - (a) has actual knowledge that the other party to a contract carries on business contrary to this Act; and
  - (b) has that knowledge at the time of entering into the contract.

## **Part 4**

### **Supervision of trustee company business**

#### *Key persons*

## **29 Commission to approve key persons**

- (1) A person must not become a key person of a trustee company without the prior approval of the Commission.
- (2) In this Act a person is treated as having become a key person if—
  - (a) the legal status of that person is that of a key person;
  - (b) that person is appointed to a position which is that of a key person;
  - (c) that person acts as a key person or exercises the holding or control of a key person, whether or not legally appointed or entitled to do so.
- (3) The trustee company must obtain approval for that person—
  - (a) in the case of a shareholder controller, under section 34;
  - (b) in the case of any other key person under section 31.

- (4) An involuntary shareholder controller that becomes a key person of a trustee company must comply with section 38.

**30 Rights in respect of decisions relating to key persons**

The trustee company in respect of which a decision is made has recourse to the Court under part 13 if—

- (a) the Commission exercises its powers under—
- (i) section 31:
  - (ii) section 33:
  - (iii) section 34:
  - (iv) section 36:
  - (v) section 38; and
- (b) the Commission either refuses the trustee company's application for approval; or
- (c) grants that application subject to a condition that the trustee company considers unreasonable or contrary to law.

**31 Approval of key persons generally**

- (1) If a person wishes to become a key person (other than a shareholder controller) in respect of a trustee company, that trustee company must first make an application for the approval of the Commission both—
- (a) to the appointment; and
  - (b) to the capacity in which the person is to act.
- (2) The Commission must not grant that application unless it is satisfied the applicant is both—
- (a) fit and proper to be a key person; and
  - (b) capable and competent to act in the capacity for which the application is made.
- (3) An approval given is limited to that person's appointment—
- (a) to the trustee company specified in the application; and
  - (b) to the capacity to which the application relates.
- (4) The trustee company must—
- (a) no later than 90 days after receiving notice of that approval—
    - (i) make any appointment of that person; and
    - (ii) have that person start to act in the approved capacity; and
  - (b) notify the Commission within 21 days of that person starting to act in the approved capacity.
- (5) The trustee company commits an offence if it fails to comply with subsection (4).

**32 Person ceasing to be a key person**

- (1) A trustee company must notify the Commission if a key person (other than a shareholder controller) ceases to act in the capacity to which an approval relates.
- (2) The notice must—

- (a) be given within 21 days after the trustee company becomes aware the person ceases to act in that capacity; and
  - (b) specify the reason why the person has ceased to act.
- (3) A trustee company that breaches this section commits an offence.

### **33 Objection to a key person**

- (1) This section applies if the Commission decides a key person is no longer fit and proper to be a key person in respect of a trustee company—
- (a) generally; or
  - (b) in a particular capacity.
- (2) The Commission must give a notice of its decision to—
- (a) the person; and
  - (b) the trustee company.
- (3) In the case of a key person other than a shareholder controller, the notice must specify whether the decision relates to the key person acting—
- (a) generally; or
  - (b) in a particular capacity.
- (4) The person must cease to be a key person in respect of the trustee company on or before the date the decision takes effect.

### **34 Commission's approval of shareholder controller required**

- (1) Until the Commission has given its approval for a person doing so, that person must not, in respect of a trustee company—
- (a) become a shareholder controller of that company;
  - (b) exercise any holding or control that may be exercised by a shareholder controller of that company.
- (2) If a person wishes to become a shareholder controller of a trustee company, that trustee company must first make an application to the Commission seeking its approval.
- (3) The Commission must not give its approval for that person to become a shareholder controller unless it is satisfied that person is both—
- (a) fit and proper to be a shareholder controller; and
  - (b) capable and competent to exercise the holding and control in question in a way that will not prejudice compliance by the trustee company of its obligations under its trustee company licence.

### **35 Effect of approval of shareholder controller**

- (1) Any approval given is limited to—
- (a) the trustee company specified in the application; and
  - (b) the holding and control in that company that is specified in the application.
- (2) That person must take up that holding and control (if at all) no later than 90 days after receiving notice of that approval.
- (3) The trustee company commits an offence if it fails to notify the Commission of that person taking up that holding and control within 21 days of that happening.

**36 Change in holding of shareholder controller**

- (1) Until the Commission has given its approval for a shareholder controller to do so, that shareholder controller must not, in respect of a trustee company—
  - (a) increase the shareholder controller's holding in that trustee company so it attains or exceeds a relevant percentage; or
  - (b) decrease that holding so it drops to or below a relevant percentage;
  - (c) dispose of that holding;
  - (d) vary the rights attaching to that holding in a way that alters the control of that shareholder controller;
  - (e) vary that holding (or the rights attaching to that holding) in a way that alters any relationship of parent and subsidiary between the trustee company and the shareholder controller.
- (2) A shareholder controller who acts contrary to subsection (1) commits an offence.
- (3) If a shareholder controller wishes to alter or dispose of the shareholder controller's holding in a trustee company, that trustee company must first make an application to the Commission seeking its approval.
- (4) The Commission must not give an approval under subsection (3) unless it is satisfied the alteration or disposal will not prejudice compliance by the trustee company of its obligations under its trustee company licence.
- (5) In this section **relevant percentage** means—
  - (a) 20%;
  - (b) 33%;
  - (c) 50%;

**37 Effect of approval to vary holding**

- (1) The shareholder controller must act on any approval given by the Commission under section 36 no later than 90 days after receiving notice of that approval.
- (2) The trustee company commits an offence if it fails to notify the Commission of the shareholder controller acting on that approval within 21 days of that happening.

**38 Involuntary shareholder controller**

- (1) This section applies—
  - (a) to any shareholder controller of a trustee company who becomes an involuntary shareholder controller due to a change in that person's holding or control in relation to that company; and
  - (b) to any other person who becomes an involuntary shareholder controller of a trustee company.
- (2) An involuntary shareholder controller must not exercise the rights of any holding or control conferred by an involuntary interest until the Commission approves that person permanently retaining that involuntary interest.
- (3) A person must, within 21 days of becoming aware of having become an involuntary shareholder controller, either—
  - (a) dispose of that person's involuntary interest; or

- (b) request the trustee company to make an application to the Commission for approval either—
  - (i) to allow that person to permanently retain the involuntary interest; or
  - (ii) allow further time for that person to dispose of the involuntary interest.
- (4) If a person acts in breach of subsection (3), that person commits an offence.
- (5) In this section an **involuntary interest** means the holding or control that makes a person an involuntary shareholder controller.

### **39 Criteria for approval of involuntary shareholder controller**

- (1) If a person applies to the Commission for approval to permanently retain an involuntary interest, the Commission must not give an approval under section 38(3) unless it is satisfied the person is both—
  - (a) fit and proper to be a key person; and
  - (b) capable and competent to exercise the holding and control of the involuntary interest in a way that will not prejudice compliance by the trustee company of its obligations under its trustee company licence.
- (2) Any approval given is limited to—
  - (a) the trustee company specified in the application; and
  - (b) the holding and control in that company specified in the application.

### **40 Power of Court in respect of shares**

- (1) The Commission may apply to the Court to order the sale of some or all of the shares of a shareholder controller in a trustee company if that trustee company—
  - (a) has failed to apply for an approval of the Commission that is required under—
    - (i) section 34;
    - (ii) section 36;
    - (iii) section 38; or
  - (b) having applied for approval, that approval has been refused but the shares in question have been acquired, or retained, despite that refusal.
- (2) The Court may make an order of sale, binding on all persons having either a legal or beneficial interest in those shares, in whatever terms it considers are—
  - (a) consistent with the property rights of all persons in those shares; and
  - (b) otherwise appropriate for—
    - (i) the sale of the shares; and
    - (ii) the distribution of the proceeds of the sale.
- (3) The Court may also make interim orders that it thinks appropriate in respect of—
  - (a) the holding of the shares;
  - (b) the exercise and enjoyment of any rights attaching to the shares.

**41 Application of powers to seek sale**

- (1) The powers of the Commission under section 40 do not affect the liability of a person to prosecution under this Act.
- (2) Section 40 applies to the ownership of shares that, either alone or with other shares, make a person—
  - (a) a shareholder controller;
  - (b) an involuntary shareholder controller.
- (3) The ownership interest of that person in those shares may be—
  - (a) legal;
  - (b) beneficial;
  - (c) both.

### **Part 5**

#### **Commission may give directions**

**42 Directions**

- (1) The Commission—
  - (a) may give a direction in the circumstances set out in this part; and
  - (b) in giving a direction must follow the procedures set out in this part.
- (2) The Commission may give a direction—
  - (a) of unlimited duration having effect from a specified date or event; or
  - (b) of limited duration, having effect between specified—
    - (i) dates;
    - (ii) events.
- (3) A direction may do 1 or more of the following—
  - (a) require action;
  - (b) prohibit, restrict, limit or control action;
  - (c) authorise action;
- (4) Having given a direction, the Commission may do 1 or more of the following—
  - (a) vary it;
  - (b) withdraw it;
  - (c) issue a further direction.
- (5) A person who fails to comply with a direction given by the Commission commits an offence.

**43 Directions – general procedure**

- (1) A direction must be in writing and may be worded as the Commission thinks appropriate.
- (2) However, a direction must specify—
  - (a) the person to whom it is directed; and
  - (b) when the direction is to take effect; and
  - (c) whether the direction is of unlimited duration; and

- (d) if the direction is of limited duration, when the direction is to cease effect; and
  - (e) the right of recourse created by section 44.
- (3) A direction must be given to the person to whom it is directed.
- (4) A copy of a direction may be given to 1 or more of the following—
- (a) any relevant trustee company;
  - (b) any person that, in the Commission's opinion, is capable of ensuring the direction is complied with;
  - (c) any person who is interested in the subject matter of the direction;
  - (d) any person that, in the Commission's opinion, ought to be given express notice of the direction's terms.

**44 Rights of trustee company in respect of directions**

A trustee company has recourse to the Court under part 13 in respect of any decision of the Commission relating to a direction that is binding on it or on any key person or employee of that trustee company.

**45 Directions to secure compliance with Act**

Without limiting section 42 the Commission may give a direction to secure compliance with—

- (a) any requirement of this Act;
- (b) any requirement imposed—
  - (i) by regulations;
  - (ii) by a condition of a trustee company licence;
  - (iii) by the Commission acting in accordance with this Act;
  - (iv) by the Court;
- (c) any decision of the Commission.

**46 Power to give directions intervening in trustee company business**

- (1) This section applies to—
- (a) a trustee company;
  - (b) a former trustee company.
- (2) If the Commission has reason to believe 1 or more intervention grounds exist in respect of a company, the Commission may give directions that intervene in the business and affairs of that company.
- (3) Directions under this section may require a company to do 1 or more of the following—
- (a) cease all or any part of its trustee company operations;
  - (b) suspend all or any part of those operations;
  - (c) make arrangements, acceptable to the Commission, for the supervision of its business;
  - (d) comply with terms and conditions imposed by the Commission on its future carrying on of business:

- (e) comply with any other requirement as to the business or affairs of the company that the Commission thinks appropriate to address and resolve matters requiring intervention.
- (4) This section does not limit the powers of the Commission—
- (a) to seek an intervention order under section 53:
  - (b) to seek winding up of the trustee company under section 54.

#### **47 Directions as to fit and proper persons**

- (1) The Commission may give directions to 1 or more trustee companies that relate to 1 or more persons.
- (2) The Commission must not give a direction under this section unless it is satisfied that a person is not a fit and proper person—
- (a) to be involved in trustee company business generally;
  - (b) to be involved in an aspect of that business;
  - (c) to be a key person.
- (3) In forming that view the Commission may take into account whether 1 or more of the following persons is not (or is no longer) fit and proper—
- (a) a key person of a trustee company;
  - (b) a person associated with a trustee company;
  - (c) a principal person in relation to that associated person;
  - (d) a shareholder controller of that associated person.

#### **48 Form of directions as to fit and proper persons**

- (1) A direction under section 47 must specify—
- (a) the person or persons to which it relates; and
  - (b) details of each person sufficient to identify that person; and
  - (c) any known alias or trading style of that person; and
  - (d) whether the direction takes effect—
    - (i) as a prohibition against that person's involvement generally in trustee company business;
    - (ii) as a prohibition against that person's involvement in a specified aspect of that business;
    - (iii) as a prohibition against that person becoming a key person; and
  - (e) if the direction is limited to a specified aspect of that business, the details of that.
- (2) Unless a direction specifies differently, a prohibition on employing a person includes a prohibition on—
- (a) dealing with that person as an independent contractor;
  - (b) dealing with that person on any gratuitous basis;
  - (c) appointing that person to any position;
  - (d) any indirect dealing between that person and a trustee company that is intended, by either, to avoid the effect of a direction given under this section.
- (3) The Commission must give a direction under section 47 to each person to which it relates, unless that person is not resident in the Cook Islands.



- (4) In that case the Commission need do no more than forward a copy of the direction by email to the last known email address of that person.

## **Part 6**

### **Commission may publish statements**

#### **49 Public statements - general**

The Commission may publish information of the following sorts—

- (a) that it must or may bring to the attention of the public under this Act:
- (b) of public or general interest that relate to the Act and its administration:
- (c) that may assist 1 or more of the following—
  - (i) the public:
  - (ii) persons having business with the Commission:
  - (iii) persons having business with trustee companies:
  - (iv) trustee companies generally:
- (d) about any breach of the Act or regulations:
- (e) about the conduct or status of any person.

#### **50 Public statements - directions**

The Commission may publish—

- (a) a direction:
- (b) a statement or notice regarding—
  - (i) a direction:
  - (ii) any breach of a direction.

#### **51 Naming of person**

- (1) Before publishing a statement, the Commission must give a notice to any person identified by name in that statement.
- (2) The notice must—
  - (a) contain or attach a copy of the statement; and
  - (b) state the date when the Commission proposes to publish the statement; and
  - (c) set out the person's rights of recourse against the Commission's decision to publish the statement.
- (3) Despite subsection (1) the Commission need not give a notice if—
  - (a) in the Commission's opinion—
    - (i) it is impractical to do that:
    - (ii) it is not in the public interest to do that:
    - (iii) identifying that person by name in the statement is not prejudicial to that person:
  - (b) the Commission is required, by law, to make a statement.
- (4) A person named in a statement has recourse to the Court under section 104—
  - (a) whether or not that person has received notice:
  - (b) whether or not the statement has been published.

## Part 7

### Powers of Court to intervene in business of trustee company

#### 52 Intervention Orders

- (1) If it has reason to believe that 1 or more intervention grounds exist in respect of a trustee company the Commission may apply to the Court for an order under section 53.
- (2) An order under section 53 is an **intervention order**.

#### 53 Jurisdiction of the Court in making intervention order

- (1) The Court may make an intervention order if it is satisfied circumstances exist entitling it to do so.
- (2) In making that order, the Court may do 1 or more of the following—
  - (a) appoint a receiver or manager of the trustee company:
  - (b) make any other order providing for the supervision of its business:
  - (c) restrain it from any action (including any future action):
  - (d) require it to take any action:
  - (e) impose terms and conditions on its future carrying on of business:
  - (f) make its business subject to supervision, restraint or conditions:
  - (g) make any other order, intervening in the business and affairs of the trustee company, that the Court thinks just and equitable in the circumstances—
    - (i) to address and resolve matters requiring intervention:
    - (ii) to provide 1 or more persons with relief from any loss, damage or prejudice suffered as a result of the matters requiring intervention.
- (3) An intervention order has effect from any time, and for any period, the Court may specify.

#### 54 Commission may seek winding up of trustee company

- (1) If it has reason to believe that 1 or more intervention grounds exist in respect of a trustee company the Commission may petition the Court to wind up the company.
- (2) If the Commission proves 1 or more intervention grounds at the hearing of the petition, the Court may make a winding up order if it thinks it is just and equitable to do so in the circumstances.
- (3) The Commission may nominate a liquidator of the company for consideration by the Court.
- (4) On, or after, filing a winding up petition, the Commission may give directions that have effect pending the making of a winding up order. Those directions may cover 1 or more of the following matters—
  - (a) the procedures that have effect pending liquidation of the company:
  - (b) the appointment of 1 or more persons to take control of the company:
  - (c) the interim possession and control of the assets of the company:
  - (d) the preservation of any property that is either in the possession of the company or under its control.

**55 Other rights not affected**

Nothing in this part limits—

- (a) the right of the Commission to seek any other relief from the Court:
- (b) the right of any other person to seek relief from the Court:
- (c) the right of the Court to make any interim or ancillary order:
- (d) the right of the Court to make an intervention order, on the application of the Commission, in the course of other proceedings:
- (e) the right of the Court to grant relief to any other person despite that relief having effect the same as or similar to an intervention order.

## **Part 8**

### **Providing information**

**56 Information**

(1) In this part—

- (a) **respondent** means—
    - (i) a trustee company:
    - (ii) a former trustee company:
    - (iii) a key person:
    - (iv) a former key person:
    - (v) a person who has at any time been associated with 1 or more of the persons referred to in subparagraphs (i) to (iv) for the purpose of trustee company business:
    - (vi) a person who appears to be in possession of information:
    - (vii) a person who is carrying on trustee company business without a licence, contrary to this Act.
  - (b) **professional person** means an accountant, an auditor, or other professionally qualified person who—
    - (i) is not an officer or employee of the trustee company; and
    - (ii) has provided a report to the Commission.
- (2) A professional person who has provided a report to the Commission as required by section 18(2) is a respondent in respect of any matter specified in subsection (5).
- (3) A person who is, or has been, an auditor of a trustee company is a respondent in respect of any matter specified in subsection (5) if that person acquired knowledge of that matter in the capacity of auditor of the trustee company.
- (4) A professional person who has provided a report to the Commission as required by section 61 is a respondent in respect of any matter specified in subsection (5).
- (5) A professional person who is a respondent under this section may be required to provide information on any matter that relates to—
- (a) the applicant or trustee company:
  - (b) a related company (past or present):
  - (c) the business or affairs of those companies.

**57 Information to be provided regarding trustee company**

- (1) A respondent must provide information to the Commission if required to do so under this section.
- (2) The Commission may require a respondent to provide information regarding—
  - (a) a trustee company; or
  - (b) a former trustee company.
- (3) The information may only relate to—
  - (a) the trustee company business of that company;
  - (b) matters relevant to a consideration of whether the trustee company is or remains fit and proper to carry on trustee company business;
  - (c) compliance by that company with any obligation imposed on it by or under this Act.

**58 Information to be provided by suspected unlicensed providers**

- (1) A respondent must provide information to the Commission if required to do so under this section.
- (2) The Commission may require a respondent to provide information if it has reasonable grounds to suspect—
  - (a) a person is carrying on trustee company business contrary to this Act; and
  - (b) that person is not licensed to carry on trustee company business.
- (3) However, the Commission may require a respondent only to provide information relating to that suspected breach of the Act.

**59 Procedure where information to be provided**

- (1) If it wishes to exercise its power under section 57 or 58, the Commission must give a notice to the respondent specifying—
  - (a) the time and place at which the respondent must provide information; and
  - (b) a description of the information the respondent must provide; and
  - (c) whether or not the respondent is to be present at that time and place to answer any question.
- (2) The Commission may exercise its powers under sections 57 and 58 by any officer or agent of the Commission who has been authorised by name, in the notice.

**60 Entry and search of premises by warrant**

- (1) A Judge may grant a warrant under this section if satisfied it is reasonable to suspect—
  - (a) a person has not complied with a notice under this Act that requires the person to provide information;
  - (b) information provided in response to a notice is not complete;
  - (c) if a person were to be given a notice under this Act requiring the person to provide information, it would not be complied with:

- (d) if a person were to be given a notice under this Act requiring a person to provide information, there is a material risk that records might instead be removed, tampered with or destroyed:
  - (e) the Commission or its delegate or any investigator has been or may be obstructed in the exercise of a power under this Act to require information or to enter premises.
- (2) The Commission must apply for the warrant and its application must be supported by information on oath.
- (3) The warrant may authorise a police officer, together with any other person named in the warrant to—
- (a) enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose:
  - (b) search the premises and obtain information that could be the subject of a notice served under section 59:
  - (c) take possession of that information if it takes the form of records:
  - (d) take steps to preserve that information and those records:
  - (e) take steps to prevent interference with that information or those records:
  - (f) take copies of, or extracts from, those records:
  - (g) require any person named in the warrant—
    - (i) to provide an explanation of those records:
    - (ii) to answer questions that could be required answered under section 62:
  - (h) if records are not provided, to require any person appearing to be in possession of information as to their whereabouts or access, to provide information, to the best of that person's knowledge and belief, as to—
    - (i) where the records are located:
    - (ii) how the records may be retrieved.

#### **61 Requirement to provide report**

- (1) A notice to provide information issued under section 59 and a warrant issued under section 60 may require that person to provide information in the form of a report, prepared by either—
- (a) an accountant; or
  - (b) some other person with the relevant professional skill.
- (2) The notice must specify the form of the report and either—
- (a) nominate the person who is to prepare the report; or
  - (b) set out a procedure for approval of a person to prepare the report.
- (3) The report must be limited to the matters to which the notice relates.
- (4) The costs of that report must be paid by the trustee company to which the report relates.

#### **62 Powers in respect of information**

- (1) This section applies to information provided to the Commission under this Act—
- (a) in hard copy format:

- (b) in digital format.
- (2) The Commission may—
  - (a) retain information:
  - (b) copy information:
  - (c) make extracts from information.
- (3) The Commission may question a respondent on the following matters—
  - (a) to seek an explanation of any information provided to it:
  - (b) to seek an explanation as to why information sought under any notice under section 59 or under a warrant issued under section 60 has not been provided to it.
- (4) A respondent must answer all questions truthfully to the best of that respondent's knowledge and belief.

### **63 Retention of records**

- (1) The Commission may retain the original copy of a record provided for the longer of the following periods—
  - (a) 1 year; or,
  - (b) if within that year proceedings to which that original copy is relevant are commenced against a person, until the conclusion of those proceedings.
- (2) If the Commission retains the original copy of a record provided, it must provide the person providing that record with a duplicate copy of that record within a reasonable time of being requested to do so.

## **Part 9**

### **Investigations on behalf of the Commission**

#### **64 Power to investigate trustee company**

- (1) The Commission may exercise its powers under this part if—
  - (a) it has reason to suspect a trustee company has breached an obligation imposed on it by or under this Act:
  - (b) it receives a complaint from a person with whom a trustee company has transacted business:
  - (c) it is in the interests of prospective clients of a trustee company that an aspect of the business (or proposed business) of that trustee company be investigated:
  - (d) it is in the public interest that the business or proposed business of a trustee company be investigated.
- (2) The Commission may appoint 1 or more competent persons to investigate a trustee company and report to the Commission on—
  - (a) the nature, conduct or state of its trustee company business or any aspect of that:
  - (b) whether any 1 or more of the following is not fit and proper in any material way—
    - (i) the trustee company:
    - (ii) a past or present key person:

- (iii) a past or present associate of the trustee company:
- (iv) a past or present associate of a key person.
- (c) the compliance by any person referred to in paragraph (b) with any obligation imposed by or under this Act.
- (3) The Commission must give notice of that appointment to the trustee company.
- (4) In this part the term **trustee company** includes a former trustee company.

#### **65 Power of investigator**

- (1) An investigator may require 1 or more of the following persons to provide information for the purposes of an investigation of a trustee company—
  - (a) any person referred to in section 64(2)(b):
  - (b) any past or present officer:
  - (c) any past or present banker:
  - (d) any past or present auditor:
  - (e) any past or present legal adviser:
  - (f) any person appointed at any time under this Act to make a report:
  - (g) any other person who is, or has been, in possession of relevant information.
- (2) A person to whom this section applies must—
  - (a) provide an investigator with all records relating to the trustee company that are in the person's custody or control; and
  - (b) attend before the investigator to answer questions that the investigator reasonably requires be answered for the purposes of the investigation; and
  - (c) give the investigator all other assistance in the investigation that the person is reasonably able to give.
- (3) The investigator may nominate any reasonable time and place at which a person must comply with that person's obligations under subsection (2).
- (4) The investigator may retain or take copies of or extracts from any records provided to the investigator under this section.
- (5) The investigator may request the Commission to seek a warrant under section 60 if any of the circumstances set out in section 60(1) arise in the course of the investigation.

#### **66 Expense of investigation**

- (1) This section applies if, as the result of an investigation under this part, a person is convicted of an offence in proceedings before the Court.
- (2) At the time of conviction or at any time afterwards, the Court may order that person to pay the expenses of the investigation to the extent specified by the Court.
- (3) The Court may exercise that power in those proceedings or in any other proceedings (civil or criminal).
- (4) The expenses of the investigation include any sum the Commission may calculate are the costs of its staff and overheads in the investigation.

## Part 10

### Legal provisions

#### 67 Certificates

- (1) This section applies to the proof of 1 or more of the following facts in legal proceedings—
- (a) the date on which any application was made under this Act;
  - (b) the contents of any application;
  - (c) the contents of any further information provided to the Commission in respect of that application;
  - (d) the date on which any application was considered by the Commission;
  - (e) the date on which the Commission decided any application;
  - (f) the date on which the Commission's decision was notified to a person;
  - (g) the identity of an applicant;
  - (h) the status in the records of the Commission at any given time of 1 or more of the following persons—
    - (i) an applicant;
    - (ii) a trustee company;
    - (iii) a key person:
  - (i) the date on which the licence of a trustee company was issued;
  - (j) the date on which the licence of a trustee company ceased to have effect;
  - (k) the terms and conditions of the licence of a trustee company at any time;
  - (l) the terms and conditions applying at any time to any other approval given by the Commission.
- (2) In any legal proceedings, the Commission may give evidence of any fact to which this section applies by a certificate—
- (a) signed on behalf of the Commission; and
  - (b) certifying as to that fact.
- (3) The Court may assume a certificate is signed on behalf of the Commission unless the contrary is shown.
- (4) A certificate is prima facie evidence of any fact stated in it of which direct oral evidence would be admissible.
- (5) Nothing in this section prevents the Commission giving evidence in any other way.

#### 68 Evidence of criminal wrongdoing

A judgment of the Court in criminal proceedings for an offence under this Act is admissible in any civil proceedings in the Court as evidence of the facts found in those criminal proceedings.

#### 69 Accountability - trustee companies

- (1) This section applies if—
- (a) an offence is committed under this Act by a trustee company or former trustee company; and
  - (b) a key person—



- (i) actively participates in the commission of that offence:
  - (ii) consents to another person causing the company to commit that offence:
  - (iii) participates in any action to conceal the commission of that offence:
  - (iv) having knowledge of the commission of the offence, acts by failing to inform the Commission of that knowledge as soon as reasonably practical :
  - (v) acts in such a way that the commission of the offence is directly attributable to that person's neglect.
- (2) If a key person acts in 1 or more of the ways described in subsection (1)(b) the key person is guilty of the same offence as the company.

#### **70 Criminal liability of officers; aiders and abettors, etc.**

- (1) This section applies if—
- (a) an offence is committed under this Act by a legal person; and
  - (b) an officer of that legal person—
    - (i) actively participates in the commission of that offence:
    - (ii) consents to another person causing the company to commit that offence:
    - (iii) participates in any action to conceal the commission of that offence:
    - (iv) having knowledge of the commission of the offence, acts by failing to inform the Commission of that knowledge as soon as reasonably practical:
    - (v) acts in such a way that the commission of the offence is directly attributable to that person's neglect.
- (2) In this section each of the following is an officer of a legal person—
- (a) a director:
  - (b) a secretary:
  - (c) a manager:
  - (d) a shareholder controller.
- (3) An officer of a legal person is a person who, in respect of the legal person either—
- (a) holds 1 or more of the positions referred to in subsection (2); or
  - (b) acts in 1 or more of those capacities, whether or not authorised to do so.
- (4) An officer of a legal person commits the same offence as that legal person if that officer acts in 1 or more of the ways described in subsection (1).
- (5) Nothing in this section affects section 68 of the Crimes Act 1969.

#### **71 Privileged information**

- (1) Nothing in this Act affects the right of a person to assert legal professional privilege in answer to any requirement either to—
- (a) provide information: or
  - (b) produce a record.

- (2) However, a person who asserts legal professional privilege must provide information by way of full name, address and contact details, of that person's client.

**72 Admissibility of compulsory statements**

- (1) If a person makes a compulsory statement it may be used in evidence against the person—
- (a) in civil proceedings;
  - (b) in criminal proceedings.
- (2) However, in criminal proceedings the Court must exclude a compulsory statement if its probative value is outweighed by the risk that the evidence will have an unfairly prejudicial effect on the proceedings.
- (3) In determining that question the Court must take into account the right of the defendant to offer an effective defence and the fair trial rights that are conferred by the Constitution.

**73 No breach of duty**

A person does not breach a duty owed to any third party—

- (a) to the extent that person truthfully makes a compulsory statement;
- (b) to the extent that person acts in compliance with a requirement imposed in 1 or more of the following ways—
  - (i) by a notice given under this Act;
  - (ii) by a person appointed to investigate the affairs of a trustee company or a former trustee company;
  - (iii) by a warrant granted by a Judge under this Act;
- (c) by providing to the Commission information relating to the activities of 1 or more of the following—
  - (i) a trustee company;
  - (ii) a key person in relation to that trustee company;
  - (iii) a related company of any corporate principal person of that trustee company.

**Part 11**

**Additional provisions relating to trustee companies**

**74 Restrictions on exercise of trustee company powers**

The powers conferred on a trustee company under this part are to be exercised subject to—

- (a) this Act and regulations; and
- (b) the conditions of its licence; and
- (c) any restrictions contained in its memorandum or articles of association.

**75 Trustee company may be appointed as an agent or trustee**

- (1) A trustee company may be appointed to act in 1 or more of the following capacities—
- (a) as an agent:

- (b) as an original trustee:
  - (c) as a new trustee:
  - (d) as an additional trustee:
  - (e) under a settlement:
  - (f) in any capacity under an instrument creating a trust:
  - (g) to perform any other duty.
- (2) The power of appointment conferred by this section—
- (a) may be exercised whether or not the instrument, deed or settlement predates the commencement of this Act:
  - (b) allows the trustee company to perform and discharge all the acts and duties of a trustee as fully and effectively as any other trustee:
  - (c) may be made jointly with any other person, including another trustee company.

#### **76 Powers in respect of estates of deceased persons**

- (1) This section applies to the estate of a deceased person—
- (a) wherever that person may have been domiciled during life:
  - (b) wherever that person's estate may be situated:
  - (c) whether or not that person's estate falls for administration—
    - (i) under letters of administration with will annexed; or
    - (ii) under letters of administration without will annexed; or
    - (iii) under probate:
  - (d) whether or not the estate is to be administered by a trustee company solely:
  - (e) whether or not any will or codicil predates the commencement of this Act:
  - (f) whether the appointment is as—
    - (i) an administrator:
    - (ii) an executor:
    - (iii) a trustee.
- (2) Subject to the terms of any will—
- (a) a trustee company may apply to any court for the right to act in the administration of the estate of a deceased person:
  - (b) a person may authorise a trustee company to make an application of that sort either—
    - (i) in place of that person; or
    - (ii) jointly with that person.
- (3) If a trustee company is appointed by a court to act in respect of the estate of a deceased person then, subject to the terms of that appointment—
- (a) the trustee company may act in the Cook Islands and elsewhere:
  - (b) may enjoy the rights and perform the duties of that appointment as fully and effectually as any other person appointed in that capacity.

- 77 Trustee company may apply assets to discharge administration expenses**  
Subject to the terms of any court order affecting the estate of a deceased person, a trustee company administering that estate is entitled to apply assets of the estate to pay—
- (a) the expenses of administering the estate;
  - (b) any debt incurred by the company in the administration of the estate;
  - (c) to pay any remuneration due to the company that has been either—
    - (i) previously been contracted for; or
    - (ii) ordered by any court.
- 78 Trustee company may act as trustee, receiver, etc.**
- (1) This section applies to every power to appoint a natural person to 1 or more of the following positions—
    - (a) trustee;
    - (b) receiver;
    - (c) committee of the estate of a mentally ill person;
    - (d) manager of the estate of an incapable person;
    - (e) guardian of the estate of a minor.
  - (2) Despite any law to the contrary, a power to appoint a natural person includes the power to appoint a trustee company.
- 79 Trustee company may act as sole trustee**
- (1) Even if the instrument that allows or requires an appointment provides that a trust or power must be performed by more than 1 trustee, a trustee company may—
    - (a) be appointed as a sole trustee;
    - (b) continue to act as sole trustee.
  - (2) For the purposes of the instrument that allows or requires that appointment, a trustee company must be counted as two trustees.
  - (3) Despite subsection (1) a trustee company must not be appointed or continue to act as sole trustee if the instrument expressly—
    - (a) forbids the appointment of a corporate trustee; or
    - (b) requires another trustee to be appointed in addition to a corporate trustee; or
    - (c) expressly provides that a corporate trustee must not be appointed to act as sole trustee.
- 80 Liability of trustee company when acting jointly**
- (1) This section applies if a trustee company acts jointly with 1 or more other persons and provides for the liability of that trustee company for—
    - (a) breach of trust; and
    - (b) loss resulting from a breach of trust.
  - (2) The trustee company is jointly liable with other trustees for its own acts or omissions that amount to breach of trust and for loss resulting.
  - (3) The trustee company is jointly liable with other trustees for loss resulting from the acts or omissions of any other trustee if—

- (a) the company has itself actively participated in, or assented to, those acts or omissions; and
- (b) it did so knowing them to be in breach of trust.
- (4) Except in the circumstances set out in subsection (3) the trustee company is not liable for the acts or omissions of any other trustee.
- (5) In this section, reference to a trustee includes a reference to—
  - (a) an executor;
  - (b) an administrator;
  - (c) an agent.

### **81 Delegation to a trustee company**

- (1) This section applies to a person who is entitled to exercise a power of delegation in respect of any office, function, power or duty as—
  - (a) an executor;
  - (b) an administrator;
  - (c) a trustee;
  - (d) an agent.
- (2) A person may exercise a power of delegation in favour of a trustee company.
- (3) That delegation must—
  - (a) be in writing; and
  - (b) be signed by the person exercising the power of delegation; and
  - (c) specify—
    - (i) whether or not the delegation permits the trustee company to act solely; and
    - (ii) if the trustee company is not permitted to act solely, the identity of each joint delegate; and
    - (iii) the term and revocability of the delegation; and
    - (iv) any limitations on the delegated power.
- (4) Unless a person has express notice of the delegation being revoked, then despite that revocation the acts of the trustee company are valid and effectual—
  - (a) as they relate to that person; and
  - (b) purport to have been done under that delegation.

## **Part 12**

### **Administrative provisions**

#### **82 Powers of the Commission**

- (1) The powers of the Commission under any other act have full effect despite any provision of this Act that might otherwise limit or reduce those powers.
- (2) Without limiting subsection (1), the powers of the Commission under this Act—
  - (a) add to the powers of the Commission under the Financial Supervisory Commission Act 2003; and

- (b) are separate to those powers; and
  - (c) are not to be treated as restricting any of those powers.
- (3) The Commission may exercise any power conferred by or under this Act on 1 or more occasions.
- (4) If the Commission gives an approval under this Act, it may impose 1 or more conditions to that approval.
- (5) Without limiting any other provision of this Act, in its oversight and supervision of a trustee company the Commission may, with the concurrence of that company, undertake compliance visits. In doing so it may exercise 1 or more of the following powers—
- (a) undertake compliance visits:
  - (b) inspect its premises, business and assets:
  - (c) review its procedures, systems and controls:
  - (d) examine and make copies of its documents:
  - (e) access and use its computer systems:
  - (f) use its copying equipment:
  - (g) seek information from its officers and employees

### 83 Indemnity

- (1) No action lies against any protected party in respect of anything done (or not done) in good faith by or under this Act, including—
- (a) the discharge of any duty:
  - (b) the performance of any function:
  - (c) the exercise of any power.
- (2) In this section each of the following is a **protected party**—
- (a) the Minister:
  - (b) a person acting on behalf of the Minister:
  - (c) the Commission:
  - (d) a person acting on behalf of the Commission:
  - (e) a person appointed by the Commission to conduct an investigation under this Act:
  - (f) every other person who performs a duty or exercises a power of the Commission under this Act whether as—
    - (i) an officer:
    - (ii) an employee:
    - (iii) a delegate:
    - (iv) an agent.

### 84 Indemnity of trustee companies acting as trustees

- (1) If a trustee company is the trustee of a trust, a beneficiary of the trust may agree—
- (a) to relieve the trustee company from liability to the beneficiary for a breach of trust:

- (b) to indemnify the trustee company against any liability the trustee company may incur for a breach of trust.
- (2) An agreement under subsection (1) must be in writing and signed—
  - (a) by the beneficiary; or
  - (b) if the beneficiary is a minor or a person under legal disability, by a person having legal authority to bind the beneficiary.
- (3) An agreement under subsection (1) does not restrict or modify any term of the trust that provides the trustee company with any relief or indemnity from liability.
- (4) An agreement under subsection (1) has no effect—
  - (a) If—
    - (i) at the time of entering into the agreement the beneficiary was a minor or a person under legal disability; and
    - (ii) the agreement is signed by that beneficiary;
  - (b) if at the time of entering into the agreement the beneficiary did not have full knowledge of all material facts;
  - (c) if the beneficiary was improperly induced by the trustee company to enter into the agreement.

**85 Protection of trustee company on deregistration of an international trust**

- (1) If an international trust is deregistered under the International Trusts Act 1984 each trustee company (and each subsidiary) that acts as its trustee may resign immediately by the trustee company giving notice of that resignation to the Registrar of International Trusts and to 1 or more of the following—
  - (a) a remaining trustee (if any);
  - (b) the settlor;
  - (c) a protector (if any);
  - (d) a beneficiary.
- (2) Subsection (1) applies despite—
  - (a) the terms of the trust instrument; and
  - (b) even if the resignation results in the trust having no remaining trustee.
- (3) From the date a trustee company has complied with subsection (1), each resigning trustee has no liability in respect of the trust for any subsequent loss or damage suffered by the trust.

**86 Duties of trustee company regarding applications**

- (1) An administering trustee company of an offshore entity must not knowingly—
  - (a) make an application regarding that offshore entity that contains false information; or
  - (b) allow that offshore entity to make an application that contains false information.
- (2) An administering trustee company of an offshore entity must comply with section 87 if it becomes aware at any time that—
  - (a) a pending application regarding that offshore entity contains false information; or

- (b) a past application (whether or not granted) contained false information.
- (3) In this section and section 87—

**administering trustee company**, in respect of an offshore entity, means a trustee company that directly or indirectly administers, acts for or provides services to that offshore entity

**offshore entity principal**, in respect of an offshore entity, means each of the following—

- (a) any person the trustee company considers to be primarily interested in the offshore entity;
- (b) any person who customarily instructs the trustee company in respect of the offshore entity;
- (c) in the case of an international trust—
  - (i) any protector;
  - (ii) any beneficiary;
  - (iii) any settlor;
- (d) in the case of an international company, any 1 of the directors of the company

**application** means an application that relates to an offshore entity and includes—

- (a) any information that is provided in support of that application;
- (b) any accompanying correspondence or submission;
- (c) any subsequent correspondence or further information provided in respect of consideration of that application;
- (d) an application relating to 1 or more of the following matters—
  - (i) incorporation, establishment or registration of an offshore entity;
  - (ii) the grant of any licence to carry on an activity;
  - (iii) the exercise of any power or discretion vested in the Commission;
  - (iv) the exercise of any power or discretion by any other person in the Cook Islands or elsewhere in favour of the offshore entity.

**information** means information that—

- (a) an offshore entity must provide in, or in support of, an application;
- (b) is otherwise material in terms of the matters to be considered by the person considering the application.

**false information** means information that in the reasonable opinion of the administering trustee company was known to 1 or more of the offshore entity principals at the time the information was provided to be either—

- (a) false; or
- (b) materially inaccurate.

### 87 Administering trustee company must resign

- (1) If circumstances described in section 86(2) occur the administering trustee company must first notify the Commission brief particulars of the false information.



- (2) If the Commission requires it to do so, the administering trustee company must then, by giving 42 days' written notice to 1 or more of the offshore entity principals—
  - (a) resign as the administering trustee company of that offshore entity; and
  - (b) resign all offices held (whether directly or indirectly) in connection with the offshore entity; and
  - (c) cease undertaking trustee company business for—
    - (i) that offshore entity; and
    - (ii) each of its offshore entity principals.
- (3) The notice of resignation must—
  - (a) set out the reasons for the resignation; and
  - (b) notify the offshore entity of its rights of recourse to the Court.
- (4) The resignation becomes effective upon the later of the following dates—
  - (a) the date on which the notice period expires;
  - (b) if the offshore entity exercises its rights of recourse to the Court, a date fixed by the Court.

#### **88 Consequences of resignation of trustee company**

- (1) Once an administering trustee company resigns as required by section 87 no other trustee company may, directly or indirectly, transact any trustee company business with—
  - (a) that offshore entity;
  - (b) any of its offshore entity principals.
- (2) However, any trustee company may do so to the extent authorised to do so by—
  - (a) the Commission; or
  - (b) the Court.
- (3) A security, lien or contribution that an administering trustee company has in respect of an offshore entity is unaffected by any resignation of that trustee company under section 87.
- (4) Subsection (3) applies despite—
  - (a) any agreement to the contrary;
  - (b) any other statute;
  - (c) any rule of law.

#### **89 Liability of officers of trustee companies acting as trustees**

- (1) No officer or employee of a trustee company incurs personal liability for any act or omission of the trustee company when the trustee company, or any subsidiary, acts as a trustee.
- (2) Subsection (1) applies to a liability that might otherwise arise in 1 or more of the following ways—
  - (a) in tort;
  - (b) in contract;
  - (c) for breach of trust;
  - (d) for breach of any other equitable obligation.

- (3) Subsection (1) does not apply—
- (a) to an officer or employee who acts dishonestly in respect of that act or omission; or
  - (b) to a personal liability that is expressly provided for—
    - (i) in the terms of the trust instrument;
    - (ii) in the terms of any instrument of appointment;
    - (iii) in the terms of any order of appointment.
  - (c) to a personal liability provided for by this Act.

#### **90 Giving notice**

- (1) A notice given under this Act must be addressed to 1 or more persons.
- (2) A notice may be in—
- (a) hard copy format;
  - (b) digital format.
- (3) A notice in hard copy format may be given to an addressee in 1 or more of the following ways—
- (a) by personal service on the addressee;
  - (b) by post to that addressee's last known address;
  - (c) by facsimile to that addressee's last known facsimile contact number.
- (4) A notice in digital format may be given to an addressee in 1 or more of the following ways—
- (a) by email addressed to 1 or more email addresses that appear to be used or accessed by the addressee;
  - (b) by electronic transmission to the addressee;
  - (c) by any other means of communication with the addressee that is capable of producing a record that contains the text of the notice in legible form.

#### **91 Receipt of notice**

- (1) A notice is given to an addressee under this Act—
- (a) immediately upon service if it is personally served on the addressee;
  - (b) three days after it is posted to the last known address of the addressee in the Cook Islands;
  - (c) fourteen days after it is posted to the last known address of the addressee outside the Cook Islands;
  - (d) immediately upon receipt of a successful transmission report if it is sent by facsimile to that addressee's last known facsimile contact number;
  - (e) immediately upon receipt of any form of confirmation by the addressee in the case of email, electronic transmission or other means of communication with the addressee.
- (2) If non-compliance with a notice is a material element of an offence under this Act, it is a defence that—
- (a) the defendant did not receive the notice; and
  - (b) the defendant had no knowledge of the requirements of the notice.
- (3) The onus of proving that defence lies on the defendant.

## Part 13

### Applications and recourse to the Court

#### 92 Applications

- (1) This section applies to applications made under the following sections—
  - (a) for a trustee company licence under section 17;
  - (b) for approval of any other key person under section 31;
  - (c) for approval of a shareholder controller under section 34;
  - (d) for approval to allow an involuntary shareholder controller to permanently retain an involuntary interest under section 38.
- (2) The application must—
  - (a) be in the prescribed form; and
  - (b) provide the prescribed information; and
  - (c) be accompanied with the prescribed fee.
- (3) The Commission may refuse to consider any application that is not compliant with the terms of—
  - (a) the Act;
  - (b) regulations.
- (4) If the Commission chooses to exercise its discretion under subsection (3) it must—
  - (a) promptly give notice to the applicant of that refusal; and
  - (b) give brief particulars of the non-compliance; and
  - (c) allow a reasonable time for the applicant to bring the application into compliance and to resubmit the application; and
  - (d) promptly consider the compliance of any resubmitted application, prior to considering its merits.

#### 93 Commission may require further information

- (1) Before determining any application the Commission may require the applicant to provide additional information that, acting reasonably, it considers material to its consideration of the application including, but not limited to, any matter authorised by—
  - (a) this Act;
  - (b) regulations.
- (2) The Commission may treat an application as having been withdrawn if the applicant—
  - (a) does not comply with a request to provide information under this section within the time specified;
  - (b) has, without good reason for that non-compliance, notified the Commission that it does not intend to comply with that request.
- (3) An applicant forfeits its application fee and has no recourse to the Court if the Commission treats an application as withdrawn. However the applicant may make a further application under the same section if that application—
  - (a) complies with section 92; and

- (b) unless circumstances have changed so there is no longer good reason for doing so, provides the further information previously requested by the Commission.

**94 Time for making decisions**

- (1) Once it receives an application that complies with section 92 the Commission must decide that application within the following time period—
  - (a) an application for a trustee company licence within 90 days;
  - (b) an application of any other sort within 28 days.
- (2) However, if the Commission requests further information that period is extended by the number of days between—
  - (a) the Commission making a request to provide further information under section 93; and
  - (b) the Commission receiving that further information in a form satisfactory to it.
- (3) If the Commission has not decided the application within the period allowed by this section, the Commission is taken to have—
  - (a) decided to refuse that application; and
  - (b) made that decision on the last day of that period.

**95 Notification of decisions and directions**

- (1) If the Commission decides to approve an application made under this Act, the Commission must give notice to the applicant of—
  - (a) that approval; and
  - (b) the conditions (if any) to which the approval is subject.
- (2) If the Commission decides either to refuse an application made under this Act or to treat it as withdrawn, the Commission must give notice to the applicant of—
  - (a) that decision; and
  - (b) the reasons for that decision.
- (3) The Commission must take all reasonable steps to ensure an applicant is given notice under this section as soon as practicable.
- (4) The Commission must give notice to the relevant trustee company of a decision made under—
  - (a) section 22 to revoke a licence;
  - (b) section 24 to vary a licence;
  - (c) sections 31, 33, 34 or 38 relating to a key person;
  - (d) part 5 to give a direction.

**96 Reasons not to be notified in certain circumstances**

Nothing in section 95 requires the Commission to disclose information—

- (a) that the Commission considers is confidential information, the disclosure of which would prejudice a third party; or
- (b) the disclosure of which the Commission considers would be contrary to the public interest.

**97 Deferred effect of certain decisions**

- (1) This section applies to—
  - (a) a decision to revoke a licence made under section 22:
  - (b) a decision refusing an application under—
    - (i) section 31 regarding a key person other than a shareholder controller:
    - (ii) section 34 regarding a shareholder controller:
    - (iii) section 38 regarding an involuntary shareholder controller:
  - (c) a decision to object to a key person made under section 33.
- (2) The decision takes effect on the later of the following—
  - (a) 21 days from the date on which notice of the decision is given to the trustee company:
  - (b) the day any proceedings filed by the trustee company to the Court seeking recourse against that decision are either—
    - (i) withdrawn; or
    - (ii) dismissed.
- (3) Despite subsection (2) the Commission and the trustee company may agree that a decision takes effect at an earlier time.

**98 Exercise of recourse to Court**

- (1) A person who has recourse to the Court under this part of the Act against a decision of the Commission may exercise either (but not both) of the following rights—
  - (a) appeal to the Court; or
  - (b) seek judicial review.
- (2) The right must be exercised by filing proceedings in the Court within 21 days of that person receiving notice of the decision.
- (3) If that person does not file proceedings in the Court within that 21 days period that person has no further rights of recourse to the Court in respect of the decision.

**99 Strike out by Court**

- (1) The Court must strike out proceedings to seek judicial review of the decision that are filed after the expiry of that 21 days period even if the person seeking judicial review—
  - (a) was not entitled to receive notice of the decision:
  - (b) was not made aware of the decision within that period:
  - (c) does so independently of any right of recourse under this Act.
- (2) If a person exercises a right to appeal to the Court against a decision of the Commission, the Court must strike out any proceedings filed by any person that seeks judicial review of the same decision.
- (3) In an appeal to the Court the sole grounds of appeal are that the decision, appealed against—
  - (a) is unreasonable or contrary to law having regard to all the circumstances of the case:

- (b) wrongly finds a person not to be fit and proper.

#### **100 Rights of a person found not to be fit and proper**

- (1) This section applies if a decision of the Commission makes or necessarily involves a finding as to whether a person is fit and proper.
- (2) That person may either—
  - (a) apply to be joined in proceedings filed by another person seeking recourse against that decision; or
  - (b) if no other proceedings have been filed, seek judicial review of that decision.
- (3) Unless a provision of this Act expressly requires the Commission to do so, it has no obligation to inform that person of its decision.
- (4) A person exercising rights under this section must file proceedings within 21 days of the Commission giving notice to the person entitled to receive notice of that decision.
- (5) A person exercising rights under this section is joined in the proceedings of another person for the limited purpose of supporting the claim of that other person. In exercising those rights that person may, by counsel—
  - (a) adduce evidence; and
  - (b) cross examine witnesses; and
  - (c) make submissions in support of the relief claimed by that other person.

#### **101 Appeal in respect of licence**

- (1) If the Court upholds an appeal against a refusal to grant a licence under section 19 or 20 it may either—
  - (a) grant the application, with or without conditions; or
  - (b) refer the matter back to the Commission for further consideration.
- (2) If the Court upholds an appeal against any revocation of a licence under section 22—
  - (a) the decision of the Commission must not take effect; and
  - (b) the licence continues, subject only to any condition that the Court might impose.
- (3) If the Court upholds an appeal against any condition imposed in respect of a licence under section 24, it may—
  - (a) disallow or modify the condition;
  - (b) impose 1 or more further or alternative conditions;
  - (c) refer the matter back to the Commission for further consideration.
- (4) Any condition that the Court imposes in respect of a licence is to be treated, for the purposes of this Act, as a condition imposed by the Commission.

#### **102 Appeal in respect of key persons and shareholder controllers**

If the Court upholds an appeal under section 31, 33, 34, 36 or 38—

- (a) the decision of the Commission must not take effect; and
- (b) the person who is the subject of the decision is to be regarded, on the facts adduced in evidence in that appeal, to be a fit and proper person for the purposes of this Act.

**103 Appeal in respect of directions**

If the Court upholds an appeal in respect of a direction made under Part 5 of the Act, it may either—

- (a) disallow or modify the direction;
- (b) declare any person the subject of a direction to be a fit and proper person for the purposes of this Act;
- (c) refer the matter back to the Commission for further consideration.

**104 Recourse in respect of statement**

- (1) A trustee company aggrieved by a decision of the Commission relating to a statement may appeal to the Court.
- (2) A person aggrieved by a decision of the Commission relating to the naming of that person in a statement may appeal to the Court.
- (3) The rights of recourse in respect of a statement may be exercised whether or not the statement has been published.
- (4) If the Commission, acting under section 51(3), has not given notice of a decision to publish, rights of recourse must be exercised within 21 days after publication of the statement.
- (5) In proceedings seeking recourse in respect of a statement, the Court may make any order it considers appropriate, including—
  - (a) an order that the Commission not publish the statement;
  - (b) an order that the Commission publish a public statement to the effect set out in the order.

**105 Appeal against further decision**

If the Court refers a matter back to the Commission for further consideration, the person appealing has recourse to the Court in respect of any further decision.

## Part 14 Offences

**106 Offences relating to key persons**

- (1) If a person becomes a key person in breach of either section 31 or section 34, that person and the trustee company are each guilty of an offence.
- (2) The trustee company has a defence to a charge under this section as it relates to a principal person if—
  - (a) it had no knowledge of or control over that person becoming a principal person; and
  - (b) as soon as the trustee company became aware of that person becoming, acting or being appointed as a principal person, the trustee company made full disclosure to the Commission.
- (3) The onus of proving that defence lies on the trustee company.

**107 Offence of providing false information under compulsion**

A person commits an offence if that person—

- (a) is compelled by or under this Act to provide information; and

- (b) knowingly or recklessly provides information that is false, misleading or incomplete in a material particular.

**108 Offences relating to compulsory provision of information**

A person who has been given a notice to provide information by or under this Act commits an offence if that person without reasonable excuse—

- (a) fails to comply with a requirement imposed on that person by the notice; or
- (b) obstructs another person in that person's exercise of a power that is notified in that notice.

**109 Offences in relation to investigations**

A person commits an offence if that person does 1 or more of the following in respect of an investigation under part 9—

- (a) when required to produce a record to the investigator, fails to do so without reasonable excuse;
- (b) when required to produce a record to the investigator, destroys the record or in any other way renders the information it contains incapable of ready access and understanding;
- (c) when required to produce a record to the investigator, alters the record in any way to make the information it contains false, misleading or incomplete in a material way;
- (d) when required to assist or attend before the investigator, fails to do so without reasonable excuse;
- (e) when required to answer a question put to the person by the investigator either—
  - (i) fails to do so without reasonable excuse; or
  - (ii) fails to answer truthfully;
- (f) obstructs the investigator in the exercise of the investigator's powers.

**110 Offence of failing to provide information**

A person commits an offence if, without reasonable excuse, that person—

- (a) fails to comply with a requirement imposed on the person in a warrant issued under section 60, or
- (b) obstructs another person exercising powers conferred in the warrant.

**111 Offence of tampering with information**

(1) This section applies to a person who has information and is—

- (a) required to provide that information under section 57 or 58;
- (b) required to provide that information under a warrant issued under section 60;
- (c) required to provide that information to an investigator under section 65.

(2) This section also applies to a person who anticipates being required to provide information to the Commission or to an investigator.

(3) A person commits an offence if—

- (a) that person has information; and



- (b) it is reasonable to suspect that information would be relevant to the Commission or to an investigator; and
- (c) the person does any of the following with that information—
  - (i) falsifies it;
  - (ii) conceals it;
  - (iii) destroys it;
  - (iv) disposes of it in any other way;
  - (v) causes or allows any other person to do any of those things.
- (4) In this section—
  - (a) if a person renders information incapable of ready access and understanding that information is to be treated as destroyed;
  - (b) if a person alters information so that it becomes false, misleading or incomplete in a material way, that information is to be treated as falsified.

#### **112 Defence of innocent destruction**

- (1) In the case of information that has been destroyed or disposed of it is a defence to a charge under section 111 that the person charged had no intent to deprive the Commission or an investigator of that information.
- (2) The onus of proving that defence lies on the person charged.

#### **113 Offence of providing false information with intent**

- (1) This section applies to a person who provides information relating to the administration or enforcement of this Act in any way, including but not limited to—
  - (a) an application for a licence;
  - (b) an application for an approval;
  - (c) a trustee company;
  - (d) a key person;
  - (e) trustee company business.
- (2) A person commits an offence if that person—
  - (a) provides information to the Commission or any delegate of the Commission; and
  - (b) is not compelled by or under this Act to do so; and
  - (c) knowingly or recklessly provides information that is false or misleading in a material; and
  - (d) does so with the intent in circumstances it would be reasonable to expect that it would be relied upon by the Commission or any delegate of the Commission.

#### **114 Offence of failing to provide material information**

- (1) This section applies to a trustee company or a former trustee company that knowingly fails to provide information—
  - (a) relevant to the exercise by the Commission of its functions in respect of the trustee company or former trustee company; and

- (b) the absence of which might reasonably be regarded as material to the way in which the Commission may—
  - (i) exercise those functions:
  - (ii) make any decision.
- (2) A company commits an offence if it fails to provide the Commission with information in its possession or under its control.
- (3) This section applies whether or not the company is compelled to provide the information by or under the Act.

#### **115 Offence of dishonesty to clients**

- (1) This section applies to a person who carries on trustee company business (whether or not licensed to do so) and includes—
  - (a) a natural person:
  - (b) an unlicensed legal person.
- (2) This section applies to any representation to or conduct affecting—
  - (a) any client of that business:
  - (b) any prospective client of that business:
  - (c) the public of any jurisdiction.
- (3) A person commits an offence if, in the course of that person's trustee company business that person—
  - (a) makes a statement, promise or forecast that the person knows to be misleading, false or deceptive:
  - (b) dishonestly conceals a material fact:
  - (c) recklessly makes (dishonestly or otherwise) a statement, promise or forecast that is misleading, false or deceptive.

#### **116 Penalties for offences**

A person who commits an offence under this Act or regulations is liable on conviction,—

- (a) in the case of an individual, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years, or both; or
- (b) in any other case, to a fine not exceeding \$150,000.

### **Part 15 Regulations and prudential guidelines**

#### **117 Regulations relating to administration fees**

- (1) The Queen's Representative by order in Executive Council may make regulations fixing fees that the Commission may charge for its administration of this Act.
- (2) Administration fees may be prescribed allowing the Commission to meet all or part of the costs and expenses of the Commission incurred—
  - (a) in exercising functions or powers conferred by or under this Act:
  - (b) in performing duties imposed by or under this Act:
  - (c) in providing services authorised by or under this Act.

- (3) Administration fees may be prescribed at differing rates to reflect—
  - (a) differing types of application:
  - (b) differing payment methods:
  - (c) late filing of applications or documents of any sort:
  - (d) other circumstances that make differential treatment necessary or appropriate.
- (4) Regulations made under subsection (1) may—
  - (a) authorise the Commission to refund or waive fees in any case or class of case:
  - (b) prescribe the recipient to whom fees are payable under this Act.

### **118 Regulations - trustee companies advertising**

- (1) The Queen's Representative by order in Executive Council may make regulations allowing the Commission to regulate trustee business advertisements either by
  - (a) enforcing express provisions imposed by those regulations:
  - (b) exercising powers and discretions conferred on the Commission by those regulations.
- (2) Trustee business advertisements may be regulated in 1 or more of the following ways—
  - (a) prohibiting or restricting their issue:
  - (b) prescribing their—
    - (i) presentation:
    - (ii) content:
    - (iii) accuracy:
    - (iv) effect:
  - (c) prohibiting or restricting implications:
  - (d) exempting any particular advertisement or class of advertisement from any prohibition or requirement imposed by regulations.
- (3) In this section **trustee business advertisement** means any communication, however made, to a person or class of persons that includes reference to 1 or more services in the nature of trustee company business and—
  - (a) promotes that service:
  - (b) invites a person or class of persons to use that service:
  - (c) invites a person or class of persons to deal with a person (whether or not named in the advertisement) or a trustee company.
- (4) However, a communication made by a trustee company to a person who is an existing client of that company is not a trustee business advertisement.

### **119 General Power to make regulations**

- (1) The Queen's Representative by Order in Executive Council may make regulations for 1 or more of the following purposes—

*Application of Act*

- (a) exempting any person or class of persons from 1 or more provisions of this Act:
- (b) exempting, from the definition of trustee company business, any class of business, transaction or activity:
- (c) prescribing conditions in respect of any exemption made under regulations:

*Enforcement of regulations*

- (d) prescribing offences for breach of any regulation:
- (e) prescribing penalties for breach of any regulation that must not exceed:
  - (i) in the case of a natural person a fine of \$50,000 and imprisonment for a term of 2 years, or both; or
  - (ii) in any other case a fine of \$150,000.

*Forms*

- (f) prescribing forms to be used in connection with any application or other matter arising under this Act or regulations made under this Act:

*Accounting and Audit*

- (g) prescribing accounting and auditing requirements for trustee companies, including—
  - (i) the keeping of accounting records:
  - (ii) the form and content of annual financial statements:
  - (iii) the qualification of auditors and their appointment:
  - (iv) the form and content of auditors' reports:
  - (v) the time and manner in which statements and reports are to be given to the Commission:
  - (vi) the powers and duties of auditors:
  - (vii) the rights of access to be given to auditors:
  - (viii) the form and content of financial statements.

*Provision of information*

- (h) prescribing forms and procedures to be used by auditors, accountants and other professional persons to give full effect to the provisions of sections 18 and 61.

*Financial Resources*

- (i) prescribing the nature and extent of the financial resources and reserves of a trustee company, including—
  - (i) nominal and paid up share capital:
  - (ii) financial reserves:
  - (iii) insurances to be held (including insurances in respect of officers, employees and agents):

*Clients' Assets*

- (j) prescribing the manner in which a trustee company must protect any class of assets of its client for which it has responsibility.

*General*

- (k) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) No regulation made under this Act derogates from the principle that a trustee company must safeguard the assets of its client for which it has responsibility.

**120 Prudential guidelines**

- (1) The Commission may issue prudential guidelines with respect to the procedures to be followed by and the conduct expected of trustee companies in the operation of their trustee company businesses and with respect to any other matter concerning this Act.
- (2) Prudential guidelines issued under subsection (1) may make different provision in relation to different persons, circumstances or cases.
- (3) The Commission may determine the form of any prudential guidelines in its discretion.
- (4) Failure to follow any prudential guidelines issued under this section does not, of itself, render a person liable to proceedings of any kind.
- (5) Instead, that failure may be taken into account by the Court or the Commission, as the case may be, in determining whether there has been a contravention of any obligation imposed on trustee company by and under this Act.

**Part 16****Amendment of other Acts****121 Amendments to other enactments**

The Acts listed in Schedule 1 are amended as set out in that schedule.

**Part 17****Repeal and transitional provisions****122 Trustee Companies Act 1981-82 repealed**

- (1) The Trustee Companies Act 1981-82 is repealed.
- (2) Despite the repeal of that act, the Trustee Companies (Due Diligence) Regulations 1996 made under that Act continue in force as if made under this Act.

**123 Existing trustee companies**

- (1) This section applies to a company that immediately before the repeal of the Trustee Companies Act 1981-82 was licensed as a trustee company under that act.

- (2) The company continues as a trustee company provisionally licensed under this section.
- (3) A company provisionally licensed under this section may, within 180 days of this Act coming into force, apply for a licence under this Act.
- (4) Despite any other provision of this Act, the Commission must issue a licence under this Act immediately upon being provided with a fully completed application form as prescribed.

## Schedule 1 Amendments to Acts

### Banking Act 2011

“Section 2 omit the definition of **trustee company** and substitute the following—  
“Trustee company” means a company licensed under the Trustee Companies Act 2014.

### Captive Insurance Act 2013

“Section 48 omit the reference to “Trustee Companies Act 1981-82” and substitute with “Trustee Companies Act 2014”.

### Financial Supervisory Commission Act 2003

“Section 1: omit the definition of **licensed financial institution** and substitute the following —

**licensed financial institution** means—

- (a) the holder of an international or restricted licence granted under the Banking Act 2011;
- (b) an insurance company licensed pursuant to the Insurance Act 2008;
- (c) a company licensed pursuant to the Trustee Companies Act 2014 to carry on trustee company business;
- (d) a captive insurance company licensed pursuant to the Captive Insurance Act 2013.

“First Schedule; omit each reference to “Trustee Companies Act 1981-82 and substitute “Trustee Companies Act 2014”.

### Financial Transactions Reporting Act 2004

“Section 2 omit subparagraph (q) of the definition of **financial institution** and substitute the following—

- (q) acting as a trustee company as defined in the Trustee Companies Act 2014;

“Section 36(f) omit and substitute —

- (f) Trustee Companies Act 2014.

### Foundations Act 2012

“Section 3 omit the definition of **trustee company** and substitute the following—  
“Trustee company” means a company licensed under the Trustee Companies Act 2014.

“Section 87 omit the reference to “Trustee Companies Act 1981-82” and substitute with “Trustee Companies Act 2014”.

### International Companies Act 1981-82

“Section 2(1) omit the definition of **trustee company** and substitute the following—

“Trustee company” means a company licensed under the Trustee Companies Act 2014.

**International Partnership Act 1984**

“Section 2 omit the definition of **trustee company** and substitute the following—

“Trustee company” means a company licensed under the Trustee Companies Act 2014.

**International Trusts Act 1984**

“Section 2 omit the definition of **trustee company** and substitute the following—

“Trustee company” means a company licensed under the Trustee Companies Act 2014.

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This Act is administered by the Financial Supervisory Commission.  
Printed under the authority of the Cook Islands Government—2014.

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