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2006, Act No. 278

AN ACT to provide for the reporting of certain transactions and the keeping of certain records, and for related purposes

Part 1 - Preliminary

1 Short title

This Act is the Financial Transactions Reporting Act 2006.

2 Interpretation

In this Act:

“**account**” means any facility or arrangement by which a financial institution does any of the following:

- (a) accepts deposits of currency:
- (b) allows withdrawals of currency:

(c) pays cheques or payment orders drawn on the financial institution, or collects cheques or payment orders on behalf of a person other than the financial institution; and includes any facility or arrangement for a safety deposit box or for any other form of safe deposit;

“Attorney-General” has the same meaning as in section 2 of the Proceeds of Crime Act 1998;

“cash” means any coin or paper money that is designed as legal tender in the country of issue, and includes bearer bonds, traveller’s cheques, postal notes, and money orders;

“customer” means anyone to whom a financial service is rendered;

“Department” means either:

- (a) the Office of the Attorney-General; or
- (b) any other Department or Office of the Executive Government of Niue if that other Department or Office is, with the authority of the Premier of Niue, for the time being responsible for hosting and supporting the Unit;

“financial institution” has the meaning given by section 3;

“financing of terrorism” means an offence against section 7 of the Terrorism Suppression and Transnational Crimes Act 2006;

“Minister” means the Minister for Finance;

“money laundering offence” means an offence within the terms of sections 64 and 65 of the Proceeds of Crime Act 1998;

“prescribed” means prescribed by regulations made under this Act;

“serious offence” has the same meaning as in section 4 of the Proceeds of Crimes Act 1998;

“supervisory authority”:

- (a) means a person within the Public Service designated as the “Bank Supervisor”
- (b) in relation to a financial institution that is a company incorporated under the Companies Act 2006 includes the Registrar (as defined in Part 13 of that Act); and

“suspicious transaction report” means a report prepared under section 8;

“transaction” has the meaning given by section 4;

“Unit” means the Financial Intelligence Unit established under Part 5.

3 Meaning of financial institution

For the purposes of this Act and every other enactment of Niue, each of the following is a “financial institution”:

- (a) a bank, being:
 - (i) a registered bank as defined in section 2 of the Niue Bank Act 1994; or
 - (ii) the Niue Bank constituted or established by section 4 of the Niue Bank Act 1994; or
 - (iii) any other person, partnership, corporation, or company carrying on in Niue the business of banking:
- (b) a person carrying on the business:
 - (i) as a trustee in respect of funds of other persons; or
 - (ii) as a trust or company service provider:
- (c) a person carrying on a business of an insurer, an insurance intermediary, a securities dealer, or a futures broker:
- (d) a person (other than a person mentioned in paragraph (a), (b), or (c)) carrying on a business of:
 - (i) exchanging money; or
 - (ii) collecting, holding, exchanging, or remitting funds, or otherwise negotiating funds transfers, on behalf of other persons; or
 - (iii) preparing pay-rolls on behalf of other persons, in whole or in part, from funds collected; or
 - (iv) delivering funds (including payrolls):
- (e) a person carrying on a business of:
 - (i) issuing, selling or redeeming traveller’s cheques, money orders, or similar instruments; or
 - (ii) collecting, holding, cashing in, remitting and delivering cash as part of a business or providing payroll services;
 - (iii) dealers in precious metals and dealers in precious stones when they engage in any transaction with a customer equal to or above \$10,000 or its equivalent in foreign currency; or
 - (iv) acting as agents for clients in the buying and selling of real estate; or
 - (v) casinos or gambling houses, including a person who carries on that business through the internet, when their customers engage in transactions equal to or above \$10,000 or its equivalent in foreign currency:
- (f) a lawyer, a notary, an independent legal professional and an accountant when they prepare for or carry out transactions for their client relating to any of the following activities:
 - (i) buying and selling real estate, businesses, and business entities:
 - (ii) managing client money, securities, or other assets:

- (iii) managing bank, savings, or securities accounts, including the crediting or debiting of accounts or causing this to be done:
- (iv) organising contributions for the creation, operation or management of companies, legal persons or arrangements:
- (g) renting of a safe deposit box:
- (h) any other person prescribed by regulations.

4 Meaning of transaction

For the purposes of this Act, a “**transaction**” includes:

- (a) the opening of an account:
- (b) a deposit withdrawal, exchange, or transfer of funds (in any currency) whether:
 - (i) in cash; or
 - (ii) by cheque, payment order, or other instrument; or
 - (iii) by electronic or other non-physical means:
- (c) the use of a safety deposit box or any other form of safe deposit:
- (d) entering into a fiduciary relationship:
- (e) a payment made in satisfaction, in whole or in part, of a contractual or other legal obligation:
- (f) the use of trust or company services:
- (g) any other transactions prescribed by regulations.

5 Application

- (1) This Act applies in relation to a transaction conducted through a financial institution.
- (2) A financial institution must comply with the requirements of this Act despite an obligation as to secrecy, or other restriction on the disclosure of information, and regardless of whether that obligation or restriction is imposed by law (for example, by any other enactment) or otherwise.

Part 2 – Obligation to report

6 Financial institution to report financial transaction

- (1) A financial institution must report each of the following to the Unit in writing (which may be given by way of electronic mail) or in any other form and manner that may be approved by the Minister:
- (a) a transaction of an amount in cash that exceeds \$10,000 or its equivalent in foreign currency, or any other amount that may be prescribed, in the course of a single transaction, unless the recipient and the sender is a financial institution:
 - (b) the sending out of Niue at the request of a customer of any electronic funds transfer that exceeds \$10,000 or its equivalent in foreign currency, or any other amount that may be prescribed, in the course of a single transaction:
 - (c) the receipt from outside Niue of an electronic funds transfer, sent at the request of a customer, of an amount that exceeds \$10,000 or its equivalent in foreign currency, or any other amount that may be prescribed, in the course of a single transaction.
- (2) **Subsection (1) (b)** does not apply when the financial institution sends an electronic funds transfer to a person or entity in Niue, even if the final recipient is outside Niue.
- (3) **Subsection (1) (c)** does not apply when the financial institution receives an electronic funds transfer from a person or entity in Niue, even if the initial sender is outside Niue.
- (4) If a financial institution fails, without reasonable excuse, to comply with **subsection (1)**, the financial institution is guilty of an offence punishable on conviction:
- (a) in the case of an individual - by a fine not exceeding 2,500 penalty units or imprisonment for a term not exceeding 5 years, or both; or
 - (b) in the case of a body corporate - by a fine not exceeding 10,000 penalty units

7 Offence to conduct transactions for purpose of ensuring no report made under section 6

- (1) A person commits an offence, and is liable on conviction to the penalty stated in **subsection (3)**, if:
- (a) the person conducts 2 or more transactions or electronic funds transfers that are of an amount below the relevant threshold set out in **section 6(1)**; and
 - (b) it may reasonably be concluded, having regard to the matters specified in **subsection (2)**, that the person conducted the transactions or transfers in that manner or form for the sole or dominant purpose of ensuring, or attempting to ensure, that no report in relation to the transactions or

transfers would be made under **section 6(1)**.

- (2) The matters referred to in **subsection (1)** are:
- (a) the manner and form in which the transactions or transfers were conducted, including, without limitation, all or any of the following:
 - (i) the value of the currency involved in each transaction or transfer;
 - (ii) the aggregated value of the currency involved in the transactions or transfers;
 - (iii) the period of time over which the transactions or transfers occurred;
 - (iv) the interval of time between any of the transactions or transfers;
 - (v) the locations at which the transactions or transfers were initiated or conducted; and
 - (b) any explanation made by the person as to the manner or form in which the transfers were conducted.
- (3) The penalty referred to in **subsection (1)** is:
- (a) in the case of an individual - a fine not exceeding 2,500 penalty units or imprisonment for a term not exceeding 5 years, or both; or
 - (b) in the case of a body corporate - a fine not exceeding 10,000 penalty units

Part 3 - Obligation to report suspicious transactions

8 Financial institutions to report suspicious transactions

(1) If:

- (a) a person conducts or seeks to conduct any transaction through a financial institution (whether or not the transaction or proposed transaction involves cash); and
 - (b) the financial institution has reasonable grounds to suspect that the transaction or proposed transaction is or may be relevant to:
 - (i) the investigation or prosecution of any person for a money laundering offence, financing of terrorism, or any other serious offence; or
 - (ii) the enforcement of the Proceeds of Crime Act 1998;
- the financial institution must prepare a report of the transaction or proposed transaction and give the report to the Unit as soon as possible, but no later than 2 working days after forming the suspicion.

(2) If a financial institution fails without reasonable excuse to comply with **subsection (1)**, the financial institution is guilty of an offence punishable on conviction:

- (a) in the case of an individual - by a fine not exceeding 2,500 penalty units or imprisonment for a term not exceeding 5 years, or both; or
- (b) in the case of a body corporate - by a fine not exceeding 10,000 penalty units

(3) A suspicious transactions report must:

- (a) be in writing and may be given by electronic mail or by any other approved form and manner; and
- (b) contain the details specified in the **Schedule**; and
- (c) contain a statement of the grounds on which the financial institution holds the suspicion; and
- (d) be signed or otherwise authenticated by the financial institution.

(4) A financial institution that has given a suspicious transaction report to the Unit must:

- (a) automatically monitor other transactions of the customer who produced a suspicious transactions report, and report any further suspicions found; and
- (b) provide to the Unit any further information that it has about the transaction or proposed transaction or information sent to the Unit as soon as possible and, in any event, within 2 working days.

(5) If a financial institution fails without reasonable excuse to comply with **subsection (4)**, the financial institution is guilty of an offence punishable on conviction:

- (a) in the case of an individual - by a fine not exceeding 2,500 penalty units or imprisonment for a term not exceeding 5 years, or both; or
- (b) in the case of a body corporate - by a fine not exceeding 10,000 penalty units

9 Supervisory authority or auditor to report certain suspicious transactions

A supervisory authority or auditor of a financial institution must report the information that it has about a transaction or attempted transaction ("**the relevant information**") to the Unit if the authority or auditor suspects on reasonable grounds that the relevant information may be:

- (a) of assistance in the enforcement of the Proceeds of Crime Act 1998; or
- (b) relevant to the detection, investigation, or prosecution of:
 - (i) a money laundering offence; or
 - (ii) financing of terrorism; or
 - (iii) a serious offence; or
- (c) related to the commission of:
 - (i) a money laundering offence; or
 - (ii) financing of terrorism; or
- (d) evidence of preparations by a person or persons for the commission of financing of terrorism.

10 Disclosure of suspicious transaction reports

(1) A financial institution must not disclose to any person that the financial institution:

- (a) is contemplating making a suspicious transaction report; or
 - (b) has given a suspicious transaction report to the Financial Intelligence Unit;
- unless required to do so under this Act or any other Act.

(2) If a financial institution contravenes **subsection (1)**, the financial institution is guilty of an offence punishable on conviction:

- (a) in the case of an individual - by a fine not exceeding 2,500 penalty units or imprisonment for a term not exceeding 5 years, or both; or
- (b) in the case of a body corporate - by a fine not exceeding 10,000 penalty units

(3) Nothing in this section prevents the disclosure of any information contained in a suspicious transaction report in connection with, or in the course of, proceedings before a court.

(4) **Subsection (1)** does not apply to disclosures made:

- (a) to an officer or employee or agent of the financial institution, for a purpose connected with the performance of that person's duties; or
- (b) to a barrister or solicitor, for the purpose of obtaining legal advice or representation in relation to the matter; or
- (c) to the supervisory authority of the financial institution, for the purposes of carrying out the supervisory authority's functions.

(5) No person referred to in **subsection 4(b)** to whom disclosure of any information to which that subsection applies has been made may disclose that information except to another person of the kind referred to in that subsection for the purpose of:

- (a) the performance of the first-mentioned person's duties; or
- (b) obtaining legal advice or representation in relation to the matter.

(6) No person referred to in **subsection 4(c)** to whom disclosure of any information to which that subsection applies has been made may disclose that information except to a person referred to in that subsection for the purpose of giving legal advice or making representations in relation to the matter.

11 Restrictions on disclosure of certain information

(1) This section applies to information that will identify, or is likely to identify, any of the following:

- (a) a person who has handled a transaction report in respect of which a suspicious transaction report has been made:
- (b) a person who has prepared a suspicious transaction report:
- (c) a person who has made a suspicious transaction report:
- (d) any information contained in a suspicious transaction report or information provided under **section 8(4)**.

(2) A person must not disclose the information except for any of the following purposes:

- (a) the enforcement of the Proceeds of Crimes Act 1998; or
- (b) the detection, investigation, or prosecution of -
 - (i) a money laundering offence; or
 - (ii) financing of terrorism; or
 - (iii) a serious offence.

(3) No person may be required to disclose any information to which this section applies in any judicial proceedings unless the Judge or other presiding officer is satisfied that the disclosure of information is necessary in the interests of justice.

(4) A person who discloses information in contravention of this section is guilty of an offence punishable, on conviction, by a fine not exceeding 200 penalty units or imprisonment for a term not exceeding 2 years, or both.

(5) Nothing in this section prohibits the disclosure of any information for the purposes of the prosecution of an offence against **section 10(2)**.

12 Protection of persons reporting suspicious transactions

(1) No civil, criminal, or disciplinary proceedings may be taken against:

- (a) a financial institution; or
- (b) an officer, employee, or agent of the financial institution acting in the course of that person's employment or agency;

in relation to any action by the financial institution or the officer, employee or agent taken in good faith under **section 8**.

(2) **Subsection (1)** does not apply in respect of proceedings for an offence against a section in this Part.

13 Other preventative measures by financial institutions

(1) A financial institution must appoint a compliance officer to be responsible for ensuring the financial institution's compliance with the requirements of this Act.

(2) The requirement in **subsection (1)** does not apply to an individual who, in the course of carrying on his or her business, does not employ, or act in association with, any other person.

(3) A financial institution must establish and maintain internal procedures:

- (a) to screen prospective officers or employees of the institution to ensure, so far as practicable, that those persons do not have criminal backgrounds and, in particular, to ensure that they have had no involvement of any kind in money laundering or financing of terrorism; and
- (b) to make the institution's officers and employees aware of the laws in Niue about money laundering; and
- (c) to make the institution's officers and employees aware of the procedures, policies, and audit systems adopted by the institution to deal with money laundering; and
- (d) to train the institution's officer and employees to recognise and deal with money laundering.

(4) A financial institution must prepare a written statement of the institution's internal procedures and submit it to the Unit:

- (a) in the case of a financial institution carrying on business when this Act commences, within 3 months after that commencement; or
- (b) in the case where an existing written statement has been updated, within 2 working days; or
- (c) in any other case, within 3 months after the financial institution starts to carry on business.

(5) The supervisory authority of a financial institution must:

- (a) examine and supervise the financial institution to ensure compliance with this Act; and
- (b) adopt any necessary measures to prevent any person who is unsuitable from controlling or participating, directly or indirectly, in the directorship, management, or operation of the financial institution; and

- (c) co-operate with law enforcement agencies and the Unit, within or outside Niue, in any investigation, proceedings or prosecutions relating to money laundering, financing of terrorism or any other serious offence.

Part 4 - Obligations to keep records and verify identity

14 Financial institutions to keep records of transactions

(1) A financial institution must keep the records of every transaction that is conducted through the financial institution that are reasonably necessary to enable the transaction to be readily reconstructed at anytime by the Unit.

(2) Without limiting **subsection (1)**, those records must contain the following information:

- (a) the nature of the transaction:
- (b) the amount of the transaction and the currency in which it was denominated:
- (c) the date on which the transaction was conducted:
- (d) the parties to the transaction:
- (e) the place and time of the transaction:
- (f) the nationality of the parties to the transaction:
- (g) details of any natural person's valid passport, drivers licence, or official identification:
- (h) details of any legal entity's constitution, if not older than 3 months.

(3) The records required by **subsection (1)** must be kept for at least 6 years after whichever of the following dates applies:

- (a) if the transaction involves an account or is part of a business relationship, the date on which the account is closed or the business relationship ceases; and
- (b) in any other case, whichever is the later of the following dates:
 - (i) the date on which the financial institution last obtained information identifying the parties to the transaction; or
 - (ii) the date on which the financial institution last received or sent correspondence relating to the transaction; or
 - (iii) the date of the transaction.

(4) If a financial institution contravenes **subsection (1) or (3)**, the financial institution is guilty of an offence punishable on conviction:

- (a) in the case of an individual - by a fine not exceeding 250 penalty units or imprisonment for a term not exceeding 2 years, or both; or
- (b) in the case of a body corporate - by a fine not exceeding 1000 penalty units

15 Financial institutions to verify customers' identity

(1) When establishing a business relationship or conducting a transaction with a person, a financial institution must, before carrying out the transaction, verify the identity of the person on the basis of any official or other identifying document or other evidence that is reasonably capable of verifying the identity of the person.

(2) Without limiting the generality of **subsection (1)**:

- (a) if the person is a legal entity, a financial institution must adequately verify its legal existence and structure, including information relating to:
 - (i) the person's name, legal form, address, and directors; and
 - (ii) the principal owners and beneficiaries; and
 - (iii) provisions regulating the power to bind the entity, provisions to verify that persons purporting to act on behalf of the customer are so authorised, and provisions to identify those persons; and
- (b) if the person is a politically exposed person, the financial institution must:
 - (i) adequately identify and verify the person's identity as set out in this section; and
 - (ii) have appropriate risk management systems to determine whether the customer is a politically exposed person; and
 - (iii) obtain approval of senior management before establishing a business relationship with the person; and
 - (iv) take reasonable measures to establish the source of wealth and funds of the person; and
 - (v) conduct regular and ongoing enhanced monitoring of the business relationship; and
- (c) the financial institution must prescribe the official or identifying document required for the verification of any particular person or class of person.

(3) A financial institution must take reasonable measures to ascertain the purpose of any transaction and the origin and ultimate destination of the funds involved in that transaction.

(4) If a person conducts a transaction through a financial institution and the financial institution has reasonable grounds to believe that the person is undertaking the transaction on behalf of any other person or persons, then, in addition to complying with **subsections (1), (2), and (3)**, the financial institution must verify the identity of the other person or persons for whom, or for whose ultimate benefit, the transaction is being conducted.

(5) If a financial institution contravenes any of **subsections (1) to (4)**, the financial institution is guilty of an offence punishable on conviction:

(a) in the case of an individual – by a fine not exceeding 250 penalty units or imprisonment for a term not exceeding 2 years, or both; or

(b) in the case of a body corporate – by a fine not exceeding 1000 penalty units.

(6) **Subsection (1) or (2)** may be waived in each of the following circumstances:

(a) if the transaction is part of an existing and regular business relationship with a person who has already produced satisfactory evidence of identity or, depending on the transaction profile, if the transaction is a low risk bulk and regular transaction of institutions like utilities, pension funds and treasury, unless the financial institution has reason to suspect that the transaction is suspicious or unusual, or if the financial institution has reason to doubt the accuracy or veracity of previously obtained information about the identity of the person:

(b) if the transaction is an occasional transaction not exceeding 1000 penalty units or its equivalent in foreign currency or any other amount that may be prescribed, unless the financial institution has reason to suspect that the transaction is suspicious or unusual:

(c) any other circumstances that may be prescribed.

(7) For the purposes of **subsection (6)**, “**occasional transaction**” means any transaction involving cash that is conducted by any person otherwise than through an account in respect of which the person is the holder.

16 Identification required to conduct business

If satisfactory evidence of the customer's identity is not produced to, or obtained by, a financial institution under **section 15**, the financial institution must not proceed any further with the transaction unless directed to do so by the Unit.

17 Financial institutions to keep records relating to customers

(1) A financial institution must keep:

- (a) if evidence of a person's identity ("the **identified person**") is obtained under **section 15**, a record that indicates the kind of evidence that was obtained, and comprises either a copy of the evidence or information that enables a copy of it to be obtained; and
- (b) a record of all correspondence between the identified person and the financial institution.

(2) The records referred to in **subsection (1)** must be kept for at least 6 years after whichever of the following dates applies:

- (a) if the transaction involves an account or is part of a business relationship, the date on which the account is closed or the business relationship ceases; and
- (b) in any other case, whichever is the later of the following dates:
 - (i) the date on which the financial institution last obtained evidence of a person's identity; or
 - (ii) the date on which the financial transaction last received correspondence from, or sent correspondence to, the identified person; or
 - (iii) the date of the transaction.

(3) If a financial institution contravenes **subsection (1) or (2)**, the financial institution is guilty of an offence punishable on conviction:

- (a) in the case of an individual - by a fine not exceeding 250 penalty units or imprisonment for a term not exceeding 2 years, or both; or
- (b) in the case of a body corporate - by a fine not exceeding 1000 penalty units

18 Financial institutions to monitor transaction

(1) A financial institution must pay special attention to the following if they have no apparent or visible economic or lawful purpose:

- (a) transactions that are complex, large, or unusual;
- (b) unusual patterns of transactions.

- (2) A financial institution must pay special attention to the following:
 - (a) business relationships and transactions with persons in jurisdictions that do not have adequate systems in place to prevent or deter money laundering or the financing of terrorism;
 - (b) wire transfers that do not contain complete originator information.
- (3) In relation to **subsections (1) and (2)**, a financial institution:
 - (a) must examine as far as possible the background and purpose of the transactions or business relations and record its findings in writing; and
 - (b) on request, must make available those findings to the Unit or to a law enforcement agency to assist the Unit or agency in an investigation relating to any of the following offences:
 - (i) a money laundering offence;
 - (ii) a serious offence;
 - (iii) financing of terrorism

19 Financial institutions to include originator information with funds transfers

A financial institution must include accurate originator information on electronic funds transfers and on any other form of funds transfers and that information must remain with the transfers, except where:

- (a) the electronic funds transfers or any other form of funds transfer result from a transaction carried out using a credit card or debit card, and provided that the credit or debit card number is included in the information accompanying the transfers (except in the case where the credit or debit card is used as a means of payment to effect the electronic funds transfers or any other form of funds transfer, where the requisite originator information must be included and is to remain with the transfers); or
- (b) the electronic funds transfers are transfers or settlements between financial institutions, and where the originator and beneficiary of the transfers are acting on their own behalf.

Part 5 - Financial Intelligence Unit

20 Establishment of Financial Intelligence Unit

- (1) The Financial Intelligence Unit is hereby established.
- (2) The Unit operates within the Department.

21 Functions and powers of the Unit

- (1) The Unit has the following functions:
 - (a) to receive and analyse suspicious transactions reports and any other information given to, or obtained by the Unit; and
 - (b) to disseminate information based on reports received under paragraph (a):
 - (i) to the Department; and

- (iii) if the Attorney-General considers it appropriate, to the police, a law enforcement agency (whether within or outside Niue), or a supervisory body outside Niue; and
- (c) to conduct examinations to ensure compliance with this Act by financial institutions; and
- (d) to receive information from, and otherwise assist, the Department the police, a law enforcement agency (whether within or outside Niue), or a supervisory body outside Niue, in relation to:
 - (i) the detection, investigation or prosecution of a money laundering offence, financing of terrorism, or a serious offence; or
 - (ii) the enforcement of the Proceeds of Crime Act 1998; and
- (e) to issue guidelines to financial institutions in relation to transaction record keeping and reporting obligations and measures to prevent the misuse of the financial institutions; and
- (f) to provide training programmes for financial institutions about transaction record keeping and reporting obligations; and
- (g) to prepare and present an annual report to the Niue Assembly.

(2) The Unit may collect, free of charge and at the Unit's request, any information the Unit considers relevant to money laundering, financing of terrorism, and serious offences, whether or not that information is publicly available, including information that is collected or maintained in databases maintained by the Government.

(3) The head of the Unit is responsible for ensuring that the Unit performs its functions properly, efficiently, and effectively, and must report to the Minister of Finance quarterly.

(4) The Public Service Commission must appoint:

- (a) the Attorney-General or another employee of the Niue Public Service as the head of the Unit (who may exercise and perform the functions, powers, and duties of a member of the Unit, and report to the Minister); and
 - (b) employees of the Niue Public Service as members of the Unit (who report to the head of the Unit).
- (5) Until an appointment is made under **subsection (4)** the Attorney-General must be taken to have been appointed under that subsection as the head of the Unit.

(6) A member of the Unit:

- (a) may enter the premises of any financial institution during ordinary business hours to inspect any records kept by the institution under **Part 4**, and make notes and take copies of the whole or any part of the record; and
- (b) may send any information derived from that inspection to the organisations mentioned in **paragraph (1) (b)**; and
- (c) may analyse and assess all reports and information; and
- (d) may direct any financial institution or Government institution to take appropriate steps to facilitate any investigation being conducted by the Unit.

22 Agreements for information exchange with outside agencies

(1) In this section, “**agreement**” means an agreement or arrangement in writing that relates to the exchange of information between the Unit and any law enforcement agency or supervisory body outside Niue.

(2) The Unit may, with the Minister’s approval, enter into an agreement with any of the following:

- (a) an institution or an agency of a foreign State, or an international organisation established by Governments of foreign states, that has powers and duties similar to those of the Unit:

- (b) any other law enforcement agency or supervisory body outside Niue.

(3) The agreement must restrict the use of information to purposes relevant to the detection, investigation, or prosecution of:

- (a) a money laundering offence; or

- (b) a serious offence;

- (c) financing of terrorism; or

- (d) an offence that is substantially similar to an offence referred to in any of **paragraphs (a) to (c)**.

(4) The agreement must also stipulate that the information must be treated in a confidential manner and must not be further disclosed without the express consent of the Unit or the relevant law enforcement agency or supervisory body outside Niue.

23 Search warrants

(1) A member of the Unit may apply to a Judge of the High Court for a warrant:

- (a) to enter premises belonging to, or in the possession or control of, a financial institution or of any officer or employee of the institution; and
- (b) to search the premises and remove any document, material, or thing on the premises.

(2) The Judge must grant the application if he or she is satisfied that there are reasonable grounds for believing that:

- (a) the financial institution has failed to keep a transaction record or report a suspicious transaction as required by this Act; or
- (b) an officer or employee of a financial institution is committing, has committed, or is about to commit, a money laundering offence.

24 Secrecy provision

(1) This section applies to a person while the person is, or after the person ceases to be, an officer, employee, or agent of the Unit, of the Department, or of the police.

(2) The person must not, directly or indirectly, divulge or communicate to any other person, or make a record of:

- (a) any information contained in a suspicious transaction report; or
- (b) any information provided under **section 21 (1) (d)** or any other provision of this Act; or
- (c) any other sensitive information to which the person is or was directly or indirectly privy to in the carrying out of the tasks of the Unit; except for one or more of the following purposes:
- (d) the detection, investigation or prosecution of a money laundering offence, financing of terrorism or any other serious offence;
- (e) the enforcement of the Proceeds of Crime Act 1998;
- (f) the exercise or performance of the person's functions, powers, or duties under this Act;
- (g) obtaining of legal advice or representation in relation to the matter.

(3) Despite **subsection (2) (b)**, nothing in this section applies to information disclosed to a person under **section 25** or **section 26**.

(4) If a person contravenes **subsection (2)** that person is guilty of an offence punishable on conviction by a fine of not more than 200 penalty units or imprisonment for a term not exceeding 2 years or both.

25 Direction to disclose information

(1) The Attorney-General may issue a direction to the person in charge of a

financial institution, Government department, or statutory body requiring that person to disclose to the Attorney-General, or to a police officer nominated by the Attorney-General in the direction, a document or other information:

- (a) that is not readily available to the public; and
- (b) to which that person may reasonably have access, or that is in the possession or under the control of that person.

(2) However, the Attorney-General may issue the direction only if satisfied that the document or other information is relevant to any or all of the following purposes:

- (a) the enforcement of this Act:
- (b) the detection, investigation, or prosecution of:
 - (i) a money laundering offence:
 - (ii) financing of terrorism:
 - (iii) a serious offence.

(3) The direction must be complied with by the person to whom it is issued, and applies notwithstanding any provision in any other law.

26 Secrecy of information disclosed under direction

(1) No person to whom information has been disclosed under a direction under **section 25** must, directly or indirectly, divulge or communicate to any other person, or otherwise further disclose, or make a record of, the information, except for any or all of the following purposes:

- (a) the enforcement of this Act:
- (b) the detection, investigation, or prosecution of:
 - (i) a money laundering offence:
 - (ii) financing of terrorism:
 - (iii) a serious offence.

(2) A person to whom information has been disclosed in accordance with **subsection (1)** or with this subsection must not disclose the information to another person except for a purpose referred to in **subsection (1)(a) or (b)**.

(3) Where information is communicated to a person under a direction under **section 25** or **subsection (1) or (2)**, the person:

- (a) must not voluntarily give the information in evidence in a proceeding before the Court other than a proceeding for a purpose referred to in **subsection (1)(a) or (b)**; and
- (b) must not be required to communicate the information to the Court.

(4) A person who discloses information in contravention of this section is guilty of an offence punishable, on conviction, by a fine not exceeding 200 penalty units or imprisonment for a term not exceeding 2 years, or both.

27 Evidential value of copies

(1) If a document is examined or provided pursuant to a direction under **section 25**:

- (a) the person by whom it is examined or to whom it is provided, or any officer or person authorised for the purpose by the recipient of the direction, may make or cause to be made one or more copies of the document; and
- (b) a certified copy of the document is evidence of the nature and content of the original document, and has the same probative force as the original document would have had if it had been proved in the ordinary way.

(2) In **subsection (1)**,—

“**certified copy of the document**”, in relation to a document examined or provided pursuant to a direction under **section 25**, means a copy of the document purporting to be certified—

- (a) by the recipient of the direction; and
- (b) as a copy made pursuant to this section; and

“**recipient of the direction**” means the person in charge of the relevant financial institution, Government department, or statutory body.

28 Protection of persons complying with directions

(1) This section applies to an action taken:

- (a) in compliance or purported compliance with a direction under **section 25**; and
- (b) by an officer, employee, or agent of a financial institution, Government department, or statutory body acting in good faith and in the performance of that person’s functions, powers, or duties, or in the course of that person’s employment or agency.

(2) No civil or criminal proceedings may be taken, in relation to the action, against either or both of the officer, employee, or agent, and the financial institution, Government department, or statutory body.

(3) Nothing in this section prevents proceedings to enforce compliance with a direction under **section 25**.

29 Immunity

(1) No action lies against any of the following for anything done in good faith in the exercise or performance, or purported exercise or performance, of any function, power, or duty under this Act:

- (a) the Attorney-General;
- (b) the head or any member of the Unit;
- (c) any agent or employee of the Unit;
- (d) any person acting at the direction of the head of the Unit.

Part 6 – Currency reporting at the border

30 Certain cash and instruments to be reported

(1) An individual who arrives in, or is leaving, Niue with more than the prescribed sum in cash or negotiable bearer instruments (as defined in **section 31(1)**) on his or her person, or in his or her luggage, must make or cause to be made to a Customs officer a report that complies with **subsection (3)** and, if the individual fails to do so, he or she is guilty of an offence punishable on conviction by a fine of not more than 20 penalty units

(2) Until another sum is prescribed instead, the prescribed sum is \$10, 000.

(3) A report complies with this subsection if it:

- (a) is in writing and in the prescribed form or, if no form is prescribed, in a form approved by the Customs officer; and
- (b) contains the following details in relation to the cash or negotiable bearer instruments to which the report relates:
 - (i) the nature and amount of each type of cash or negotiable bearer instrument; and
 - (ii) the total amount of the cash or negotiable bearer instruments; and
- (c) is made by the individual himself or herself (or, if he or she is, by reason of age or disability, incapable of complying with the requirements of this section, by a parent or guardian or other person for the time being having the care of the individual, and on the individual's behalf); and
- (d) is signed by the person who made the report or, as the case requires, on whose behalf the report is made; and
- (e) is given to the Customs officer before the cash or negotiable bearer instruments leave the control of the Customs.

(4) It is a defence to a charge under this section against a person in relation to a failure to make or cause to be made a report to a Customs officer before cash or a negotiable bearer instrument leaves the control of the Customs if the defendant proves—

- (a) that the failure was due to some emergency or to any other circumstance outside the reasonable control of the defendant; and
- (b) that the defendant made or caused to be made a report in respect of that cash or negotiable bearer instrument as soon as practicable after the obligation to make the report arose.

31 Powers of search, etc

(1) In this section and **sections 32 to 35**,—
“authorised officer” means—

- (a) a police officer; or
- (b) a Customs officer; or
- (c) a member of the Unit;

“negotiable bearer instrument”, without limiting the definition of the term “cash” in **section 2(1)**:

- (a) means a document representing ownership of debts or obligations; and
- (b) includes a bill of exchange, promissory note, or certificate of deposit, whether made payable to the bearer or not.

(2) **Subsections (3) and (4)** apply to a person who—

- (a) is about to leave, or has arrived in, Niue; or
- (b) is about to board or leave, or has boarded or left, a ship or aircraft that is about to leave, or has arrived in, Niue.

(3) An authorised officer may detain a person to whom this subsection applies and examine an article that the person has with him or her, or in his or her luggage, for the purpose of determining whether the person has in his or her possession cash or negotiable bearer instruments in respect of which a report under **section 30** is required.

(4) An authorised officer may detain and search a person to whom this subsection applies if the authorised officer suspects on reasonable grounds that an offence against **section 30** is being, or may have been, committed by the person.

32 Further provisions on search, etc

(1) Reasonable force may be used if it is necessary to effect a detention, or examination, or search under **section 31(3) or (4)**.

(2) An authorised officer may exercise a power under **section 31(3) or (4)** with any assistance that may be reasonable and necessary.

(3) A person may be searched under **section 31(4)** only by a person of the same sex, and no search under **section 31(4)** may be carried out in the view of a person who is not of the same sex as the person to be searched.

(4) Every search under **section 31(4)** must be conducted with decency and sensitivity and in a manner that affords to the person being searched the greatest degree of privacy and dignity consistent with the purpose of the search.

(5) An authorised officer, and any person assisting that officer, may stop, board, and search a ship, aircraft, or conveyance for the purposes of exercising the powers conferred by **section 31(3) or (4)**.

33 Seizure of cash or instruments

(1) An authorised officer may seize and, in accordance with **section 34**, detain cash or negotiable bearer instruments found in the course of an examination or search under **section 31(3) or (4)** if the officer believes, on reasonable grounds, that the cash or negotiable bearer instruments may be evidence of the commission of:

- (a) a money laundering offence; or
- (b) financing of terrorism; or
- (c) an offence under **section 30** of this Act; or
- (d) a serious offence.

(2) An authorised officer who seizes cash or a negotiable bearer instrument under **subsection (1)** must report the seizure to the Unit.

(3) An authorised officer may seize and, in accordance with **section 34**, detain cash or a negotiable bearer instrument that is being (in any form or manner) imported into, or exported from, Niue if the cash or negotiable bearer instrument comes to the attention, or into the possession, of the authorised officer in the exercise or performance of his or her official powers, functions, or duties, and he or she has reasonable grounds for suspecting that it is derived from, or intended by a person for use in the commission of:

- (a) a money laundering offence; or
- (b) financing of terrorism; or
- (c) a serious offence.

34 Detention of cash or instruments seized

(1) Cash or a negotiable bearer instrument seized under **section 33** must not be detained by the authorised officer for longer than 48 hours after seizure, unless the High Court makes an order of continued detention for a period not exceeding 3 months from the date of seizure.

(2) The Court may make an order of continued detention under **subsection (1)** only if satisfied on a written application for the purpose:

- (a) that there are reasonable grounds to suspect that the cash or negotiable bearer instrument was derived from, or is intended by a person for use in the commission of, an offence of the kind specified in **section 33(3)(a) to (c)**; and
- (b) that the continued detention of the cash or negotiable bearer instrument is justified while its origin or derivation is further investigated.

(3) Having made an order of continued detention under **subsection (1)**, the Court may later (and once only) order, if it has taken all reasonable steps to notify and hear all parties concerned, and is satisfied of the matters

specified in **subsection (2)(a) and (b)**, the continued detention of the cash or negotiable bearer instrument.

(4) However, the total period of detention under any later order must not exceed 2 years from the date of that order.

35 Release of detained cash or instruments

(1) The authorised officer must release cash or a negotiable bearer instrument detained under **section 34**, or under an order made under that section, to the person from whom it was seized or to any other person claiming an interest in that cash or negotiable bearer instrument if:

- (a) the High Court orders (on a written application made by, or on behalf of, that person, and after the Court has considered any views of the Unit and the authorised officer to the contrary) that its continued detention is no longer justified; or
- (b) the authorised officer is satisfied that its continued detention is no longer justified.

(2) The continued detention of cash or a negotiable bearer instrument detained under **section 34** is justified for the purposes of **subsection (1)** so long as the cash or negotiable bearer instrument is relevant to:

- (a) an investigation or prosecution of:
 - (i) a money laundering offence or any other offence against the Proceeds of Crime Act 1998; or
 - (ii) financing of terrorism; or
 - (iii) a serious offence; or
- (b) any other investigation, or any other proceeding, under the Proceeds of Crime Act 1998.

Part 7 - Other matters

36 Opening accounts in false names

(1) A person who opens or operates an account with a financial institution in a false name is guilty of an offence punishable on conviction by:

- (a) in the case of an individual - imprisonment for a term of not more than 4 years or a fine of not more than 1000 penalty units or both; or
- (b) in the case of a body corporate - a fine of not more than 5000 penalty units

37 Anonymous accounts prohibited

(1) A financial institution must not open, operate, or maintain an anonymous account or an account in a false name.

(2) If a financial institution contravenes **subsection (1)**, the financial institution is guilty of an offence punishable on conviction by:

- (a) in the case of an individual - imprisonment for a term of not more than 4 years or a fine of not more than 1000 penalty units or both; or
- (b) in the case of a body corporate - a fine of not more than 5000 penalty units

(3) However, a financial institution does not contravene **subsection (1)** just because the financial institution operates, on or after the commencement of this Act and in what appears to the financial institution to be the account holder's true name, an account that:

- (a) existed on the commencement of this Act; and
- (b) was at that time an anonymous account.

38 Alternative remittance

(1) For the purposes of this section a “**funds or assets transfer system**” is one that consists of a financial service that accepts cash, cheques or any other instrument of payment or stores of value at a given location and pays an equal amount in cash or in any other form to a beneficiary located in another geographical area by means of a method of communication, a message, transfer, compensation or clearing system to which the funds or assets transfer system belongs.

(2) A person who is not a financial institution and who, on behalf of, or in the name of, another person operates a funds or assets transfer system as a principal or essential part of his or her activities must be authorized to do so by the relevant supervisory authority.

(3) A person who operates a funds or assets transfer system is subject to **Parts 2 and 3 of this Act** and any other requirements prescribed by the relevant supervisory authority.

(4) A person commits an offence who operates a funds or assets transfer system in contravention of this section and is liable on conviction:

- (a) in the case of a natural person, to a fine not exceeding 2,500 penalty units or a term of imprisonment not exceeding 5 years; and
- (b) in the case of a body corporate, to a maximum fine of 10,000 penalty units.

39 Regulations

Cabinet may make such regulations as are necessary or convenient for the purposes of this Act.

40 Repeals and Consequential Amendments

- (1) The Financial Transactions Reporting Act 2000 is repealed.
- (2) The Niue Bank Act 1994 is amended-
 - a) in section 2 by the repeal of the definition “financial institution”;
 - b) Section 40 is amended by numbering the existing subsections as (2), (3), (4) and inserting the following new subsection (1)-

“(1) No person who is not registered as a Bank under this Act shall carry on banking business in Niue”;
 - c) in section 42 by adding after the word “shall” the words “carry on banking business in Niue or”;

- d) by the repeal of section 101;
- e) by the addition of the following new section 101

“101 Issue of Bank notes

(1) It shall not be lawful for any Bank to issue bank notes in Niue

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding 1000 penalty units”.

(3) The Niue Act 1966 is amended by the repeal of section 726

(4) The Banking Act 1986 is repealed

SCHEDULE

[Section 8(3)]

DETAILS THAT MUST BE INCLUDED IN SUSPICIOUS TRANSACTION REPORTS

- 1 The name and address of the financial institution, including the branch of the institution (if applicable) at which the transaction was conducted.
- 2 The nature of the transaction.
- 3 The date of the transaction.
- 4 The total amount involved in the transaction.
- 5 The type of currency involved in the transaction, and its equivalent in the local currency.
- 6 For each person conducting the transaction with the financial institution:
 - (a) the name of the person; and
 - (b) the business or residential address of the person; and
 - (c) the occupation, business, or principal activity of the person; and
 - (d) the nationality and date and place of birth of the person; and
 - (e) in the case of a natural person, details of the person's current passport, official government identification or driving licence; and
 - (f) in the case of a body corporate, details of its Constitution (if it is not older than 3 months); and

- (g) the method used by the financial institution to verify the identity of the person; and
- (h) the place and time of the financial transaction; and
- (i) whether the transaction was conducted on behalf of the person or on behalf of another person.

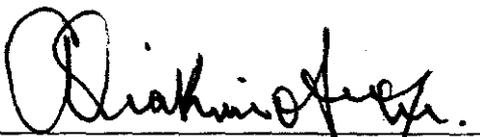
7 For any person on whose behalf the transaction was conducted:

- (a) the name of the person; and
- (b) the address of the person; and
- (c) the occupation of the person (or, where appropriate, the business or principal activity of the person); and
- (d) the nationality and date and place of birth of the person.

8 The type of facility and or identifying number of any account with a financial institution that is affected by the transaction.

I, ATAPANA SIAKIMOTU, Speaker of the Niue Assembly, hereby certify that the requirements of Article 34 of the Niue Constitution have been duly complied with.

SIGNED AND SEALED at the Assembly Chambers this 1st day of December 2006.



Speaker of the Niue Assembly

COUNTERSIGNED in the presence of the Speaker



Clerk of the Niue Assembly

This Act was passed by the Niue Assembly on the 8th day of November 2006.