

# **BILL NO. 2 OF 2017**

## **A BILL**

### **FOR AN ACT TO AMEND THE FINANCIAL TRANSACTIONS REPORTING ACT 2004**

ENACTED by the Parliament of the Republic of Fiji—

*Short title and commencement*

**1.**—(1) This Act may be cited as the Financial Transactions Reporting (Amendment) Act 2017.

(2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.

(3) In this Act, the Financial Transactions Reporting Act 2004 is referred to as the “Principal Act”.

*Section 40 amended*

**2.** Section 40 of the Principal Act is amended by deleting “where it is proved that the act or omission that constituted the offence took place with that person’s knowledge, authority, permission, or consent”.

*Section 42 amended*

3. Section 42 of the Principal Act is amended by—

- (a) in paragraph (c), deleting “or”;
- (b) in paragraph (d), deleting “.” and substituting “; or”; and
- (c) inserting the following new paragraph after paragraph (d)—
  - “(e) prescribing penalties for any offence in any regulations to a fine not exceeding \$150,000 or to a term of imprisonment not exceeding 5 years or both.”

*New Part 8 inserted*

4. The Principal Act is amended by inserting the following new Part after Part 7—

“PART 8—PENALTIES

*Penalties*

43.—(1) A person who contravenes any requirement under this Act for which a penalty is not provided, commits an offence and is liable on conviction—

- (a) for an individual, to a fine not exceeding \$30,000 or to a term of imprisonment not exceeding 5 years or both; or
- (b) for a body corporate, to a fine not exceeding \$150,000.

(2) A person who fails to comply with any instruction, guideline or directive issued by the Unit commits an offence and is liable on conviction—

- (a) for an individual, to a fine not exceeding \$30,000 or to a term of imprisonment not exceeding 5 years or both; or
- (b) for a body corporate, to a fine not exceeding \$150,000.”

## FINANCIAL TRANSACTIONS REPORTING (AMENDMENT) BILL 2017

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### EXPLANATORY NOTE

*(This note is not part of the Bill and is only intended to indicate its general effect)*

#### **1.0 BACKGROUND**

- 1.1 The Financial Transactions Reporting Act 2004 (**‘Act’**) is Fiji’s key legal safeguard against money laundering and terrorism financing. The Act establishes the Financial Intelligence Unit (**‘Unit’**) that regulates and controls the reporting of financial transactions by financial institutions in Fiji.
- 1.2 In October 2015, Fiji’s framework on combating money laundering and terrorism financing was subject to peer review by the Asia Pacific Group on Money Laundering (**‘APG’**). The APG assessment team noted gaps in the Act and in the Financial Transactions Regulations 2007 (**‘Regulations’**).
- 1.3 In October 2016, a Mutual Evaluation Report (**‘Report’**) on Fiji was published by the APG assessing the level of effectiveness of Fiji’s anti-money laundering and counter-terrorist financing system. The APG assessment team and the Report noted that the Act fails to prescribe penalties for certain sections and that the Regulations do not prescribe penalties.
- 1.4 The Bill addresses the gaps noted by the APG assessment team and the Report by introducing provisions that will strengthen the penalty provisions of the Act and the Regulations.

#### **2.0 CLAUSES**

- 2.1 Clause 1 of the Bill provides for the short title and commencement. If passed by Parliament, the amending legislation will come into force on a date or dates appointed by the Attorney-General.
- 2.2 Clause 2 of the Bill amends section 40 of the Act to remove the requirement to prove that a director, controller or officer had knowledge, authorised, permitted or consented to the offence of the body corporate.

4

2.3 Clause 3 of the Bill amends section 42 of the Act to allow the Minister to prescribe penalties in the Regulations. The Regulations currently do not prescribe penalties.

2.4 Under the Interpretation Act 1967, the Minister has a general power to prescribe penalties not exceeding \$400 or to a term not exceeding 6 months or to both in relation to any subsidiary legislation. Taking into account the gravity of the offence of money laundering and terrorism financing, this penalty is too lenient. For that reason, clause 3 of the Bill amends section 42 of the Act to allow the Minister to prescribe penalties in regulations made under the Act of a fine not more than \$150,000 or a term of imprisonment not exceeding 5 years, or to both.

2.5 Clause 4 of the Bill inserts a new Part 8 titled ‘Penalties’. The new Part 8 provides for penalties under the Act. The new section 43(1) proposes to provide a general penalty provision for the contravention of any offence under the Act that does not have a prescribed penalty.

2.6 The new section 43(2) prescribes a penalty provision for persons who fail to comply with any instruction or directive issued by the Unit.

### **3.0 MINISTERIAL ASSIGNMENT**

3.1 The Act comes under the responsibility of the Attorney-General.

A. SAYED-KHAIYUM  
Attorney-General