

# BILL NO. 8 OF 2018

## 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 2018.

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

*Section 40 substituted*

**2.** The Financial Transactions Reporting Act 2004 is amended by deleting section 40 and substituting the following—

*“Liability of officer*

40.—(1) If a body corporate commits an offence under this Act or any regulations made under this Act, an officer also commits the offence and is liable to the penalty prescribed for the offence, whether or not the body corporate has been prosecuted or convicted, if the officer fails to prove that he or she had taken all reasonable steps to prevent the commission of the offence by the body corporate.

(2) For the purposes of subsection (1), in determining whether things done or omitted to be done by an officer constitute reasonable steps, a court must have regard to—

- (a) what the officer knew, or ought to have reasonably known, about the commission of the offence by the body corporate;
- (b) whether the officer was in a position to influence the conduct of the body corporate in relation to the commission of the offence; and
- (c) any other relevant matter.

(3) For the purposes of this section, “officer” means a director, officer, employee, agent or consultant of the body corporate.”.

April 2018

## **FINANCIAL TRANSACTIONS REPORTING (AMENDMENT) BILL 2018**

### **EXPLANATORY NOTE**

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

#### **1.0 BACKGROUND**

- 1.1 The Financial Transactions Reporting (Amendment) Bill 2018 (**‘Bill’**) seeks to amend the Financial Transactions Reporting Act 2004 (**‘Act’**) to provide more clarity to circumstances in which officers of a body corporate may incur liability as a result of an offence by the body corporate.

#### **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 appointed by the Minister by notice published in the Gazette.
- 2.2 Clause 2 of the Bill amends the Act by replacing section 40 to effectively clarify the liability of officers for corporate offences. The proposed section 40(1) states that if a body corporate commits an offence under the Act or any regulations made under the Act, an officer is also guilty of the offence if the officer fails to prove that he or she had taken all reasonable steps to prevent the commission of the offence. An ‘officer’ is defined as a director, officer, employee, agent or consultant of the body corporate in section 40(3). In the proposed provision, the officer bears the burden of proving that he or she had taken all reasonable steps to prevent the commission of the offence by the body corporate.
- 2.3 The proposed section 40(2) further prescribes the factors which a court must consider in determining whether things done or omitted to be done by the officer constitute reasonable steps. These factors include:
- (i) what the officer knew, or ought to have reasonably known, about the commission of the offence by the body corporate;

- (ii) whether the officer was in a position to influence the conduct of the body corporate in relation to the commission of the offence; and
- (iii) any other relevant matter.

### **3.0 MINISTERIAL RESPONSIBILITY**

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

A. SAYED-KHAIYUM  
Attorney-General