



# The Cook Islands Review

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## Cook Islands is on top of the world!!!

The Cook Islands Anti-Money Laundering/Combating the Financing of Terrorism ("AML/CFT") regime is officially one of the best in the world. This was confirmed recently at a plenary meeting of the Asia Pacific Group on Money Laundering ("APG"), a FATF-styled regional body, held in Kathmandu, Nepal from 21st to 27th July, 2018.

The Cook Islands Mutual Evaluation Report ("MER") was tabled and adopted at the plenary meeting where the Cook Islands achieved an outstanding result indicating it has one of the best AML/CFT regimes in the world. The plenary meeting was attended by over 520 senior delegates from around the world and APG member jurisdictions include countries such as Australia, Canada, China, India, Japan, South Korea, New Zealand, Singapore and the United States of America.

In regards to the FATF 40 Recommendations, the Cook Islands received 38 ratings of Largely Compliant and above. This has not been bettered by any other jurisdiction. In terms of the implementation and effectiveness of its laws and systems, when measured against the FATF's 11 Immediate Outcomes the Cook Islands attained 5 substantial ratings, 4 moderate ratings and 2 low ratings. This resulted in the Cook Islands being one of only two jurisdictions (the other being Macau) within the APG membership to be placed in the "regular" follow up process. This is a very rare achievement.

The media release from the Cook Islands Financial Supervisory Commission, the lead government agency for the Mutual Evaluation, can be found on our [website](#).

The evaluation process leading to this excellent achievement was long and arduous and spanned over 18 months. It commenced in early 2017 and included a rigorous two week on-site evaluation in November 2017 of the Cook Islands' AML/CFT regime. The on-site evaluation was undertaken by 2 representatives of the APG and 6 independent assessors appointed by the APG. It amounted to a comprehensive and intensive examination of the country's AML/CFT laws, the effectiveness of its AML/CFT systems and whether the Cook Islands is meeting the FATF's defined set of expected outcomes. The assessment team met with and interviewed members of all key government agencies and the private sector. Following the on-site evaluation, the Cook Islands, led by the Deputy Commissioner of the Financial Supervisory Commission, Cheryl McCarthy, was in constant contact with the assessment team in order to have the Cook Islands MER ready for presentation at the APG's AGM. The final version of the Cook Islands' Mutual Evaluation Report will be published in September of this year.

This outstanding result for the Cook Islands has been achieved through the commitment and hard work of the Cook Islands government, its crown agencies and the private sector. It is hoped this result will begin to dispel much of the misinformation that exists in relation to the Cook Islands and its financial services industry.

The Cook Islands  
Financial Services  
Development  
Authority will  
commence  
operating as "Cook  
Islands Finance."

### Feature: “It is a Trust ... isn't it?”

The recent decision of the High Court in England and Wales in *Mezprohm v Pugachev* [2017], has trust practitioners in onshore and offshore locations looking closely at their trust deeds thinking carefully on whether a valid trust has actually been created.

In summary, Mr. Pugachev established five irrevocable discretionary trusts under New Zealand law. He was a beneficiary, together with his minor children, and the protector of the trusts. As protector, Mr. Pugachev had retained extensive powers, including veto powers in relation to the distribution of income and capital, investment of the trust funds, the removal of beneficiaries, any variation to the trust deeds, the release or revocation of any power granted to the trustees, the trust period, and any variation of the trusts. In addition Mr. Pugachev had the power to appoint and remove trustees, with or without cause, and add further beneficiaries.

Birss J held that Mr. Pugachev's powers were not held in a fiduciary capacity (the trust instrument was silent on this point). They were therefore personal, unrestricted and could be exercised selfishly. This was important in the context of the decision as if the powers were held in a fiduciary capacity Birss J determined that the trusts would have been shams (a very serious matter for the professional trustee). As they were not fiduciary powers, the trusts were simply bare trusts that did not successfully divest Mr. Pugachev of the beneficial ownership in the assets he had transferred into them. The trusts therefore offered no protection to Mr. Pugachev or his assets. That was unfortunate for Mr. Pugachev given a Russian court had entered judgement against him for USD1 billion.

It is common in offshore jurisdictions, the Cook Islands being one, for legislation to permit the extensive reservation of powers to a settlor (whilst he/she is a beneficiary and protector) without affecting the validity of a trust or putting the trustee in breach. Perhaps if Birss J had decided the Pugachev case under such laws he may have decided differently. Notwithstanding, this case is a sharp reminder to all trust practitioners that too much settlor control is never advisable and may defeat the purpose of the trust and affect its validity. In addition, regardless of the powers reserved to a settlor, or any third party, the trustee's fiduciary duty to act in the best interests of all beneficiaries (not just the settlor) remains and the trustee must act to preserve trust assets at all times. Trustees therefore need to be actively engaged in the administration of trusts under their management and not merely act as a corporate service provider.

## On the Road

**Nepal:** In July, Alan Taylor, our Marketing Director, accompanied the Cook Islands delegation to the Asia Pacific Group on Money Laundering's annual meeting in Kathmandu, Nepal. In addition to assisting the Cook Islands delegation in the presentation and review of its Mutual Evaluation Report, Alan made a presentation on behalf of the APG to APG members on the assessment of money laundering and terrorist financing risk for Legal Persons and Legal Arrangements.

**Fiji:** Tamatoa Jonassen, our CEO, just returned from a Workshop on Tax Governance hosted by the Pacific Islands Forum Secretariat in Nadi, Fiji, in early August. The workshop provided a forum to engage with the European Union, other Pacific island countries, and international organizations relating to common tax practices and the European Union's efforts to encourage uniformity in certain tax practices.

**Hong Kong in November:** We are proud to announce that it will be continuing its sponsorship of the STEP Asia Conference in 2018. The conference will be held in Hong Kong on 20-21 November 2018 and is regarded as a must attend event for those practising and providing services in the wealth planning industry. The FSDA, operating as Cook Islands Finance, will be represented at the conference by its CEO, Tamatoa Jonassen, and Marketing Director, Alan Taylor.



The Cook Islands delegation with the APG evaluation team in Kathmandu, Nepal, July 2018.

“the Cook Islands Financial Services Development Authority will commence operating as Cook Islands Finance.”



Cook Islands: decades of expertise crafting effective wealth structures to weather any storms.



**Cook Islands  
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Development Authority**

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**World map showing the  
Cook Islands at the heart of  
the Pacific.**

## In the News

### **British Overseas Territories required by UK government to have public registers of company beneficial ownership**

On 1 May 2018 the UK government agreed to force the British Overseas Territories (“BoTs”) to introduce publicly available registers of company beneficial ownership by 2020. The Crown Dependent Territories (“CDTs”) of Jersey, Guernsey and Isle of Man were however spared the same fate. On 23 May 2018 the UK Sanctions and Anti Money Laundering Act (the “Act”) received Royal Assent. The Act instructs the UK government to impose publicly accessible registers of beneficial ownership on BoTs.

The BoTs are 14 territories under the jurisdiction and sovereignty of the United Kingdom (UK) and include the British Virgin Islands, Cayman Islands, Bermuda, Anguilla, Turks and Caicos Islands and Gibraltar. They are the parts of the British Empire that have not been granted independence or have voted to remain British territories. These territories do not form part of the UK and, with the exception of Gibraltar, are not part of the European Union. The BoTs are mostly internally self-governing, with the UK retaining responsibility for defence and foreign relations.

Understandably the BoTs view the actions of the UK government as an infringement of their rights to self-determination. The BVI government has responded by appointing law firm Withers to prepare a legal challenge to the Act. BVI premier Orlando Smith has said the legislation raises serious constitutional and human rights issues, and insists the BVI will not introduce public registers until they become a global standard.

At present the UK is the only country in the world that maintains a publicly available register of company beneficial ownership and has been making concerted efforts for a number of years to have the BoTs and CDTs do the same.

### **CRS Reporting has commenced**

Pursuant to the international commitment made by the Cook Islands and the laws enacted to give effect to that commitment, Cook Islands financial institutions have now completed their first reporting under the OECD’s Common Reporting Standard (“CRS”). CRS provides for the collection of financial information held on individuals and entities in one jurisdiction and automatic sharing of that information with the jurisdiction(s) where the individuals and beneficial owners are tax resident.

## Visit Our Website

We regularly add topical items under our Industry News webpage and post articles to highlight Cook Islands financial services and products to advisors, intermediaries, clients and those with an interest in what the Cook Islands can provide. Please visit our [website](#) for more information.

## About Us

The Cook Islands Financial Services Development Authority (“FSDA”), operating as Cook Islands Finance, is a government agency tasked with the development of the financial services industry in the Cook Islands. The FSDA was established in 2009 and functions independently from the Financial Supervisory Commission that regulates the industry. The FSDA focuses on promoting the Cook Islands, coordinating on industry relevant issues, and developing financial products and services. The FSDA is an important point of contact for any financial institution looking to establish a presence in the Cook Islands. Individuals seeking a Cook Islands financial service provider can find details on our website at [www.cookislandsfinance.com/service-providers.php](http://www.cookislandsfinance.com/service-providers.php).

**Important Information: The Cook Islands Financial Services Development Authority does not provide advice, recommendations or opinions regarding legal and/or tax matters under any circumstances. To the extent that this communication, or anything referenced herein may concern tax matters, it is not intended to be used, and cannot be used, for the purpose of avoiding tax liabilities or penalties that may be imposed by law, foreign and domestic. The Cook Islands Financial Services Development Authority strongly recommends that before any person makes a decision to create a structure, professional legal and tax advice should be taken in his/her country of residence.**