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Subject: Kobre & Kim Update: Assets in the Cook Islands Are Now Easier for the U.S. Government to Reach: What You Need to Know

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Assets in the Cook Islands Are Now Easier for the U.S. Government to Reach: *What You Need to Know*

July 17, 2017

The Cook Islands — once publicly described as a "paradise of untouchable assets" — has just passed legislation that makes asset forfeiture by the U.S. government easier and more far-reaching. Yielding to pressure from the international onshore community, the Parliament of the Cook Islands handed the U.S. Department of Justice (DOJ) a potent new weapon in its aggressive campaign to confiscate proceeds of crime and other assets of investigation targets.

Here are some key considerations for Cook Islands account holders and those who represent them:

The U.S. government now has broader powers to freeze assets in the Cook Islands. Previously, the DOJ could only apply for assistance, such as freeze orders, in criminal matters. But the new Cook Islands legislation treats civil forfeiture cases as if they were criminal cases, which allows the DOJ to obtain freeze orders in connection with civil forfeiture cases — a new and powerful tool for prosecutors. Indeed, U.S. prosecutors often use civil forfeiture actions to seize proceeds of crime when they are concerned that they cannot obtain criminal convictions or successfully extradite defendants.

The U.S. government does not have to trace the assets to criminal activity to freeze them. Even more striking, the new Cook Islands laws allow the DOJ to freeze substitute assets — that is, assets untainted by any connection to a crime. The assets need only be in an amount equal to alleged proceeds of a crime and located in the Cook Islands, which the new legislation defines as "property of a corresponding value." U.S. authorities do not even possess such broad power in

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their own country; U.S. federal law does not permit U.S. courts to freeze untainted assets before a trial, even in amounts equal to allegedly tainted proceeds that have been dissipated.

Banks and other financial institutions now bear increased responsibility to cooperate with U.S. authorities, and not just the DOJ. Cook Islands authorities could previously reject foreign assistance requests if they ran counter to local confidentiality laws or related only to foreign tax investigations. The new legislation expressly forbids Cook Islands authorities from rejecting foreign requests solely on those bases. This opens the possibility for Cook Islands bank accounts to face intense scrutiny from the U.S. Internal Revenue Service, similar to recent international operations undertaken against Swiss bank accounts.

For these reasons, lawyers and wealth managers with clients who have assets in the Cook Islands and face potential U.S. investigations should be well-informed about the increased litigation risk they may face.

About Kobre & Kim's Asset Forfeiture Defense Team:

Kobre & Kim is a conflict-free global law firm focused on disputes and investigations, often involving fraud and misconduct.

Often working with other law firms as special counsel, our global government enforcement defense team has handled some of the largest asset forfeiture and asset freezing cases, with a successful track record of convincing the U.S. government to unfreeze assets or reduce forfeiture requests that often have hundreds of millions of dollars at stake. We regularly advise in contentious matters that involve misappropriation of assets.

The team includes more than a dozen former U.S. government prosecutors and lawyers who have held leadership positions at the U.S. Department of Justice and the U.S. Securities and Exchange Commission. Our cross-disciplinary team is qualified in multiple jurisdictions across the U.S., EMEA, Asia and the Caribbean.

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