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CHAPTER 367

FINANCIAL INTELLIGENCE UNIT

**An Act to provide for the establishment of a body to be known as the Financial Intelligence Unit; the functions and powers of that body; and for connected purposes.**

*39 of 2000*

*20 of 2001*

*S.I. 128/2001*

*[Commencement 29th December, 2000]*

1. This Act may be cited as the Financial Intelligence Unit Act, 2000.

Short title.

2. In this Act-

Interpretation.

"Director" means the Director of the Financial Intelligence Unit, appointed pursuant to

section 3;

"Financial Intelligence Unit" means the Financial Intelligence Unit established pursuant to section 3;

"Foreign Financial Intelligence Unit" means such body or bodies in another jurisdiction which performs functions similar to those of the Financial Intelligence Unit;

"Minister" means the Minister responsible for the administration of this Act.

**3.** (1) There is hereby established a body to be known as the Financial Intelligence Unit having perpetual succession and a common seal with power to enter into contracts and to do all such things necessary for the purpose of its functions. Establishment of Financial Intelligence Unit.

(2) The Financial Intelligence Unit shall consist of-

(a)

a Director appointed in writing by the Minister who shall be the chief executive officer of the Financial Intelligence Unit;

(b)

a counsel and attorney appointed in writing by the Minister;

(c)

a public accountant appointed in writing by the Minister;

(d)

such number of consultants, having suitable qualifications and experience to provide services to the Financial Intelligence Unit, appointed in writing by the Minister;

(e)

such number of police officers appointed by the Commissioner of Police on the recommendation of the Director;

(f)

such other personnel as the Director considers necessary.

(3) The First Schedule shall have effect with respect to the Director and otherwise in relation to the Financial Intelligence Unit.

**4.** (1) In the exercise of its functions under subsection (2), the Financial Intelligence Unit shall act as the agency responsible for receiving, analysing, obtaining and disseminating information which relates to or may relate to the proceeds of the offences specified in the Second Schedule. Functions of the Financial Intelligence Unit.

(2) Without limiting the foregoing and notwithstanding any other law to the contrary the Financial Intelligence unit-

(a)

shall receive all disclosures of information such as are required to be made pursuant to the Proceeds of Crime Act, 2000 which are relevant to its functions, including information from any Foreign Financial Intelligence Unit;

(b)

may upon receipt of such disclosures as are referred to in paragraph (a), order in writing any person to refrain from completing any transaction for a period not exceeding seventy-two hours;

(c)

may upon receipt of a request from a Foreign Financial Intelligence Unit or law enforcement authority including the Commissioner of Police of The Bahamas order any person to freeze a person's bank account for a period not exceeding five days if satisfied that the request relates to the proceeds of any of the offences specified in the Second Schedule:

Provided that an aggrieved person may apply to a judge in chambers to discharge the order of the Financial Intelligence Unit and shall serve notice on the Financial Intelligence Unit to join in the proceedings but such order shall remain in full force and effect until the judge determines otherwise;

(d)

may require the production of such information excluding information subject to legal

professional privilege that the Financial Intelligence Unit considers relevant to fulfil its functions;

(e) shall retain a record of all information that it receives for a minimum of five years after the information is received;

(f) shall provide information, subject to such conditions as may be determined by the Director, to the Commissioner of Police where the information may relate to the commission of an offence specified in the Second Schedule;

(g) may provide information relating to the commission of an offence specified in the Second Schedule to any Foreign Financial Intelligence Unit, subject to any conditions as may be considered appropriate by the Director;

(h) may enter into any agreement or arrangement, in writing, with a Foreign Financial Intelligence Unit which the Director considers necessary or desirable for the discharge or performance of the functions of the Financial Intelligence Unit;

(i) shall inform the public and financial and business entities of their obligations under measures that have been or might be taken to detect, prevent and deter the commission of the offences specified in the Second Schedule.

(3) Any person failing or refusing to provide such information as is required by paragraph (d) of subsection (2) is guilty of an offence and shall be liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

**5.** The Minister may give to the Financial Intelligence Unit directions in writing of a general nature as to the policy to be followed by the Financial Intelligence Unit in the performance of its functions as appear to the Minister to be requisite in the public interest and the Financial Intelligence Unit shall give effect to those directions. Directions of the Minister.

**6.** Notwithstanding the provisions of any other Act, no order for the provision of information, documents or evidence may be issued in respect of the Financial Intelligence Unit or against the Minister, Director, officers or personnel of the Financial Intelligence Unit or any person engaged pursuant to this Act. No order.

**7.** No action shall lie against the Minister, Director, officers or personnel of the Financial Intelligence Unit or any person acting under the direction of the Director for anything done or omitted to be done in good faith and in the administration or discharge of any functions, duties or powers under this Act. No liability.

**8.** (1) No proceedings for breach of banking or professional confidentiality may be instituted against any person or against directors or employees of a financial or business entity who in good faith transmit information or submit reports in accordance with the Proceeds of Crime Act, 2000 or under this Act. No criminal or civil liability for information.

(2) No civil or criminal liability action may be brought nor any professional sanction may be taken against any person or against directors or employees of a financial or business entity who in good faith transmit information or submit reports to the Financial Intelligence Unit.

**9.** (1) Any person who obtains information in any form as a result of his connection with the Financial Intelligence Unit shall not disclose that information to any person except so far as it is required or permitted under this Act or any written law. Confidentiality.

(2) Any person who communicates any information in breach of subsection (1) commits an offence and shall be liable on summary conviction to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding one year or to both such fine and imprisonment.

**10.** (1) The Director shall- Annual Report.

(a) from time to time advise the Minister on the work of the Financial Intelligence Unit and in particular on matters that could affect public policy or the priorities to be set by the Financial Intelligence Unit;

(b) prepare and submit to the Minister on or before June 30 in each year an annual report reviewing the work of the Financial Intelligence Unit.

(2) The Minister shall lay or cause to be laid a copy of every annual report on the table of both Houses of Parliament.

**11.** The funds and resources of the Financial Intelligence Unit shall consist of any moneys as may from time to time be provided by Parliament. Funds and Resources.

**12.** The Financial Intelligence Unit shall prepare for each new financial year an annual budget of revenue and expenditure which shall be submitted to the Minister at least two months prior to the commencement of the financial year. Annual budget.

**13.** (1) The Financial Intelligence Unit shall keep proper accounts and other records in relation thereto, and shall prepare in respect of each financial year a statement of accounts. Accounts and audit.

(2) The accounts of the Financial Intelligence Unit for each financial year shall be audited by an auditor to be appointed by the Director with the approval of the Minister.

(3) As soon as the accounts have been audited the Financial Intelligence Unit shall submit a copy thereof to the Minister together with a copy of any report made by the auditor.

(4) The Minister shall lay a copy of every such audited accounts before each House of Parliament, together with a copy of any report made by the auditor on the accounts.

**14.** (1) The Minister, after consultation with the Financial Intelligence Unit, may make such regulations as he thinks necessary or convenient for carrying out or giving effect to this Act. Regulations.

(2) Without prejudice to the generality of subsection (1), such regulations may in particular-

(a) require financial and other institutions as may be prescribed to establish and maintain procedures relating to the identification of clients, the keeping of records, the making of reports and training;

(b) create criminal offences and penalties triable summarily for failing to comply with the regulations;

(c) provide that in determining whether a person has complied with the regulations the trial court shall take account of any relevant guidelines issued by the Financial Intelligence Unit;

(d) prescribe all matters required or permitted by this Act to be prescribed.

**15.** (1) Subject to section 16, the Financial Intelligence Unit shall from time to time issue, in respect of each kind of financial institution to which the Financial Transactions Reporting Act, 2000 applies, guidelines- Financial Intelligence Unit to issue guidelines.

(a) setting out any features of a transaction that may give rise to a suspicion that the transaction is or may be relevant to the enforcement of the Proceeds of Crime Act, 2000;

(b) setting out any circumstances in which a suspicious transaction report relating to such a transaction may be made orally in accordance with section 14(3) of the Financial Transactions Reporting Act, 2000 and the procedures for making such an oral report.

(2) Suspicious transaction guidelines shall be issued in such manner as the Financial Intelligence Unit shall from time to time determine.

(3) The Financial Intelligence Unit may from time to time issue an amendment or

revocation of any suspicious transaction guidelines.

(4) Without limiting subsection (1), suspicious transaction guidelines issued under this section may relate to one or more kinds of financial institution; and such guidelines may make different provisions for different kinds of financial institutions and different kinds of transactions.

**16.** (1) The Financial Intelligence Unit shall, before issuing any suspicious transaction guidelines-

Consultation on proposed guidelines.

(a)

consult with, and invite representations from the Central Bank of The Bahamas, the Securities Commission, the Compliance Commission, the Registrar of Insurance, the Gaming Board and such other agencies and/or entities as the Minister may by order designate and shall have regard to any such representations;

(b)

give public notice of the Financial Intelligence Unit's intention to issue the guidelines, which notice shall contain a statement-

(i)

indicating the Financial Intelligence Unit's intention to issue the guidelines; and

(ii)

inviting financial institutions that are likely to be affected by the proposed guidelines, and industry organisations that are representative of those financial institutions, to express to the Financial Intelligence Unit, within such reasonable period as is specified in the notice, their interest in being consulted in the course of the development of the guidelines; and

(c)

consult with, and invite representations from, those financial institutions and industry organisations which express such an interest, and shall have regard to any such representations.

(2) Nothing in subsection (1) prevents the Financial Intelligence Unit from adopting any additional means of publicising the proposal to issue any suspicious transaction guidelines or of consulting with interested parties in relation to such a proposal.

(3) This section shall apply in respect of any amendment or revocation of any suspicious transaction guidelines.

**17.** On request by any financial institution in respect of which any suspicious transaction guidelines are for the time being in force, or by any industry organisation that represents any such financial institution, the Financial Intelligence Unit shall, without charge-

Financial Intelligence Unit to make guidelines available.

(a)

make those guidelines, and all amendments to those guidelines, available for inspection, by that financial institution or, as the case requires, that industry organisation, at its offices; and

(b)

provide copies of those guidelines, and all amendments to those guidelines, to that financial institution, or, as the case requires, that industry organisation.

**18.** (1) The Financial Intelligence Unit shall from time to time review any suspicious transaction guidelines for the time being in force.

Review of guidelines.

(2) Section 16 shall apply, with all necessary modifications, in relation to any such review as if the review were a proposal to issue suspicious transaction guidelines.

FIRST SCHEDULE (Section 3(3))

THE DIRECTOR OF THE FINANCIAL INTELLIGENCE UNIT

1. (1) The Director shall, subject to the provisions of this paragraph, hold and vacate his office in accordance with the terms of his appointment and shall, on ceasing to hold office, be eligible for re-appointment.

(2) The Director shall not be appointed or re-appointed for a period exceeding five years.

2. (1) The Director shall not while holding office as such hold any other office or employment, whether remunerated or not, without the prior approval of the Minister.

(2) Subject to subparagraph (1) of this paragraph, a person may not be appointed or remain Director who-

(a)

is a member of either House of Parliament;

(b)

is a public officer; or

(c)

is a director, officer or servant of, or has a controlling interest in, any financial institution.

3. The Minister may appoint any person eligible to be appointed to act temporarily in the place of the Director who is absent or unable to act.

4. The Director may at any time by notice in writing to the Minister resign his office.

5. If the Minister is satisfied that the Director-

(a)

has become bankrupt or made arrangements with his creditors; or

(b)

is incapacitated by physical or mental illness; or

(c)

is otherwise unable or unfit to discharge the functions of a director,

the Minister may declare the office of Director vacant and shall notify the fact in such manner as the Minister thinks fit, and thereupon that office shall become vacant.

6. The Director shall receive such remuneration whether by way of salary, honoraria or fees, as the Minister may determine and, if a person ceases to be the Director and it appears to the Minister that there are special circumstances which make it right that the person should receive compensation, the Minister may direct to pay to that person a sum of such amount as the Minister may determine.

7. The Director shall have charge of the day-to-day management and operation of the Financial Intelligence Unit.

SECOND SCHEDULE (Section 4(1))

OFFENCES

Offences under the Proceeds of Crime Act, 2000.