

CHAPTER 129

**MONEY LAUNDERING AND FINANCING
OF TERRORISM (PREVENTION
AND CONTROL)**

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CHAPTER 129**MONEY LAUNDERING AND FINANCING
OF TERRORISM (PREVENTION
AND CONTROL)**

An Act to provide for the prevention and control of money laundering, the prevention of the financing of terrorism and for related matters.

1998-38.
2000-7.
2001-32.
2002-6.

[25th April, 2000]

Commence-
ment.
2000/36.

PRELIMINARY*Citation*

1. This Act may be cited as the *Money Laundering and Financing of Terrorism (Prevention and Control) Act*.

Short title.
2002-6.

Interpretation

2. (1) In this Act

Definitions.

"account" means any facility or arrangement by which a financial institution does any one or more of the following:

- (a) accepts deposits of currency;
- (b) allows withdrawals of currency or transfers between accounts;
- (c) pays cheques or payment orders drawn on a financial institution by, or collects cheques or payment orders on behalf of, a person;
- (d) supplies a facility or arrangement for a safety deposit box;

"Authority" means the Anti-Money Laundering Authority appointed by the Minister under section 5;

"business transaction"

- (a) means any arrangement, including opening an account, between 2 or more persons where the purpose of the arrangement is to facilitate a financial transaction between the persons concerned; and
- (b) includes
 - (i) any related transaction between any of the persons concerned and another person; and
 - (ii) the making of a gift;

"business transaction record" includes

- (a) the identification records of all the persons who are a party to the transaction;
- (b) a description of the transaction sufficient to identify its purpose and method of execution;
- (c) the details of any account used for the transaction, including Bank, Branch and Sort Code; and
- (d) the total value of that transaction;

"Court" means the High Court;

2001-32. "Director" means the Director of the Financial Intelligence Unit referred to under section 6B;

"document" means any record of information, and includes

- (a) anything on which there is writing;
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; and
- (d) a map, plan, drawing or photograph;

"financial institution"

- (a) means any person who carries on business under the *Financial Institutions Act*; and Cap. 324A.
- (b) includes
- (i) a deposit taking institution;
 - (ii) any person whose business involves money transmission services, investment services or any other services of a financial nature; 2001-32.
 - (iii) a credit union within the meaning of the *Co-operatives Societies Act*; 2001-32. Cap. 378A.
 - (iv) a building society within the *Building Societies Act*; 2001-32. Cap. 377.
 - (v) a friendly society within the meaning of the *Friendly Societies Act*; 2001-32. Cap. 379.
 - (vi) an insurance business within the meaning of the *Insurance Act*; 2001-32. Cap. 310.
 - (vii) an off-shore bank within the meaning of the *Off-shore Banking Act*; 2001-32. Cap. 325.
 - (viii) an exempt insurance company within the meaning of the *Exempt Insurance Act*; 2001-32. Cap. 308A.
 - (ix) an international business company within the meaning of the *International Business Companies Act*; 2001-32. Cap. 77.
 - (x) a society with restricted liability within the meaning of the *Societies with Restricted Liability Act*; 2001-32. Cap. 318B.
 - (xi) a foreign sales corporation within the meaning of the *Barbados Foreign Sales Corporation Act*; 2001-32. Cap. 59C.
 - (xii) a mutual fund, mutual fund administrator and a mutual fund manager; 2001-32.
 - (xiii) international trusts within the meaning of the *International Trusts Act*; 2001-32. Cap. 245.

"freezing" means restraining any transaction or dealing in property;

"identification record" means

(a) in the case of a corporate body,

- (i) certified copies of the certificate of incorporation, authenticated where the body is incorporated abroad, and other necessary documents filed with the Registrar of Corporate Affairs and Intellectual Property and any amendments thereto;
- (ii) the certificate of continuance issued pursuant to section 352 or 356.2 of the *Companies Act*, and other necessary documents filed with the Registrar of Corporate Affairs and Intellectual Property and any amendments thereto;
- (iii) the certificate of registration, where the body corporate was incorporated abroad and registered under the *Companies Act*, and other necessary documents filed with the Registrar of Corporate Affairs and Intellectual Property for registration as an external company and any annual returns filed;
- (iv) the name, address, occupation, nationality and such other evidence as may satisfy the financial institution that the directors and shareholders are who they claim to be;

(b) in the case of an individual, sufficient documentary evidence to prove to the satisfaction of a financial institution that the individual is who that individual claims to be, and

for the purposes of paragraphs (a) and (b) "person" includes a nominee, agent, beneficiary or principal in relation to a business transaction;

2000-7. "Minister" means the Attorney-General;

"money laundering" has the meaning assigned to it by section 3;

"proceeds of crime" means the proceeds of unlawful activity wherever committed and includes any property that is mingled with property that is proceeds of unlawful activity;

"property" includes money and all other property real or personal, including things in action and other intangible or incorporeal property wherever situate and includes any interest in such property;

"unlawful activity" means any activity which under any law anywhere is a crime and is punishable by death or by imprisonment for a period of not less than 12 months.

- (2) A reference in this Act to a document includes a reference to
- (a) any part of a document;
 - (b) any copy, reproduction or duplicate of the document or of any part of the document; or
 - (c) any part of such copy, reproduction or duplicate.

PART I

MONEY LAUNDERING

3. (1) A person engages in money laundering where

Money
laundering.

- (a) the person engages, directly or indirectly, in a transaction that involves money or other property that is proceeds of crime; or
- (b) the person receives, possesses, conceals, disposes of, or brings into or sends out of Barbados any money or other property that is proceeds of crime.

(2) For the purposes of this section, a person engages in money laundering whether he knows or has reasonable grounds to suspect that the property is derived or realised directly or indirectly from some form of unlawful activity or, where the person is

- (a) an individual, if he fails without reasonable excuse to take reasonable steps to ascertain whether or not the property is derived or realised, directly or indirectly, from some form of unlawful activity; or
- (b) a financial institution, if the person fails to take reasonable steps to implement or apply procedures to control or combat money laundering.

Jurisdiction. **4.** Any act done by a person outside Barbados with intent to do that act within Barbados is, if it would be an offence within Barbados, an offence under this Act.

PART II

ANTI-MONEY LAUNDERING PROVISIONS

Anti-Money Laundering Authority. **5.** (1) The Minister shall appoint a body to be known as the "Anti-Money Laundering Authority" to supervise financial institutions in accordance with this Act.

(2) The Authority shall comprise such persons as the Minister may determine who have a sound knowledge of banking, financial and legal matters.

Duties and powers of Authority generally. 2001-32. **6.** The Authority

- (a) shall establish training requirements and provide any necessary training for any financial institution in respect of the business transaction record keeping obligations and reporting obligations required under this Act;
- (b) may compile statistics and records; and
- (c) may disseminate information within or outside Barbados and make recommendations arising out of any information received.

Powers in respect of information-gathering. 2001-32. **6A.** (1) The Authority shall receive the reports issued by financial institutions pursuant to section 8(1)(b), as well as disclosures of information from any state or any other source which are relevant to the administration and enforcement of this Act.

(2) Where after considering any report or information referred to in subsection (1) the Authority has reasonable grounds to believe that a business transaction involves criminal activity or proceeds of crime or an offence under section 4 of the *Anti-Terrorism Act*, it shall furnish the report or the information to the Commissioner of Police. Cap. 158.

(3) The Authority

- (a) shall conduct such investigations as are necessary for the purposes of this Act;
- (b) may instruct financial institutions to take such steps as may be appropriate to facilitate any investigation by the Authority;
- (c) may require from any financial institution the production of any information, except information which is subject to legal professional privilege, that the Authority considers relevant to fulfil its functions; and
- (d) shall retain a record of all information that it receives under this section for a minimum of 5 years after the information is received.

(4) Where the Director has reasonable grounds to believe

- (a) that an investigation in relation to any person should be conducted for the purposes of this Act; and
- (b) that information from the records of
 - (i) the Central Bank;
 - (ii) the Customs Department;
 - (iii) the Immigration Department;
 - (iv) the Inland Revenue Department;
 - (v) the Land Tax Department;
 - (vi) the National Insurance Department; or

(vii) the VAT Office

is necessary for the purposes of such investigation,

the head of that institution or department shall, at the request of the Director, provide the information.

(5) On receipt of information under this Act, the Authority may upon application to a Judge in chambers seek an order

- (a) to prohibit any person from completing any transaction for a period not exceeding 72 hours;
- (b) to freeze a person's bank account for a period not exceeding 5 days.

Administra-
tion and
staff.
2001-32.
Cap. 21.

6B. (1) The office of the Authority shall comprise the Financial Intelligence Unit, which shall consist of a director and other public officers, whose offices shall be established in accordance with the *Civil Establishment Act*.

(2) The staff of the Financial Intelligence Unit shall, subject to the directions of the Authority, be responsible for the administration of this Act.

Communi-
cation of
information
to foreign
states.
2001-32.

6C. The Director may in accordance with the directions issued by the Authority communicate information that is relevant to this Act to any national financial intelligence unit of a foreign state (by whatever name called)

- (a) where the unit is located in a state that is party to any agreement with Barbados in respect of the exchange of information under this Act; and
- (b) where he is satisfied that the state has given appropriate undertakings for protecting the confidentiality of the information and for controlling the use that will be made of it.

Information-
sharing
between
regulatory
authorities.
2001-32.

6D. (1) Subject to section 22A, any report or disclosure of information that is received by or on behalf of the Authority under this Act may be referred to any institution or department referred to in subsection (4)(b) of section 6A.

(2) Notwithstanding any law to the contrary, any regulatory authority mentioned in subsection (1) may provide information to the Authority or to another regulatory authority for the purposes of this Act, if the information is not subject to legal professional privilege.

7. (1) A financial institution shall take reasonable measures to satisfy itself as to the true identity of any applicant seeking to enter into a business relationship with it, or to carry out a transaction or series of transactions with it, by requiring the applicant to produce the applicant's identification record. Customer identity.

(2) Where an applicant requests a financial institution to enter into any transaction, the institution shall take reasonable measures to establish whether the person is acting on behalf of another person.

(3) Where it appears to a financial institution that an applicant requesting it to enter into any transaction is acting on behalf of another person, the institution shall take reasonable measures to establish the true identity of any person on whose behalf or for whose ultimate benefit the applicant may be acting in the proposed transaction, whether as trustee, nominee, agent or otherwise.

(4) In determining what constitutes reasonable measures for the purposes of subsection (1) or (3), regard shall be had to all the circumstances of the case and, in particular,

- (a) to whether the applicant is a person based or incorporated in a country in which there are in force provisions applicable to it to prevent the use of the financial system for the purpose of money laundering; and
- (b) to such custom and practice as may from time to time be current in the relevant business.

(5) Nothing in this section requires the production of any evidence of identity where

- (a) the applicant is itself a financial institution to which this Part applies; or

- (b) there is a transaction or a series of transactions taking place in the course of a business relationship, in respect of which the applicant has already produced satisfactory evidence of identity.

Duties of
financial
institutions.

8. (1) Every financial institution

- (a) shall establish and maintain for a period of 5 years
 - (i) business transaction records of all business transactions exceeding \$10 000 or its equivalent in foreign currency for a period of 5 years after the termination of the business transaction;
 - (ii) a record that indicates the nature of the evidence obtained, and which comprises either a copy of the evidence or such information as would enable a copy of it to be obtained where evidence of a person's identity is obtained in accordance with section 7;

2002-6.

- (b) shall forthwith report to the Authority any business transaction where the identity of the person involved, the transaction or any other circumstance concerning that business transaction gives any officer or employee of the financial institution reasonable grounds to suspect that the transaction
 - (i) involves proceeds of crime;
 - (ii) involves the financing of terrorism; or
 - (iii) is of a suspicious or an unusual nature;
- (c) shall comply with any instruction issued to it by the Authority pursuant to section 6A;
- (d) shall
 - (i) permit any member of the Authority or any person duly authorised by it, upon request, to enter into any premises of the financial institution during normal working hours and inspect the records kept pursuant to paragraph (a);
 - (ii) permit any member of the Authority or any person duly authorised by it, to make any notes or take any copies of the whole or any part of any such record; and

(iii) answer any questions of the Authority, or any person duly authorised by it, in relation to such records;

(e) shall

(i) develop and apply internal policies, procedures and controls to combat money laundering; and

(ii) develop audit functions to evaluate such policies, procedures and controls;

(f) shall comply with the training requirements created and guidelines issued by the Authority in accordance with this Act;

(g) shall develop a procedure to audit compliance with this section; 2001-32.

(h) shall monitor and report to the Authority all currency exchanges of \$10 000 or more and all instructions for transfers of international funds of \$10 000 or more, whether by telegraph or wire, into and out of Barbados, where the transaction appears to be of an unusual nature. 2001-32.

(2) Customer accounts of a financial institution shall be kept in the true name of the account holder.

(3) Records required under subsection (1)(a) shall contain particulars sufficient to identify

(a) the name, address and occupation (or, where appropriate, the business or principal activity) of each person

(i) conducting the transaction; or

(ii) on whose behalf the transaction is being conducted, as the case may be, 2001-32.

and the method used by the financial institution to verify the identity of each such person;

(b) the nature and date of the transaction;

s.8A

- (c) the type and amount of currency involved;
- (d) the type and identifying number of any account with the financial institution involved in the transaction;
- 2001-32. (e) if the transaction involves a negotiable instrument, the name of the drawer of the instrument, the name of the institution on which it was drawn, the name of the payee (if any), the amount and date of the instrument, the number (if any) of the instrument and details of any endorsements appearing on the instrument;
- (f) the name and address of the financial institution, and of the officer, employee or agent of the financial institution who prepared the record.

2001-32. (4) Notwithstanding section 19, where any financial institution fails to make a report that is required under this section, the directors of the institution are guilty of an offence and are jointly and severally liable on conviction on indictment to a fine of \$100 000.

2001-32. (5) Where there is a failure by any financial institution to maintain business transaction records as required under subsection (1), the directors of that institution are guilty of an offence and are jointly and severally liable on conviction on indictment to a fine of \$100 000.

Reports of
transfer of
currency
into or out
of Barbados.
2001-32.

8A. (1) Subject to subsections (2), (3) and (4), where

- (a) a person transfers Barbadian currency or foreign currency out of Barbados or transfers Barbadian currency or foreign currency into Barbados; and
- (b) the amount of the currency involved in the transfer is more than \$10 000 in value,

Cap. 71. that person shall make a report in respect of the transfer in accordance with this section unless permission was obtained under the *Exchange Control Act* for the transfer.

(2) A commercial carrier is under no obligation to make a report in respect of currency in the possession of the carrier's passengers.

(3) A commercial carrier of goods is under no obligation to make a report in respect of currency carried on behalf of another person unless the other person has disclosed to the carrier that the goods include currency.

(4) A financial institution is under no obligation to make a report in respect of currency transferred on behalf of that financial institution by a commercial carrier of goods.

(5) Where a person other than a financial institution receives Barbadian currency or foreign currency transferred to that person from outside Barbados, and the amount of currency received is more than \$10 000 in value, the person shall make

- (a) a report in respect of the transfer of currency into Barbados in accordance with subsection (1), before the transfer; or
- (b) a report in respect of the receipt of currency before the end of the period of 30 days commencing on the day of the receipt of the currency,

unless permission was obtained under the *Exchange Control Act* for Cap. 71. the transfer.

(6) A person who contravenes subsection (1) or (5) is guilty of an offence and is liable

- (a) upon summary conviction to a fine of \$10 000 or to imprisonment for a term of 2 years;
- (b) upon conviction on indictment to a fine of \$200 000 or to imprisonment for a term of 5 years.

(7) A report under this section shall be

- (a) in such form as is approved by the Authority;
- (b) signed by the person giving the report; and

(c) given

(i) to the Comptroller of Customs where the transfer is effected by a person taking the currency out of or bringing it into Barbados on his person, in his luggage or as cargo; or

(ii) to the Authority or the Comptroller in any other case.

(8) A report under this section must be given

(a) in the case of a report under subsection (7)(c)(i), at the time the currency concerned is brought into or taken out of Barbados;

(b) in the case of a report under subsection (5), at the time specified in that subsection; and

(c) in any other case, at any time before the transfer takes place.

(9) For the purposes of subsection (8)(a), where currency is taken out of Barbados by a person by consignment of the currency

(a) through the post to a place outside of Barbados; or

(b) to another person for carriage to a place outside Barbados by that other person or by a third person,

the time when the currency is deemed to have been taken out of Barbados is the point when it is irrevocably committed to the postal service or committed to the other person for carriage to a place outside Barbados.

(10) For the purposes of subsection 8(a), the time at which currency is deemed to be taken out of Barbados by a person is,

(a) where the person is leaving Barbados by an aircraft or a vessel and, before embarking, goes through an area that is set apart for customs officers to perform duties in respect of embarking passengers, the time when that person reaches the area at which the customs officers perform duties in respect of embarking passengers; or

(b) in any other case, the time when the person reaches the immigration officer who is to examine that person's passport in relation to that person leaving Barbados.

(11) For the purposes of subsection (8)(a), the time at which currency is deemed to be brought into Barbados by a person is,

(a) where the person arrives in Barbados by an aircraft or a vessel and after disembarking goes through an area set apart for customs officers to perform duties in respect of disembarking passengers, the time when that person reaches the area at which customs officers perform duties in respect of disembarking passengers; or

(b) in any other case, the first opportunity after arrival in Barbados that the person has to give the report under this section.

(12) Where a report under this section is given to a customs officer, the officer shall, as soon as practicable after receipt of the report, forward it to the Authority.

(13) For the purposes of this section, if a person

(a) arranges to leave Barbados as a passenger on an aircraft or vessel; and

(b) for the purpose of leaving Barbados, goes towards an aircraft or vessel through an area described in subsection (10); and

(c) either

(i) takes currency into that area; or

(ii) has currency in his personal luggage; and

(d) does not give a report about the currency as required under this section,

that person is deemed to have transferred the currency out of Barbados.

Internal reporting procedures.

9. (1) A financial institution shall establish and maintain internal reporting procedures to

- (a) identify persons to whom an employee is to report any information which comes to the employee's attention in the course of employment and which gives rise to knowledge or suspicion by the employee that another person is engaged in money laundering;
- (b) enable any person identified in accordance with paragraph (a) to have reasonable access to information that may be relevant to determining whether a sufficient basis exists to report the matter pursuant to paragraph (b) of section 8(1).

(2) A report for the purposes of subsection (1) may be made by letter, facsimile or mechanical or electronic means.

Further precautionary measures.

10. A financial institution shall establish and maintain internal reporting procedures to

- (a) take appropriate measures for the purpose of making employees aware of the laws of Barbados relating to money laundering, and the procedures and related policies established and maintained by it pursuant to this Part; and
- (b) provide its employees with appropriate training in the recognition and handling of money laundering transactions.

Search warrant. Cap. 116A.

11. A magistrate may, in accordance with section 84 of the *Magistrate's Courts Act*, issue to any police officer a warrant to enter any premises belonging to, or in the possession or control of, a financial institution or any officer or employee of such institution and to search the premises and remove any document, material or other thing therein if the magistrate is satisfied by evidence on oath that there are reasonable grounds to believe that

- (a) a financial institution has failed to keep a business transaction record as required by paragraph (a) of section 8(1);

- (b) a financial institution has failed to comply with paragraph (b) of section 8(1);
- (c) an officer or employee of a financial institution is committing, has committed or is about to commit a money laundering offence.

12. (1) A person who has been convicted of an indictable offence may not be licensed to carry on the business of a financial institution; and where the person is a financial institution its licence shall, without further action, be cancelled. Other measures to prevent money laundering.

(2) For the purposes of this section the expression "indictable offence" shall be deemed to include any similar offence committed abroad.

PART III

FREEZING AND FORFEITURE OF ASSETS IN RELATION TO MONEY LAUNDERING

13. (1) The Court may, where it is satisfied upon application by the Director of Public Prosecutions that a person has been charged or is about to be charged with a money laundering offence, grant an order freezing the property of, or in the possession or under the control of, that person. Freezing of property.

(2) The Court may, in making an order under subsection (1), give directions with regard to

- (a) the duration of the freezing order; or
- (b) the disposal of the property for the purpose of
 - (i) determining any dispute relating to the ownership of or other interest in the property or any part thereof,
 - (ii) its proper administration during the period of freezing,
 - (iii) the payment of debts incurred in good faith prior to the making of the order,

(iv) the payment of moneys to the person referred to in subsection (1) for the reasonable subsistence of that person and his family,

(v) the payment of the costs of the person referred to in sub-paragraph (iv) to defend criminal proceedings against him.

(3) An order made under subsection (1) shall cease to have effect at the end of the period of 7 days after the order was made if the person against whom the order was made has not been charged with a money laundering offence within that period.

(4) The Crown is not liable for any damages or costs arising directly or indirectly from the making of an order under subsection (1) unless it is proved that the application for the order was made in bad faith.

(5) Where the Court makes an order for the administration of frozen property the person charged with the administration of the property is not liable for any loss or damage to the property or for the costs of proceedings taken to establish a claim to the property or to an interest in the property unless the court in which the claim is made is of the opinion that the person has been guilty of negligence in respect of the taking of custody and control of the property.

Forfeiture
of property.

14. (1) The Court may, upon application by the Director of Public Prosecutions, forfeit any property of or in the possession or under the control of any person who is convicted of a money laundering offence or any property of that person that is the subject of a freezing order, unless it is proved that the property did not derive from money laundering.

(2) For the purposes of subsection (1) the burden of proof lies on the person who owns, or is in possession or control of, the property.

(3) In determining whether or not any property is derived from money laundering the standard of proof required for the purposes of subsections (1) and (2) is the same as in criminal proceedings.

- (4) In making a forfeiture order the Court may give directions
- (a) for the purpose of determining any dispute as to the ownership of or other interest in the property or any part thereof; and
 - (b) as to the disposal of the property.

(5) Upon application to the Court by a person against whom a forfeiture order has been made under this section, the Court may order that an amount deemed by the Court to be the value of the property so ordered to be forfeited, be paid by that person to the Court and upon satisfactory payment of that sum by that person the property ordered to be forfeited shall be returned to him.

PART IV

MISCELLANEOUS

15. (1) Where a magistrate is satisfied by information on oath that there are reasonable grounds for believing that

Investigation
of offences.

- (a) an offence under this Act has been committed; and
- (b) a document or thing that may afford evidence of the commission of the offence is likely to be found in any building, thing, receptacle or place

the magistrate may at any time issue a warrant under his hand authorising any constable or other person named in the warrant to enter and search, by day or by night and if necessary by force, such building, thing, receptacle or place for any document or thing that may afford evidence of the commission of the offence and to seize and take away such document or thing.

(2) Where the constable or other person has seized a document or other thing under subsection (1), he shall take it to the Commissioner of Police who may retain the document or thing, taking reasonable care to ensure that it is preserved, until the conclusion of any investigation into the offence in relation to which the document or thing was seized and any trial or appeal relating to the offence.

(3) Where a document or other thing has been seized under subsection (1) a magistrate may, on application of an interested party, order that the document or thing be returned to the person from whom it was seized or person who is otherwise legally entitled thereto if the magistrate is satisfied that the document or thing will not be required for the purposes of an investigation, trial or appeal relating to an offence under this Act.

(4) The person from whom any document or thing is seized under subsection (1) is entitled, at all reasonable times and subject to such reasonable conditions as may be imposed by the Commissioner of Police, to inspect the document or thing and, in the case of a document, to obtain a copy thereof.

(5) The Commissioner of Police shall be given at least 7 days' notice of an application made under subsection (3).

(6) The Commissioner of Police shall send to the Authority and the Director of Public Prosecutions a copy of any document or any information derived from anything seized under this section if he has reasonable grounds to suspect that the same may afford evidence of a business transaction involving proceeds of crime.

Interference with members, constables, etc.

16. Any person who obstructs, hinders, molests or assaults any member of the Authority, constable or other person in the execution of his duty under this Act is guilty of an offence and is liable on summary conviction to a fine of \$50 000 or to imprisonment for a term of 2 years or both.

Liability of officers of bodies corporate.

17. (1) For the purposes of this Act, any conduct engaged in on behalf of a body corporate

- (a) by a director, servant or agent of that body corporate within the scope of his actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement whether expressed or implied, of a director, servant or agent of that body corporate where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent,

shall be deemed to have been engaged in by the body corporate.

(2) Where it is necessary, for the purposes of this Act, to establish the state of mind of a person in relation to conduct deemed by subsection (3) to have been engaged in by that person, it is sufficient to show that a servant or agent of that person, being a servant or agent by whom the conduct was engaged in and acting within the scope of his actual or apparent authority, had that state of mind.

(3) Conduct engaged in on behalf of a person, other than a body corporate,

- (a) by a servant or agent of that person within the scope of his actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement, whether expressed or implied, of a servant or agent of the first-mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent,

shall be deemed, for the purposes of this Act, to have been engaged in by the first-mentioned person.

(4) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of that person and that person's reasons for his intention, opinion, belief or purpose.

18. (1) The following provisions of the *Proceeds of Crime Act* apply to this Act with such modifications and adaptations as circumstance requires:

Application
of *Proceeds
of Crime
Act*.
Cap. 143.

- (a) section 48 (relating to monitoring orders);
- (b) section 49 (relating to the non-disclosure of monitoring orders);
- (c) sections 55 to 59 (relating to disclosure of income tax information);

(d) section 60 (relating to access to specified information and documents held by Government departments or statutory boards); and

(e) section 71 (relating to the Public Trustee).

Cap. 143. (2) A reference in sections 48 and 49 of the *Proceeds of Crime Act* to "financial institution" shall be construed as a reference to "financial institution" within the meaning of this Act.

Mandatory injunction. **19.** (1) The officers and employees of a financial institution shall take all reasonable steps to ensure the compliance by that financial institution with its obligations under this Act.

(2) The Court may, where it is satisfied upon application by the Director of Public Prosecutions that a financial institution has failed without reasonable excuse to comply in whole or in part with any obligation imposed on the institution by paragraphs (a), (b), (c) and (d) of section 8(1), issue a mandatory injunction against any or all of the officers or employees of that financial institution in such terms as the Court deems necessary to enforce compliance with such obligation.

Offence of money laundering. **20.** (1) A person who engages in money laundering is guilty of an offence.

(2) Any person who attempts, or who aids, abets, counsels or procures, the commission of, or who conspires to commit, the offence of, money laundering is guilty of an offence.

(3) A person guilty of an offence under subsection (1) is liable

(a) on summary conviction, to a fine of \$200 000 or to imprisonment for 5 years or to both; and

(b) on conviction on indictment, to a fine of \$2 000 000 or imprisonment for 25 years or to both.

- (4) A person guilty of an offence under subsection (2) is liable
- (a) on summary conviction, to a fine of \$150 000 or to imprisonment for 3 years or to both; and
- (b) on conviction on indictment, to a fine of \$1 500 000 or imprisonment for 15 years or to both.

20A. (1) Where a person is charged with an offence under section 20 and the Court is satisfied that the property in his possession or under his control was not acquired from income derived from a legitimate source, then it shall be presumed, unless the contrary is proved, that the property was derived from the proceeds of crime. Evidence. 2001-32.

(2) For the purposes of subsection (1) the standard of proof required by the person referred to in that subsection, shall be on a balance of probabilities. 2001-32.

(3) For the avoidance of doubt, section 18(2) of the *Constitution* is amended in paragraph (a) to any extent necessary to give effect to subsection (1).

21. Where an offence under section 20 is committed by a body of persons, whether corporate or unincorporated, every person who, at the time of the commission of the offence acted in an official capacity for or on behalf of such body of persons, whether as a director, manager, secretary or other similar officer, or was purporting to act in such capacity, is guilty of that offence and shall be tried and punished accordingly. Offence committed by a body of persons.

22. (1) It is an offence for any person who knows or suspects that an investigation into money laundering has been, is being or is about to be made, or that an order has been made or may be made requiring the delivery or production of any document Other offences.

- (a) to divulge that fact or other information to another whereby the investigation is likely to be prejudiced; or

(b) to falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, concealment, destruction or disposal of, any matter or thing that is or is likely to be material to the investigation.

(2) It is an offence for any person to falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, concealment, destruction or disposal of any document, matter or thing that is or is likely to be material to the execution of any order made under section 13(1).

(3) It is an offence for a person who is the subject of an order made under section 13(1) to disclose the existence or operation of the order to any person except to

- (a) a police officer named in the order;
- (b) an officer or agent of the financial institution named in the order, for the purposes of ensuring that the order is complied with; or
- (c) for the purpose of obtaining legal advice or representation in relation to the order.

(4) A person guilty of an offence under subsection (1), (2) or (3) is liable on summary conviction to a fine of \$50 000 or imprisonment for 2 years or to both.

Disclosure
of informa-
tion.
2001-32.

22A. (1) The Authority, every person who receives reports or information under this Act and every person concerned with the administration of this Act shall regard as secret and confidential all documents, information or matters disclosed in the administration of this Act.

(2) No person shall publish or disclose to any person, otherwise than as is provided by this Act or as is necessary in the course of his duties, the contents of any document or any communication or information whatsoever which relate to, and have come to his knowledge in the course of, his duties under this Act.

(3) A person who contravenes subsection (2) is guilty of an offence and is liable on conviction on indictment to a fine of \$50 000 or to imprisonment for a term of 5 years or to both.

(4) Any disclosure

(a) made by the Authority or any other person in proceedings for an offence under subsection (3); or

(b) which the Authority considers necessary in the discharge of its functions

shall not be deemed inconsistent with any duty imposed under this section.

(5) Where an institution or department referred to under subsection (4)(b) of section 6A has information about an unusual or a suspicious transaction or where a financial institution has information about an account held with the institution, and the institution or department has reasonable grounds for believing that

(a) the information may be relevant to an investigation of, or the prosecution of, a person for an offence; or

(b) the information would otherwise be of assistance in the enforcement of this Act or any regulations made thereunder,

the institution or department may give the information to the Authority.

(6) An action, suit or proceeding does not lie against

(a) a financial institution; or

(b) an officer, employee or agent of the institution acting in the course of the person's employment or agency,

in relation to an action taken by the institution or department or person pursuant to subsection (5).

