

COMMONWEALTH OF DOMINICA

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COMMONWEALTH OF DOMINICA

Act No. 20 OF 2000

I assent

Vernon L. Shaw
President.

18th January, 2001

AN ACT TO PROVIDE FOR THE PREVENTION OF
MONEY LAUNDERING AND FOR RELATED MAT-
TERS.

(Gazetted 25th January, 2001.)

BE IT ENACTED by the Parliament of the Commonwealth of
Dominica as follows:

PART I
PRELIMINARY

1. This Act may be cited as the-
MONEY LAUNDERING
(PREVENTION) ACT, 2000.

Short title.

Interpretation.

2.(1) In this Act -

“Authority” means the Money Laundering Supervisory Authority established under section 9;

“business transaction” means any arrangement, including opening and maintaining an account, between two or more persons where the purpose of the arrangement is to facilitate a transaction between the persons concerned and any related transaction between any of the persons concerned and another person;

“business transaction record” includes where relevant to a business transaction-

- (a) the identification of all the persons party to that transaction;
- (b) a description of that transaction sufficient to identify its purpose and method of execution;
- (c) the details of any account used for that transaction, including bank, branch and sort code; and
- (d) the total value of that transaction;

“financial institution” means any person whose regular occupation or business is the carrying on of any activity listed in Part I of the Schedule.

Schedule.

“freezing” means temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or

control of property on the basis of an order by a court;

“forfeiture” means the permanent deprivation of property by order of a court:

“Fund” means the Forfeiture Fund established under section 24;

“identification record means -

(a) where the person is a corporate body, the details -

(i) of the certificate of incorporation, such certificate to be notarized where the corporate body is incorporated outside Dominica;

(ii) except in respect of International Business Companies, of the most recent annual return of the corporate body filed at the Registry, such return to be notarized where the corporate body is incorporated outside of Dominica;

(iii) of any officer of the corporation as required in paragraph (b) of this definition; and

(b) in any other case, sufficient documentary evidence to prove to the satisfaction of a financial

institution that the person is who that person claims to be;

and for these purposes "person" includes any person who is a nominee, agent, beneficiary or principal in relation to a business transaction;

"instrumentality" means something that is used in or intended for use in any manner in the commission of a money laundering offence;

"Minister" means the Minister responsible for Finance;

"money laundering" means-

(a) engaging in a transaction that involves property that is the proceeds of crime, knowing or believing the same to be the proceeds of crime; or

(b) receiving, possessing, managing, investing, concealing, disguising, disposing of or bringing into Dominica any property that is the proceeds of crime, knowing or believing the same to be the proceeds of crime;

"person" includes any entity, natural or juridical, corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture, or other unincorporated organisation or group, capable of acquiring rights or entering into obligations;

“proceeds of crime” means any property derived or obtained through the commission of an indictable or hybrid offence whether committed in Dominica or elsewhere;

“property” includes money, investments, holdings possessions, assets and all other property real or personal, heritable or moveable including things in action and other intangible or incorporeal property wherever situate (whether in Dominica or elsewhere) and includes any interest in such property;

“scheduled business” means any business activity for the time being listed in Part II of the Schedule;

Schedule.

“Unit” means the Financial Intelligence Unit established under section 12.

(2) Knowledge, intent, purpose, belief or suspicion required as an element of any offence under this Act may be inferred from objective, factual circumstances.

PART II MONEY LAUNDERING PROHIBITED

3. A person who, after the commencement to this Act, engages in money laundering commits an offence. Offence of money laundering.

4. A person who aids, abets, counsels or procures the commission of, or attempts or conspires to commit, the offence of money laundering commits an offence. Attempt, aiding and abetting, conspiracy.

5. A person who commits an offence under section 3 or 4 is liable, on conviction, to a fine not exceeding one million dollars, and to imprisonment for a term not exceeding seven years. Penalty for money laundering.

Tipping-off.

6.(1) A person who has reasonable grounds to believe that an investigation into money laundering has been, is being, or is about to be made shall not prejudice the investigation by divulging the fact to another person.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty thousand dollars and to imprisonment for a term not exceeding ten years.

Falsification, concealment etc., of documents.

7.(1) A person who has reasonable grounds to believe that an investigation into money laundering has been, is being or is about to be made shall not prejudice the investigation by falsifying, concealing, destroying or otherwise disposing of or causing or permitting the falsification, concealment, destruction or disposal of a matter or thing that is or is likely to be material to the investigation.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding five hundred thousand dollars and to imprisonment for a term not exceeding ten years.

Jurisdiction.

8. An offence under this Act, whether or not it occurred in Dominica or any other territorial jurisdiction, may be investigated by the Unit or a person authorised by the Unit and tried, judged and sentenced by a court in Dominica, without prejudice to extradition when applicable, in accordance with the law.

PART III ANTI-MONEY LAUNDERING SUPERVISION

Establishment of Supervisory Authority.

9. There is hereby established a body to be known as the Money Laundering Supervisory Authority.

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- 10.** The Authority shall comprise the following persons-
- (a) the manager of the International Business Unit;
 - (b) the Commissioner of Police or his nominee;
 - (c) the Attorney General or his nominee;
 - (d) the Comptroller of Customs or his nominee; and
 - (e) a person experienced in financial services appointed by the Minister.
- 11.** The Authority shall -
- (a) receive and consider reports issued by financial institutions and persons carrying on scheduled businesses pursuant to sections 16(1) and 16(2);
 - (b) send reports referred to in paragraph (a) to the Unit;
 - (c) develop anti-money laundering strategies for Dominica;
 - (d) issue instructions and guidance notes to financial institutions and persons carrying on scheduled businesses, in respect of money laundering prevention;
 - (e) create and promote training requirements for financial institutions and persons carrying on scheduled businesses, in respect of the business transaction record keeping and reporting obligations under sections 15(a) and 16(2) respectively;
 - (f) advise the minister with regard to any matter relating to money laundering; and
- Composition of the Authority.
- Functions and duties of the Authority.

(g) carry out any other function as may be assigned to it by the Minister.

Establishment of the Financial Investigation Unit.

12. There is hereby established a unit to be known as the Financial Intelligence Unit.

Composition of the Unit.

13. The Unit shall consist of three police officers trained in the investigation of financial crimes and two other persons appointed by the Minister responsible for national security after consultation with the Commissioner of Police.

Powers and functions of the Unit.

14. The Unit -

- (a) shall receive and analyse reports submitted to it by the Authority pursuant to section 11(b);
- (b) shall gather intelligence with a view to detecting money laundering and other financial crimes;
- (c) shall establish a data base on cases with a view of detecting money trails;
- (d) shall liaise with money laundering intelligence agencies outside of Dominica;
- (e) shall gather information about pending cases of money laundering and other financial crimes in other jurisdictions;
- (f) may on reasonable suspicion that any provision of this Act is being or has been contravened apply to a Judge or in his absence a Magistrate for a warrant to enter into the premises of any financial institution or any person carrying on a scheduled business, during normal working hours to inspect any business transaction record kept pursuant to section 15(a) and ask any questions relevant to such record and

make any notes or take any copies of the whole or part of any such record;

- (g) may instruct any financial institution or person carrying on a scheduled business, to take such steps as may be appropriate to facilitate any investigation anticipated by the Unit following a report or inspection made under this section;
- (h) shall compile statistics and records on matters relating to money laundering;
- (i) may consult with any person, institution or organisation within or outside Dominica for the purposes of the exercise of its powers and duties under this Act;
- (j) shall pass on any relevant information relating to money laundering to the Director of Public Prosecutions with a view to taking the appropriate action; and
- (k) shall submit to the Minister annual reports on the performance of its functions containing statistics and details of reports received by it and results of its investigations; and
- (l) shall carry out any other function assigned to it by the Minister.

(2) The Unit shall destroy any note or copy thereof made or taken pursuant to subsections (1)(j), within one year of the inspection, except where any such note or copy has been sent to the Director of Public Prosecutions.

15. A financial institution or person carrying on a scheduled business shall -

Obligations of financial institutions, etc.

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- (a) keep a business transaction record of all business transactions of United States ten thousand dollars and over for a period of seven years after the termination of the business transaction so recorded;
 - (b) comply with any instruction issued to it by the Unit pursuant to section 14(g);
 - (c) permit any member of the Unit, or a person authorised by the Unit, upon request to enter into any premises of the financial institution or person carrying on a scheduled business during normal working hours and inspect the records kept pursuant to paragraph (a) and to make any notes of the whole or any part of any such record and shall answer any questions of the Unit or a person authorised by the Unit in relation to such records; and
 - (d) comply with the guidelines and training requirements issued by the Authority in accordance with section 11.

Reporting of suspicious business transactions.

16. (1) A financial institution or person carrying on a scheduled business shall pay attention to-

- (a) all complex, unusual or large business transactions, whether completed or not;
- (b) all unusual patterns of transactions;
- (c) relations and transactions with persons, including business and other financial institutions, from countries that have not adopted a comprehensive anti money laundering legislation.

(2) Upon reasonable suspicion that the transaction described in subsection (1) could constitute or be related to money laundering, a financial institution or person carrying on a scheduled business shall promptly report the suspicious transactions to the Authority.

(3) A financial institution or person carrying on a scheduled business, shall not notify any person, other than a court, competent authority or other person authorised by law, that information has been requested by or furnished to a court or the Authority.

(4) When the report referred to in subsection (2) is made in good faith, the financial institution or person carrying on a scheduled business and its employees, staff, directors, owners or other representatives as authorised by law shall be exempted from criminal, civil or administrative liability, as the case may be, for complying with this section or for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, regardless of the result of the communication.

(5) A criminal offence is committed by a financial institution or its employees, staff, directors, owners or other authorised representatives or a person carrying on a scheduled business who, acting as such, wilfully fail to comply with the obligations in this section, or who wilfully make a false or falsified report referred to above.

(6) Without prejudice to criminal or civil liabilities for offences connected to money laundering, a financial institution and its employees or a person carrying on a scheduled business that fail to comply with the requirements of this section are liable on conviction to a fine of fifty thousand dollars, and in addition the licence of the financial institution to operate as such may be suspended or revoked by the competent authority.

(7) The question whether a reasonable suspicion, for the purpose of subsection (2), has been formed shall be determined objectively having regard to all the facts and surrounding circumstances.

Power to obtain search warrant.

17. A judge of the High Court may, upon application by the Unit, where he is satisfied that there are reasonable grounds to believe that -

- (a) a financial institution or person carrying on a scheduled business, has failed to keep a business transaction record without reasonable excuse as provided by section 15(a);
- (b) a financial institution or a person carrying on a scheduled business has failed without reasonable excuse to report any business transaction as provided by section 16(2); or
- (c) an officer or employee of a financial institution or person carrying on a scheduled business is committing, has committed or is about to commit a money laundering offence,

issue a warrant authorising the Unit to enter any premises belonging to, or in the possession or under the control of the financial institution or any officer or employee of that institution or of the person carrying on a scheduled business and to search the premises and remove any document, material or other thing therein for the purposes of the Unit as ordered by the Court and specified in the warrant.

Property tracking and monitoring orders.

18. A Judge of the High Court may, upon application by the Unit, where he is satisfied that there are reasonable grounds to believe that a person is committing, has committed or is about to commit a money laundering offence or for the purpose of determining whether any property belongs to, is in the possession or under the control of that person or any other person on behalf of that person, make an order-

(a) that any document relevant to-

- (i) identifying, locating or quantifying any property; or
- (ii) identifying or locating any document necessary for the transfer of any property;

belonging to, or in the possession or under the control of that person be delivered forthwith to the Unit.

- (b) that a financial institution or person carrying on a scheduled business forthwith produce to the Unit all information obtained by the institution or person carrying on a scheduled business about any business transaction as provided by section 15(a) conducted by or for that person with the institution or person carrying on a scheduled business during such period before or after the date of the order as the Judge directs.

19.(1) A Judge of the High Court may, upon application by the Unit, grant a mandatory injunction against an officer or employee of a financial institution or person carrying on a scheduled business in terms the court deems necessary to enforce compliance, on being satisfied that a financial institution or person carrying on a scheduled business has failed without reasonable excuse to comply in whole or in part with any obligation as provided under section 15(a), (b), (c), and section 16(2).

Mandatory injunction to enforce compliance.

(2) In granting an injunction pursuant to subsection (1) the Court may order that should the financial institution or any officer or employee of that institutional or person carrying on a scheduled business fail without reasonable excuse to comply with all or any of the provisions of that injunction the financial institution, officer or employee or person carrying on a scheduled busi-

ness shall pay a financial penalty in the sum and in such manner directed by the Court.

Other measures to avoid money laundering.

20. A person who has been convicted of a money laundering offence, whether in Dominica or elsewhere, may not be eligible or licensed to carry on the business of a financial institution.

Currency reporting when leaving and entering Dominica.

21.(1) A person who transports or causes the transportation of cash into or out of Dominica exceeding ten thousand United States dollars or in any other amount prescribed under Regulations made under this Act, must report that fact to the Unit at the prescribed time and in the prescribed manner.

(2) A person who willfully fails to report the transportation of currency as required by subsection (1) commits an offence, and is liable on conviction to imprisonment of three months or a fine of ten thousand United States dollars or both and in addition the cash being transported may be confiscated.

(3) Notwithstanding subsection (2), property involved in a violation of subsection (1) may be detained by the Unit for a period of up to thirty days in order that investigations may be conducted to determine if the funds are the proceeds of crime.

PART IV FREEZING AND FORFEITURE OF ASSETS IN REGULATIONS TO MONEY LAUNDERING

Freezing of property.

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

(2) The Court, in making a freezing order may give directions with regard to the disposal of the property in respect of

-
- (a) determining any dispute as to the ownership of the property of any part thereof;
 - (b) its proper administration during the period of freezing;
 - (c) the payment of debts due to creditors prior to the order; and
 - (d) the payment of money to a person referred to in subsection (1) for the reasonable subsistence of that person and his family.

(3) A freezing order shall cease to have effect after seven days of the freezing order being made if the person against whom the freezing order was made has not been charged with a money laundering offence within seven days.

(4) The Government shall not be held liable for damages or costs arising directly or indirectly from the making of a freezing order under subsection (1) unless it is proved, on a balance of probabilities that the application for the freezing order was made in bad faith.

23.(1) When a person is convicted of a money laundering offence under this Act, the court shall order that the property, proceeds or instrumentalities derived from or connected or related to such an offence, be forfeited to the Government of Dominica.

Forfeiture of property, proceeds or instrumentalities.

(2) When, as a result of any act or omission of the person convicted, any of the property, proceeds or instrumentalities described in subsection (1) cannot be forfeited, the court may order the forfeiture of any other property of the person convicted, for an equivalent value, or may order the person convicted to pay a fine of that value.

(3) In determining whether or not any property is derived from, connected or related to a money laundering offence the court -

(a) shall apply the standard of proof required in civil proceedings; and

(b) shall, unless the contrary is proved, deem-

(i) all property appearing to the court to be held by the person on the day on which the application is made; and

(ii) all property appearing to the court to be held by the person within the period between the day the money laundering offence was committed and the day on which the application was made; or

(iii) all property appearing to the court to be held within the period of six years immediately before the day on which the application is made, whichever is longer

to be property that came into the possession or under the control of the person by reason of the money laundering offence for which the person was convicted.

(4) In making a forfeiture order the court may give directions for the purpose of determining any dispute as to ownership of the property or any part thereof.

(5) Upon application to the court by a person against whom a forfeiture order has been made under this section, the court may require that a sum deemed by the court to be the value of the property 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 that person.

24.(1) There shall be established a Forfeiture Fund under the administration and control of the Minister. Forfeiture Fund.

(2) All funds and the proceeds from the sale of all property forfeited under section 23 shall be disposed in the Fund after the deduction of a 20% administrative fee to be deposited into the Consolidated Fund.

(3) The funds and proceeds forfeited under section 23 and deposited into the Fund shall be used for the purpose of anti-money laundering activities and for the purpose of the administration of justice and law enforcement.

25.(1) An order referred to in section 22 or 23 shall apply without prejudice to the rights of *bona fide* third parties. Rights of bona-fide third parties.

(2) Proper notifications shall be made so that all those claiming legitimate legal interest in property, proceeds or instrumentalities may appear in support of their claims.

(3) A third party's lack of good faith may be inferred, at the discretion of the court, from the objective circumstances of the case.

(4) The court shall return the property, proceeds or instrumentalities to the claimant, when it has been demonstrated to its satisfaction that -

- (a) the claimant has a legitimate legal interest in the property, proceeds or instrumentalities;
- (b) no participation, collusion or involvement with respect to a money laundering offence which is the subject of the proceedings can be imputed to the claimant;
- (c) the claimant lacked knowledge and was not intentionally ignorant of the illegal use of the property, proceeds or instrumentalities;

- (d) the claimant did not acquire any right in the property, proceeds or instrumentalities from a person proceeded against under circumstances that give rise to a reasonable inference that any right was transferred for the purpose of avoiding the eventual subsequent forfeiture of the property, proceeds or instrumentalities; and
- (e) the claimant did all that could reasonably be expected to prevent the illegal use of the property, proceeds or instrumentalities.

Limitations on freezing and forfeiture of property.

26. The provisions of sections 22 and 23 shall apply to all property possessed by or under the control of a person after the coming into force of this Act.

PART V INTERNATIONAL COOPERATION

Assistance to foreign countries.

27.(1) The court or the Unit shall co-operate with the court or other competent authority of another State, taking the appropriate measures to provide assistance in matters concerning money laundering offences, in accordance with this Act, and within the limits of their respective legal systems.

(2) The Court or the Unit may receive a request from the court of another State to identify, trace, freeze, seize or forfeit the property proceeds, or instrumentalities connected to money laundering offences, and may take appropriate actions, including those contained in sections 22 and 23.

PART VI MISCELLANEOUS

Money laundering an offence for extradition purposes.

28. Money laundering is an offence for the purpose of any law relating to extradition.

29. Subject to the provisions of the Constitution, the provisions of this Act shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any law or otherwise.

Secrecy obligations overridden.

30. It shall not be unlawful for a person to make any disclosure in compliance with this Act.

Disclosure protected.

31. No prosecution in respect of an offence committed under this Act or the Regulations made thereunder shall be instituted except by, or with the consent in writing of, the Director of Public Prosecutions.

Prosecution of offences.

32. All prosecutions, actions, suits or other proceedings brought for any offence, or for the recovery of any fines, penalties, or forfeitures, under this Act or the Regulations made thereunder, shall be brought within six years next after the date of the offence committed or the cause of action accrued.

Limitation of proceedings.

33.(1) The Minister may make Regulations for the better carrying out of the provisions of this Act and for prescribing anything to be prescribed.

Regulations.

(2) All Regulations made under subsection (1) shall be subject to a Negative Resolution of the House of Assembly within six weeks.

SCHEDULE

Section 2.

PART I

ACTIVITIES OF FINANCIAL INSTITUTIONS

1. “Banking business” and “financial business” as defined in the Banking Act;

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2. "banking business" as defined in the Offshore Banking Act;
 3. Venture risk capital;
 4. Money transmission services;
 5. Issuing and administering means of payments (e.g. credit cards, travellers' cheques and bankers' drafts);
 6. Guarantees and commitments;
 7. Trading for own account or for account of customers in-
 - (a) money market instruments (e.g. cheques, bills, certificates of deposits, commercial paper, etc.);
 - (b) foreign exchange;
 - (c) financial and commodity-based derivative instruments (e.g. options, interests rate and foreign exchange instruments etc.);
 - (d) transferable or negotiable instruments;
 8. Money broking;
 9. Money lending and pawning;
 10. Money exchange (e.g. *casa de cambio*);
 11. Mutual Funds
 12. Credit unions;
 13. Building societies;
 14. Trust business;
 15. Insurance Business.

PART II**OTHER BUSINESS ACTIVITIES**

1. real estate business;
2. car dealerships;
3. casinos (gaming houses)
4. Courier services;
5. Jewellery business

Passed in the House of Asembly this 28th day of December,
2000.

ALEX F. PHILLIP (MRS.)
Clerk of the House of Asembly.

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