

Money Laundering Prevention Act

SAINT LUCIA

No. 36 of 1999

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FIRST SCHEDULE

SECOND SCHEDULE

SAINT LUCIA

No. 36 of 1999

An Act to provide for the prevention of money laundering and related matters.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same, as follows:

**PART I
Preliminary**

Short title and commencement

1. (1) This Act may be cited as the Money Laundering (Prevention) Act, 1999.
- (2) This Act comes into force on a date to be prescribed by the Minister by Order published in the Gazette.

Interpretation

2. (1) In this Act

"account" means a facility by which a financial institution

- (a) accepts deposits of money;
- (b) allows withdrawals or transfers of money;
- (c) pays or collects cheques or payment orders drawn on a financial institution by a person or on behalf of a person; or
- (d) supplies a safety deposit box;

"Advisory Council on Misuse of Drugs" means the Advisory Council on the Misuse of Drugs established under the Drugs (Prevention of Misuse) Act, No. 22 of 1988;

"Authority" means the Money Laundering (Prevention) Authority established under section 3;

"Court" means the High Court;

"document" includes -

- (a) a thing on which there is writing, marks, figures, symbols or perforations, having a meaning for a person qualified to interpret them;
- (b) a thing from which sounds, images or writing may be reproduced; and
- (c) a map, plan, drawing or photograph;

"financial institution" includes

- (a) a bank licensed under the Banking Act, 1991;
- (b) a building society registered under the Building Societies Ordinance, 1965;
- (c) a credit union registered under the Co-operative Societies Ordinance, Cap 82; and
- (d) an insurance company registered under the Insurance Act, 1994; and
- (e) a company that performs international financial services under the international financial services legislation in force in Saint Lucia, a trust company, finance company or deposit taking company declared by the Minister by Order published in the Gazette to be a financial institution;

"forfeiture" means the permanent deprivation of property by order of a court or other competent authority;

"forfeiture order" means an order made under section 13;

"freeze" means to temporarily prohibit the transfer, conversion, disposition or movement of property or to temporarily assume custody or control of property on the basis of an order by a court or other competent authority;

"freezing order" means an order made under section 12;

"identification record" means

- (a) documentary evidence to prove the identity of a person who is a nominee, agent, beneficiary or principal in relation to a transaction; or
- (b) in the case where the person is a corporate body
 - (i) incorporated in Saint Lucia, the certificate of incorporation of that body;
 - (ii) incorporated outside of Saint Lucia, the authenticated certificate of incorporation or equivalent document of that body;
 - (iii) the most recent annual return to the Registrar of the Court in Saint Lucia where the corporate body is incorporated abroad; or
 - (iv) documentary evidence to prove the identity of an officer of the corporate body;

"joint account" means an account held by two or more persons;

"Minister" means the Minister responsible for Legal Affairs;

"money laundering" means:

- (a) directly or indirectly engaging in a transaction that involves property that is the proceeds of a prescribed offence knowing or having reasonable grounds to believe the property to be the proceeds of a prescribed offence; or
- (b) receiving, possessing, concealing, disposing of, or bringing into Saint Lucia, property that is proceeds of a prescribed offence knowing or having reasonable grounds to believe the property to be the proceeds of a prescribed offence;

"person" includes a body corporate and an unincorporated body;

"prescribed offence" means an offence listed in the First Schedule;

"proceeds of a prescribed offence" means the property derived from or property mingled with the proceeds of a prescribed offence;

"property" includes money, movable or immovable property, corporeal or incorporeal property and an interest in property;

"requesting State" means a State which makes a request to Saint Lucia for assistance pursuant to the Mutual Assistance in Criminal Matters Act, 1996;

"transaction" includes

- (a) opening of a joint account where the purpose of the account is to facilitate a transaction between the holders of the joint account;
- (b) a transaction between the holders of a joint account relating to the joint account; and
- (c) the making of a gift;

"transaction record" includes

- (a) the identification records of a person who is a party to a transaction;
- (b) a description of the transaction sufficient to identify its date, purpose and method of execution;
- (c) the details of any account used for a transaction including name of financial institution, address and sort code;
- (d) the total value of the transaction; and
- (e) the name and address of the employee in the financial institution who prepared the transaction record;

"unlawful act" means an act which under a law in any jurisdiction is a crime and is punishable by imprisonment for a period of not less than twelve months or is punishable by death.

(2) A reference in this Act to a document includes a reference to

- (a) part of a document; and
- (b) a copy, reproduction or duplicate of the document, or of part of the document.

PART II

Establishment

Establishment and Composition

3. (1) There is established a body to be known as the Money Laundering (Prevention) Authority.
- (2) The Authority shall comprise five persons who have a sound knowledge of law, banking or finance and who shall be appointed by the Minister.

PART III Functions

Powers

4. The Authority may:

- (a) enter into the premises of a financial institution during normal working hours and inspect a transaction record kept by that financial institution;
- (b) ask any question relevant to a transaction record inspected under paragraph (a);
- (c) make notes or take a copy of the note or part of a transaction record inspected under paragraph (a);
- (d) instruct a financial institution to take steps as may be appropriate to facilitate an investigation by the Authority;
- (e) compile statistics or records;
- (f) disseminate information within or outside Saint Lucia;
- (g) make recommendations arising from information received;
- (h) issue guidelines to financial institutions;
 - (i) advise the Minister; or
 - (j) consult with a person, institution or organisation for the purpose of exercising its powers under this Act.

Duties

5. The Authority shall

- (a) report to the Commissioner of Police and Director of Public Prosecutions information derived from an inspection carried out under section 4, if on the basis of the information the Authority has reasonable grounds to suspect that a transaction involves the proceeds of a prescribed offence;
- (b) within six years after an inspection, destroy a note or copy of a note made pursuant to section 4 except where the note or copy has been sent to the Commissioner of Police and the Director of Public Prosecutions;
- (c) receive the reports issued by financial institutions pursuant to section 8(1)(c);
- (d) create training requirements and facilitate, with the cooperation of a financial institution, the training for a financial institution in respect of transaction record keeping or reporting obligations required by this Act.

Prohibition

6. The Authority shall not conduct an investigation into a financial institution other than for the purpose of ensuring compliance by the financial institution with this Act.

**PART IV
Prevention Measures****Customer identity**

- 7 (1) A financial institution shall take reasonable measures to satisfy itself as to the true identity of a person seeking to enter into a transaction with it or to carry out a transaction or series of transactions with it.
 - (2) Where a person requests a financial institution to enter into a transaction, the institution shall take reasonable measures to establish whether the person is acting on behalf of another person.
 - (3) Where it reasonably appears to a financial institution that a person requesting to enter into a transaction is acting on behalf of another person, the financial institution shall take reasonable measures to establish the true identity of the other person on whose behalf or for whose benefit the person may be acting in the proposed transaction, whether as a trustee, nominee, agent or otherwise.
 - (4) In determining what constitutes reasonable measures for the purposes of this section, a financial institution shall have regard to all the circumstances of the case and in particular:
 - (a) as to whether the person is resident or is a corporate body incorporated in a country in which there are in force provisions applicable to it to prevent the use of a financial institution for the purpose of money laundering; or
 - (b) to custom or practice current to the relevant business.
 - (5) Nothing in this section requires the production of identity records where:
 - (a) the applicant itself is a financial institution to which this Act applies; or
 - (b) there is a transaction or 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.

Assistance by and immunity of financial institution

8. (1) A financial institution shall:

- (a) establish and maintain transaction records of a transaction exceeding ten thousand dollars for a period of seven years after the completion of the transaction recorded;
- (b) where evidence of a person's identity is obtained in accordance with section 7, establish and maintain a record that indicates the nature of the evidence obtained and which comprises either a copy of the evidence or information as would enable a copy of it to be maintained;
- (c) report to the Authority a transaction where the identity of a person involved in the transaction or the circumstances relating to the transaction gives an employee of the financial institution reasonable grounds to suspect that the transaction involves the proceeds of a prescribed offence;
- (d) comply with an instruction issued to it by the Authority pursuant to section 4;
- (e) permit a member of the Authority to enter into any premises of the financial institution during normal working hours; and
 - (i) inspect the records kept pursuant to paragraph (a);
 - (ii) make notes or take a copy of the whole or part of the record;
 - (iii) answer a question of the Authority in relation to the record;
- (f) develop and apply internal policies, procedures or controls to combat money laundering, and develop audit functions to evaluate the internal policies, procedures or controls;
- (g) comply with the guidelines or training requirements issued by the Authority in accordance with section 4(h) or 5(d);
- (h) develop a procedure to audit compliance with this section.

(2) A financial institution shall keep an account in the true name of the account holder.

(3) Where a financial institution discloses information to the Authority in accordance with this Act, but in breach of another enactment or a contract, the financial institution, its directors or its employees shall not be liable for such breach.

Internal reporting procedures

9. A financial institution shall establish and maintain internal reporting procedures to
- (a) identify persons to whom an employee is to report information which comes to the employee's attention in the course of employment that a person may be engaged in money laundering;
 - (b) enable a person identified in accordance with paragraph (a) to have reasonable access to information that may be relevant to determining whether sufficient basis exists to report the matter pursuant to section 8 (1)(c);
 - (c) require the person referred to in paragraph (b) to report the matter pursuant to section 8 (1)(c) in the event that the person determines that sufficient basis exists.

Further precautionary measures

10. A financial institution shall
- (a) take appropriate measures for the purpose of making its employees aware of the law in force in Saint Lucia relating to money laundering and the procedures or policies established and maintained by the institution pursuant to this Part;
 - (b) provide its employees with appropriate training in the recognition and handling of money laundering transactions.

Warrants to search or seize

11. A Magistrate may, in accordance with Articles 1228 and 1229 of the Criminal Code, 1992 issue to a police officer a warrant
- (a) to enter premises belonging to or in the possession or control of a financial institution or an employee of a financial institution;
 - (b) to search the premises and remove any document, material or other thing therein if the Magistrate is satisfied by evidence or oath that there are reasonable grounds to believe that -
 - (i) a financial institution has failed to keep a transaction record as required by section 8(1)(a);
 - (ii) a financial institution has failed to comply with section 8(1)(b); or
 - (iii) an employee of a financial institution is committing, has committed or is about to commit an offence under this Act.

PART V

Freezing and Forfeiture of Property

Freezing of property

12. (1) The Court may, upon application by the Director of Public Prosecutions, where it is satisfied that a person charged or who 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 may, in making a freezing order 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 a dispute relating to the ownership of or other interest in the property or a part of the property;
 - (ii) the proper administration of the property during the period of freezing;
 - (iii) the payment of debts incurred in good faith prior to the making of the freezing order;
 - (iv) the payment of money to a person referred to in subsection (1) for the reasonable subsistence of that person and that person's family; or
 - (v) the payment of the costs of a person referred to in subparagraph (1) to defend criminal proceedings against that person.
- (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 an offence under this Act within the seven days.
- (4) The Government is not liable for damages or costs arising directly or indirectly from the making of freezing order under subsection (1) unless it is proved on a balance of probability that the application for the freezing order was made in bad faith.
- (5) Where under subsection (2) a Court gives a direction for the administration of frozen property, the person upon whom the duty to administer the property is imposed shall not be liable
- (a) for any loss or damage to the property;
 - (b) for the costs of proceedings taken to establish a claim to the property; or
 - (c) to a person having an interest in the property;
- unless the Court in which the claim is made is of the opinion that the person has been negligent in respect of taking of custody or control of the property.

Forfeiture of property and Forfeiture Fund

13. (1) The Director of Public Prosecutions shall apply to the Court for an order for the forfeiture of any property owned by, or in the possession or control of, a person who is convicted of an offence under this Act.
- (2) Where an application is made under subsection (1) and the Court is satisfied that a person convicted of an offence under this Act owns or is in possession or control of property that is derived from the offence of money laundering, the Court shall grant the forfeiture order applied for.
- (3) In determining whether or not property is derived from money laundering, the standard of proof required for the purposes of subsections (4) or (5) is on a balance of probabilities.
- (4) Where it is proved that property which is the subject of a forfeiture order made under subsection (1) is not derived from money laundering, the Court shall return the property to the person.
- (5) For the purposes of subsection (4), the burden of proof lies on the person who owns or is in possession or control of the property.
- (6) In making a forfeiture order, the Court may give directions
 - (a) for the purpose of determining a dispute as to the ownership of or other interest in the property or a part of the property; and
 - (b) as to the disposal of the property.
- (7) 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.
- (8) A fund to be known as the Forfeiture Fund shall be established under the administration and control of the Accountant General.
- (9) Forty percent of the proceeds from the sale of all property forfeited under this section shall be deposited in the Forfeiture Fund.
- (10) Fifty percent of all proceeds deposited in the Forfeiture Fund under subsection (9) shall be allocated to the Authority to be used for the advancement of its work.
- (11) Fifty percent of all proceeds deposited in the Forfeiture Fund under subsection (9) shall be allocated to the Advisory Council/Secretariat on the Misuse of Drugs to be used for the advancement of its work.

Third party rights

14. (1) An order referred to in section 12 or 13 shall apply without prejudice to the rights of a third party.
- (2) The Registrar of the Court shall notify a third party who has a legitimate legal interest in property which is the subject of an order made under section 12 or 13 by publication of the order in the Gazette and at least one weekly newspaper published in Saint Lucia within fourteen days of the order being made.
- (3) A third party who has been notified under subsection (2), may make a claim to the Court against property which is the subject of an order made under section 12 or 13.
- (4) The Court shall return the property or proceeds of the property to a third party, when it has been demonstrated to its satisfaction that
- (a) the third party has a legitimate legal interest in the property or proceeds of the property;
 - (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 third party lacked knowledge and was not intentionally ignorant of the illegal use of the property or proceeds of the property;
 - (d) the third party did not acquire any right in the property from a person proceeded against under circumstances that give rise to a reasonable inference that any right was transferred for the purpose of evading the forfeiture of the property or the proceeds of the property; and
 - (e) the third party did all that could reasonably be expected to prevent the illegal use of the property, or proceeds of the property.

Application of orders

15. Section 12 or 13 shall apply only to property coming into the possession or under the control of a person after the coming into force of this Act.

PART VI

Offences and Penalties

Rules for establishing actus reus

16. (1) For the purposes of this Act conduct engaged in on behalf of a body corporate
- (a) by a director, servant or agent of that body corporate within the scope of the director, servant or agent's authority; or

(b) by a person at the direction or with the consent or agreement whether express 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 authority of the director, servant or agent;
shall be deemed to have been engaged in by the body corporate.

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

(a) by a servant or agent of that person reasonably within the scope of that person's authority;
or

(b) another person at the direction or within the consent or agreement whether express or implied of a servant or agent of that person, where the giving of the direction, consent or agreement is reasonably within the scope of the authority;

shall be deemed, for the purpose of this Act, to be engaged in by that person.

Offence of money laundering

17. (1) A person who engages in money laundering commits an offence and is liable -

(a) on summary conviction to a fine of not less than half a million dollars and not exceeding one million dollars or to imprisonment for a term of not less than five years and not exceeding ten years or both;

(b) on conviction on indictment to a fine of not less than one million dollars and not exceeding two million dollars or to imprisonment for a term of not less than ten years and not exceeding fifteen years or both.

(2) A person who attempts, aids, abets, counsels, or procures the commission of, or who conspires to engage in money laundering, commits an offence and is liable -

(a) on summary conviction to fine not exceeding one million dollars or to imprisonment for five years or both;

(b) on conviction on indictment to a fine not exceeding two million dollars or to imprisonment for fifteen years or both.

Offence committed by a body of persons

18. Where an offence under section 17 is committed by a body of persons, whether corporate or incorporate, a person who, at the time of the commission of the offence, acted or purported to act in an official capacity for or on behalf of the body of persons, is regarded as having committed the offence and shall be tried and punished accordingly.

Other offences

19. (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 that fact to another person.
- (2) A person shall not, if that person is the subject of an order made under section 12, disclose the existence or operation of the order to any person except:
 - (a) to a police officer named in the order;
 - (b) to 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.
- (3) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of not less than fifty thousand dollars and not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not less than five years and not exceeding ten years.
- (4) A person who has reasonable grounds to believe that an investigation into money laundering has been or 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.
- (5) A person shall not falsify, conceal, destroy or otherwise dispose of or cause the falsification, concealment, destruction or disposal of a thing that is likely to be material to the execution of an order made under section 12 or 13.
- (6) A person who contravenes subsection (4) or (5) commits an offence and is liable on summary conviction to a fine of not less than one hundred thousand dollars and not exceeding five hundred thousand dollars or to imprisonment for a term of not less than seven years and not exceeding fifteen years or both.

PART VII

Miscellaneous

Mutual assistance

20. (1) In this section,

"assistance" includes:

- (a) the providing of original or certified copies of relevant documents and records, including those financial institutions and government agencies obtaining testimony, in a requesting State of persons, including those in custody; to
 - (b) the giving of testimony locating or identifying persons;
 - (c) service of documents;
 - (d) examining of objects or places;
 - (e) the executing of searches and seizure; and
 - (f) the providing of information and evidentiary items.
- (2) The Court or the Authority shall cooperate with a court or other competent authority of a requesting State by taking the appropriate measures under this Act and within the limits of the requesting State's legal system to provide assistance in matters concerning a money laundering offence.
- (3) The Court or the Authority on receiving a request from a court or competent authority from a requesting State to freeze, seize or forfeit under this Act, property or a thing connected to a money laundering offence shall take appropriate measures.

Secrecy obligations overridden

21. 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 disclosure or information imposed by law or otherwise.

Application of Proceeds of Crime Act

22. (1) The following provisions of the Proceeds of Crime Act, 1993 apply to this Act with modifications or adaptations as the circumstance require:

- (a) section 47 (relating to monitoring orders);
- (b) section 48 (relating to non-disclosure of monitoring orders);
- (c) sections 54-58 (relating to disclosure of income tax information); and
- (d) section 59 (relating to access to specified information and documents held by government departments or statutory boards).

- (2) A reference in sections 47 or 48 of the Proceeds of Crime Act, 1993 to "financial institution" shall be construed as a reference to the definition of "financial institution" in this Act.

Mandatory injunction

23. (1) The 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 cause to comply in whole or in part with an obligation imposed on the financial institution by section 8(1) issue a mandatory injunction against the financial institution in such terms as the Court considers necessary to enforce compliance with the obligation.

Amendment of Proceeds of Crime Act

24. The provisions of the Proceeds of Crime Act, 1993, set out in the first column of the Second Schedule are amended as in the second column of the Second Schedule.

Power to amend Schedules

25. The Minister may, by Order published in the Gazette, amend the First Schedule or the Second Schedule.

Regulations

26. The Minister may make Regulations for the purpose of giving effect to the provisions of this Act.

**FIRST SCHEDULE
(sections 2 and 25)**

PRESCRIBED OFFENCES

Abduction
Blackmail
Corruption
Counterfeiting
Drug trafficking
Extortion
Firearms trafficking
Forgery
Fraud
Gambling
Illegal deposit taking
Prostitution
Robbery
Terrorism
Stealing