



ST CHRISTOPHER AND NEVIS

CHAPTER 21.09

FINANCIAL INTELLIGENCE UNIT ACT

Revised Edition

showing the law as at 31 December 2009

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Financial Intelligence Unit Act

Act 15 of 2000 in force 22nd May, 2001

Amended by Act 16 of 2005

Act 26 of 2005

Act 23 of 2008

CHAPTER 21.09

FINANCIAL INTELLIGENCE UNIT ACT

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CHAPTER 21.09

FINANCIAL INTELLIGENCE UNIT ACT

AN ACT to provide for the establishment of a Financial Intelligence Unit in Saint Christopher and Nevis for the purpose of combating money laundering; and to provide for related or incidental matters.

[Amended by Act 23/2008]

1. Short title.

This Act may be cited as the Financial Intelligence Unit Act.

2. Interpretation.

In this Act, unless the context otherwise requires,

“Anti-Terrorism Act” means the Anti-Terrorism Act, Cap. 4.02;

[Inserted by Act 23/2008]

“Commissioner” means the Commissioner of Police;

“Intelligence Unit” means the Financial Intelligence Unit established under section 3 of this Act;

“Foreign Intelligence Unit” means a body or bodies in another jurisdiction designated from time to time by the Minister, by Order, and which performs or perform functions that are similar to those of the Intelligence Unit;

“Minister” means the Minister responsible for Finance.

[Amended by Act 16/2005]

“Proceeds of Crime Act” means the Proceeds of Crime Act, Cap. 4.28.

3. Establishment of Intelligence Unit.

(1) For the purposes of combating money laundering and the financing of terrorism, there is established a body to be known as the Financial Intelligence Unit, which body shall comprise of

- (a) a representative from the Attorney General’s Chambers;
- (b) a representative from the Ministry of Finance, Saint Christopher;
- (c) a representative from the Ministry of Finance, Nevis;
- (d) a Director appointed in writing by the Minister;
- (e) a representative from the Legal Department, Nevis;
- (f) such number of consultants, having suitable qualifications and experience relevant to the functions of the Intelligence Unit, as are necessary, to be appointed in writing by the Minister;

- (g) such number of police officers to be appointed by the Commissioner on the recommendation of the Director;
- (h) such other personnel as the Director may consider necessary.

[Amended by Act 23/2008]

(2) The Director appointed under subsection (1)(d) shall be appointed on such terms and conditions as may be set out in his or her instrument of appointment and shall be the Chief Executive Officer of the Intelligence Unit and, in that capacity, shall be responsible for managing the day to day affairs of the Intelligence Unit.

4. Functions of the Intelligence Unit.

(1) The Intelligence Unit shall

- (a) collect, receive, analyse, and act upon suspicious transaction information;
- (b) disseminate information on suspicious transactions referred to in paragraph (a) to competent authorities;
- (c) establish a data base for the purpose of detecting money laundering and financing of terrorism;
[Amended by Act 23/2008]
- (d) liaise with money laundering intelligence agencies as well as with competent authorities and agencies involved in combating financing of terrorism outside Saint Christopher and Nevis;
[Replaced by Act 23/2008]
- (e) do anything that is related or incidental to the functions enumerated in paragraphs (a), (b), (c), and (d).

(2) For the purposes of this section, the term “production of financial records” shall not include a mere request as to whether an account exists or not or for the number of an account.

[Inserted by Act 26/2005]

(3) Without limiting the generality of subsection (1) and notwithstanding any other law to the contrary, other than the Constitution, the Intelligence Unit

- (a) shall receive all disclosures of information as are required to be made pursuant to the Proceeds of Crime Act, or the Anti-Terrorism Act as long as such disclosure is relevant to its functions, including information from any Foreign Intelligence Unit;
[Amended by Act 23/2008]
- (b) may, upon receipt of the disclosures referred to in paragraph (a), order any person, in writing, to refrain from completing any transaction for a period not exceeding seventy-two hours;
- (c) may, upon receipt of a request from a Foreign Intelligence Unit, or law enforcement authority, order any person to freeze a person’s bank account for a period not exceeding five days if the Intelligence Unit is satisfied that the request relates to the proceeds of any crime;

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- (d) shall apply to the Court for an Order requiring the production of financial records that the Intelligence Unit considers relevant to the fulfilment of its functions;
[Replaced by Act 26/2005]
 - (e) shall retain a record of all information that it receives for a minimum period of five years;
 - (f) may provide information relating to the commission of a money laundering offence or terrorist financing offence to any Foreign Intelligence Unit, subject to any conditions the Intelligence Unit may consider appropriate;
[Amended by Act 23/2008]
 - (g) may enter into any agreement or arrangement, in writing, with any Foreign Intelligence Unit, which is considered by the Intelligence Unit to be necessary or desirable for the discharge or performance of its functions;
 - (h) shall inform the public, and the financial and business entities of their obligations under measures that have been or might be taken to detect, prevent and deter the commission of money laundering and terrorist financing offences.
[Amended by Act 23/2008]
- (4) (a) An application made under section 4 subsection (3) shall be made *ex parte*, in writing and supported by an affidavit;
- (b) The application in paragraph (3) shall be made in respect of a suspicious transaction connected with a regulated business activity or other person.
- (5) Where an application is made under subsection (3) paragraph (d) for an order against a person, the Judge may, subject to subsections (7) and (7) make an order requiring the person to
- (a) produce to the Intelligence Unit any financial records of the kind referred to in subsection (3)(b) that is in the person's possession or control; or
 - (b) make available to the Intelligence Unit for inspection, any financial records of the kind referred to in subsection (3)(b) that is in the person's possession or control;
- (6) An order made under paragraph (a) of subsection (5) shall not be in respect of accounting records used in the ordinary business of banking including ledger, day-books, cash books and account books.
- (7) A Judge shall not make an order under this section unless
- (a) the applicant or some other person has given the Judge by affidavit, such information as the Judge requires concerning the grounds on which the order is sought; and
 - (b) the Judge is satisfied that there are reasonable grounds for making the order.

(8) An order made to the effect that a person produces information to the Intelligence Unit shall specify the time or times when the information is to be made available.

(9) An order made to the effect that a person makes information available to the Intelligence Unit for inspection shall specify the time or times when the document is to be made available.

[Inserted by Act 26/2005]

5. Production or inspection of documents.

(1) Where a document is produced or made available to the Intelligence Unit pursuant to an order made under subsection (2) paragraph (d), the Intelligence Unit may

- (a) inspect the information;
- (b) take extracts from the information;
- (c) make copies of the information; or
- (d) retain the original containing the information for such time only as the Court may specify in the production order.

(2) Where the Intelligence Unit retains a document pursuant to an order made under section (2) paragraph (d), the Intelligence Unit shall

- (a) give the person to whom the order was addressed a copy of the document certified by the Intelligence Unit in writing to be a true copy of the document retained; and
- (b) unless the person has received a copy of the document under paragraph (a), permit the person to
 - (i) inspect the document;
 - (ii) make copies of the document.

[Inserted by Act 26/2005]

6. Variation of production order.

Where a Judge makes a production order requiring a person to produce a document to the Intelligence Unit, the person may apply to the Judge or to another Judge for a variation of the order and if the Judge hearing the application is satisfied that information is essential to the business activities of the person, the Judge may vary the production order so that it requires the person to make the information available to the Intelligence Unit for inspection only, or on such terms as the Judge thinks fit or may vary or set aside.

[Inserted by Act 26/2005]

7. Offence of non-compliance.

(1) Where a person is required by a production order to produce or make information available to the Intelligence Unit for inspection, the person commits an offence against this subsection if the person,

- (a) contravenes the order without reasonable excuse; or

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- (b) in purported compliance with the order produces or makes available a document known to the person to be false or misleading in a material particular without
 - (i) indicating to the Intelligence Unit to whom the document is produced or made available that the document is false or misleading and the respect in which the document is false or misleading; and
 - (ii) providing correct information to the Intelligence Unit if the person is in possession of, or can reasonably acquire, the correct information.

(2) A person who fails or refuses to provide the information referred to in subsection (1) of paragraph (d) commits an offence, and shall be liable, on summary conviction, to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding two years or both.

[Inserted by Act 26/2005]

8. Operations of the Intelligence Unit.

(1) The Intelligence Unit shall, upon receiving any information on a suspicious transaction connected with a regulated activity or other person, and on being satisfied that there are reasonable grounds that a money laundering or a terrorist financing offence has been committed or is being committed or is about to be committed, submit its report to the Commissioner for necessary action.

[Amended by Act 23/2008]

(2) The Commissioner shall, upon receipt of the report referred to in subsection (1), forward the report to a police officer for investigation of the transaction and to take any other necessary action.

(3) The Intelligence Unit shall submit to the competent authorities reports of its operations on a quarterly basis.

- (4) For the purposes of subsection (3), “competent authorities” mean,
 - (a) in relation to Saint Christopher, the Minister responsible for finance;
 - (b) in relation to the Nevis Island Administration, the Minister responsible for finance in Nevis.

9. Directions by the Minister.

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

10. No liability.

No action shall lie against the Minister, member of the Intelligence Unit, or employee of the Intelligence Unit or any person acting under the direction of the

Intelligence Unit for anything done or omitted to be done in good faith and in the administration or discharge of any function, duty, or power under this Act.

11. No criminal or civil liability for information.

(1) No proceedings for breach of banking or professional confidentiality shall be instituted against any director or employee of a financial or business entity or any other person who, in good faith, transmits information or submits a report to the Intelligence Unit.

(2) No civil or criminal proceedings shall be brought or professional sanction taken against a director or employee of a financial or business entity or any other person who, in good faith, transmits information or submits a report to the Intelligence Unit.

12. Confidentiality.

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

(2) A person who communicates any information contrary to subsection (1) commits an offence, and is liable, on summary conviction, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding one year or both.

13. Annual Report.

The Intelligence Unit shall prepare and submit to the Minister on or before the 30th day of November in each year an annual report reviewing the work of the Intelligence Unit, and upon receipt of the report the Minister shall lay or cause to be laid a copy of the report on the table of the National Assembly.

14. Regulations.

The Minister may generally make regulations to give effect to the provisions of this Act.

15. Application to Nevis.

The Nevis Island Administration having requested that the provisions of this Act do apply to the Island of Nevis, in so far as it may be necessary to comply with the provisions of section 37.(3) of the Constitution, consents to the provisions of this Act to apply to the Island of Nevis in respect of those matters over which it has exclusive jurisdiction.