

THE MONEY LAUNDERING ACT

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THE MONEY LAUNDERING ACT

Acts
30 of 1996,
34 of 1997,
14 of 1999.

[5th January, 1998.]

1. This Act may be cited as the Money Laundering Act.

Short title.

2.—(1) In this Act—

Interpreta-
tion.

"designated authority" means the Director of Public Prosecutions or such other person as may be designated by the Minister by order;

"financial institution" means—

- (a) a bank licensed under the Banking Act;
- (b) a financial institution licensed under the Financial Institutions Act;
- (c) a building society registered under the Building Societies Act;
- (d) a society registered under the Co-operative Societies Act;
- (e) an insurance company registered under the Insurance Act;
- (f) a person licensed under the Bank of Jamaica Act to operate an exchange bureau;
- (g) a person licensed under the Securities Act as a dealer or investment adviser;
- (h) any other person declared by the Minister, by order subject to affirmative resolution, to be a financial institution for the purposes of this Act;

"property" includes money and all other property, real or personal, including things in action and other

intangible or incorporeal property;

"specified offence" means—

Schedule.

(a) an offence listed in the Schedule; or

(b) an act or omission that occurred outside Jamaica which, had it occurred in Jamaica, would have constituted such an offence;

"transaction" includes the receiving or making of a gift.

(2) The Minister may, by order subject to affirmative resolution, amend the Schedule.

Money
laundering.

3.—(1) A person shall be taken to engage in money laundering if that person—

(a) engages in a transaction that involves property that is derived from the commission of a specified offence; or

(b) acquires, possesses, uses, conceals, disguises, disposes of or brings into Jamaica, any such property; or

(c) converts or transfers that property or removes it from Jamaica,

and the person knows, at the time he engages in the transaction referred to in paragraph (a) or at the time he does any act referred to in paragraph (b) or (c), that the property is derived or realized directly, or indirectly from the commission of a specified offence.

(2) A person who, after the 5th of January, 1998 engages in money laundering is guilty of an offence and is liable—

(a) on summary conviction before a Resident Magistrate—

(i) in the case of an individual, to a fine not exceeding one million dollars or to imprison-

ment for a term not exceeding five years or to both such fine and imprisonment;

(ii) in the case of a body corporate, to a fine not exceeding three million dollars;

(b) on conviction in a Circuit Court—

(i) in the case of an individual, to a fine or to imprisonment for a term not exceeding twenty years or to both such fine and imprisonment;

(ii) in the case of a body corporate, to a fine.

(3) An attorney-at-law shall not be taken to engage in money laundering to the extent that he receives *bona fide* fees for legal representation of a person charged with an offence under this section or with a specified offence.

(4) Nothing in this section shall apply to—

(a) a *bona fide* purchaser for value without notice in relation to property described in this section; or

(b) a person who enters into any subsequent transaction relating to that property, so, however, that this paragraph shall not apply in any case where a person enters into any such subsequent transaction involving the use of other property, knowing that the other property is derived from the commission of a specified offence.

4. A reference in section 3 (1)(b) to concealing or disguising any property includes a reference to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

Meaning of
concealing
or
disguising.

Conspiring,
aiding,
abetting, etc.,
commission
of offence of
money
laundering.

5. A person who conspires with another to commit, or aids, abets, counsels, or procures, the commission of, an offence under section 3, is guilty of an offence and is liable—

(a) on summary conviction before a Resident Magistrate—

(i) in the case of an individual, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding five years or to both such fine and imprisonment;

(ii) in the case of a body corporate, to a fine not exceeding three million dollars;

(b) on conviction in a Circuit Court—

(i) in the case of an individual, to a fine or to imprisonment for a term not exceeding twenty years or to both such fine and imprisonment;

(ii) in the case of a body corporate, to a fine.

Duty of
financial
institution to
report certain
transactions.
34/1997
S. 2(a).
14/1999
S. 2(a).

6.—(1) Subject to the provisions of this Act, it shall be the duty of a financial institution to make a report to the designated authority, either on its own initiative or in response to a request made to it by the designated authority, in relation to any cash transaction involving the prescribed amount being carried out by any person with that institution.

14/1999
S. 2(b).

(1A) Subsection (1) shall not apply to transactions carried out by—

(a) a ministry, department or agency of government;

(b) a statutory body or authority;

(c) a company registered under the Companies Act, in which the Government or an agency of the Government, whether by the holding of shares or by other financial input, is in a position to influence the policy of the company;

(d) any Embassy, High Commission, consular office or organization to which the Diplomatic Immunities and Privileges Act applies; or

(e) any organization in relation to which an order is made under section 3(2) of the Technical Assistance (Immunities and Privileges) Act.

(2) A financial institution which makes a report under subsection (1) to the designated authority shall not disclose the existence of that report to any other person.

(3) Where a financial institution makes a report in accordance with subsection (1), that institution, its directors and employees shall be exempt from—

(a) any liability to prosecution for an offence under section 3 or 5;

(b) any criminal, civil or administrative liability, as the case may be, for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision,

regardless of the outcome of the report.

(4) In making a report under subsection (1) a financial institution shall comply with such directions as may be given by the designated authority.

(5) A financial institution which fails to comply with subsection (1), (2) or (4) is guilty of an offence and liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding four hundred thousand dollars.

(6) In subsection (1)—

34/1997
S. 2(b).

“cash transaction” means a transaction involving the physical transfer of currency from one person to another;

14/1999
S. 2(c).

“prescribed amount” means—

- (a) in relation to a person licensed under the Bank of Jamaica Act to operate an exchange bureau, eight thousand dollars or more in the currency of the United States of America or an equivalent amount in Jamaican currency or any other currency;
- (b) in relation to any other financial institution, fifty thousand dollars or more in the currency of the United States of America or an equivalent amount in Jamaican currency or any other currency.

34/1997
S. 2(c).

(7) For the purposes of the definition of “cash transaction” and “the prescribed amount” in subsection (6), “currency” refers to the coin and paper money designated as the legal tender of Jamaica, the United States of America or any other foreign country which circulates as and is customarily used and accepted as a medium of exchange in the country of issue.

Exemption
from duty
to report under
section 6.
14/1999
S. 3.

6A.—(1) A financial institution may apply in writing to the Minister responsible for finance or a person designated in writing by that Minister for exemption from the requirements of section 6 (1) in relation to a transaction or series of transactions carried out or to be carried out by a person who is an established customer of that institution.

(2) The Minister responsible for finance may grant an exemption in relation to a transaction or series of transactions specified in an application under subsection (1) if the Minister is satisfied that the exemption should be granted, having regard to the matters specified in subsection (3).

(3) The matters referred to in subsection (2) are as follows—

- (a) the transaction or series of transactions consists of a deposit into or a withdrawal from an account maintained by that customer with the financial institution;
- (b) the customer carries on—
 - (i) a retail business (other than a business that includes the selling of vehicles, vessels, farm machinery or aircraft);
 - (ii) a business declared by the Minister by order to be an entertainment business or a hospitality business for the purposes of this Act.
- (c) the account through which the transaction or series of transactions is conducted is maintained for the purposes of any such business; and
- (d) the amount of cash involved in the transaction or series of transactions does not exceed an amount that is reasonably commensurate with the lawful business activities of the customer.

(4) In subsection (1) “established customer”, in relation to an application for exemption, means a person who has been a customer of the financial institution for not less than a period of twelve months immediately preceding the date of the application.

6B.—(1) A financial institution shall, in relation to each customer, pay special attention to all complex, unusual or large business transactions, or unusual patterns of transactions whether completed or not, which appear to the financial institution to be inconsistent with the normal transactions carried out by that customer with the institution.

(2) Upon reasonable suspicion that the transactions described in subsection (1) could constitute or be related to money laundering, a financial institution shall promptly report the transactions to the designated authority.

Duty to
report sus-
picious
transaction.
14/1999
S. 3.

(3) A person who fails to comply with subsection (2) is guilty of an offence and liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment or a term not exceeding twelve months.

(4) In proceedings against a person for an offence under this section, it is a defence for the person charged that he had a reasonable excuse for not making the report required under subsection (2).

(5) Where a member of staff of a financial institution other than an officer referred to in section 7 (3), is charged with an offence under this section, it is a defence for that member of staff that he disclosed the information or other matter in question to that officer in accordance with the procedures established pursuant to section 7.

(6) Where a report is made in accordance with subsection (2), the financial institution concerned, its directors and employees shall be exempt from—

- (a) any liability to prosecution for an offence under section 3 or 5;
- (b) any criminal, civil or administrative liability, as the case may be, for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision,

regardless of the outcome of the report.

6C.—(1) A person is guilty of an offence if, knowing or suspecting that a designated authority is acting or is proposing to act, in connection with an investigation which is being, or is about to be conducted in relation to money laundering, he discloses information or any other matter, relating to the investigation, to any other person, except—

- (a) an attorney-at-law for the purpose of obtaining legal advice; or
- (b) for the purpose of facilitating the investigation or any proceedings which might be conducted following the investigation.

(2) A person is guilty of an offence if, knowing or suspecting that a report has been made to the designated authority under section 6B(2), he discloses information or any matter, relating to the report, to any other person, except—

- (a) an attorney-at-law for the purpose of obtaining legal advice; or
- (b) for the purpose of facilitating any investigation or proceedings which might be conducted following that report.

(3) A person is guilty of an offence if, knowing or suspecting that a disclosure referred to in section 6B(5) has been made, he discloses information or any other matter, relating to that disclosure, to any other person, except —

- (a) an attorney-at-law for the purpose of obtaining legal advice; or
- (b) for the purpose of facilitating any investigation or proceedings which might be conducted following that disclosure.

(4) Nothing in subsections (1) to (3) makes it an offence for an attorney-at-law to disclose information or any other matters to—

- (a) a person who is, or a representative of, a client of that attorney-at-law, in connection with the giving of legal advice to that client; or
- (b) any other person, in contemplation of or in connection with, legal proceedings and for the purpose of those proceedings.

(5) A person convicted of an offence under subsection (1), (2) or (3) is liable to a fine not exceeding two million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

7.—(1) A financial institution shall establish and implement such programmes, policies, procedures and controls as may be necessary for the purpose of preventing or detecting money laundering.

Regulatory controls by financial institutions.

(2) Without prejudice to the generality of subsection (1), the programmes referred to in that subsection shall include—

- (a) the establishment of procedures to ensure high standards of integrity of employees;
- (b) the development of a system to evaluate the personal employment and financial history of those employees;
- (c) the establishment of programmes for training of employees on a continuing basis and for instructing employees as to their responsibilities in respect of the provisions of this Act;
- (d) arrangements for an independent audit in order to ensure that the programmes as aforesaid are being implemented.

(3) For the purposes of this section, a financial institution shall designate an officer of the institution who performs management functions to be responsible for ensuring the implementation of the programmes, policies, procedures and controls referred to in subsection (1), including the reporting of transactions referred to in sections 6 and 6B.

14/1999
S. 4.

(4) A financial institution shall consult with the competent authority for the purpose of carrying out its obligations under this section.

(5) In this section "competent authority" means the Minister or such other person as he may specify in writing for the purpose of this section.

(6) A financial institution which fails to comply with subsection (1) or (3) is guilty of an offence and liable on summary conviction before a Resident Magistrate to a fine not exceeding four hundred thousand dollars.

Monitoring
orders.

8.—(1) The Director of Public Prosecutions may apply to a Judge in Chambers in accordance with subsection (3) for an order (in this section referred to as a "monitoring order") directing a financial institution to give to a constable

named by the Director of Public Prosecutions in the application, information and such documents as the Director of Public Prosecutions may specify in the application, other than items subject to legal privilege.

(2) The constable referred to in subsection (1) shall be a constable designated in writing by the Commissioner of Police.

(3) An application under subsection (1) shall be made *ex parte* and shall be in writing and be accompanied by an affidavit.

(4) A monitoring order shall direct a financial institution to disclose information or to produce documents, or both, obtained by or under the control of the institution about transactions conducted through an account held by a particular person with the institution.

(5) A monitoring order shall apply in relation to transactions conducted during the period specified in the order, being a period commencing not earlier than the day on which notice of the order is given to the financial institution and ending not later than three months after the date of the order.

(6) A Judge shall not make a monitoring order unless he is satisfied that there are reasonable grounds for suspecting that the person in respect of whose account the information is or documents are sought—

(a) has committed or is about to commit an offence under section 3 or 5;

(b) was involved in the commission, or is about to be involved in the commission of, such an offence; or

(c) has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of that offence.

(7) A monitoring order shall specify—

- (a) the name or names in which the account is believed to be held;
- (b) the class of information and a description of any documents that the institution is required to give; and
- (c) the name of the constable to whom the information is or documents are to be given and the manner in which it is or they are to be given.

(8) A financial institution that is notified of a monitoring order and knowingly—

- (a) contravenes the order; or
- (b) provides false or misleading information or documents in purported compliance with the order, is guilty of an offence and is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars.

(9) A reference in this section to a transaction conducted through an account includes a reference to—

- (a) the making of a fixed term deposit;
- (b) in relation to a fixed term deposit, the transfer of the amount deposited or any part thereof at the end of the term; and
- (c) the opening, existence or use of a deposit box held by the institution.

(10) Nothing in section 3 shall apply to a financial institution that is subject to a monitoring order in so far as that institution continues to conduct business with the person to whom the order relates.

9.—(1) A financial institution that is, or has been, subject to a monitoring order shall not disclose the existence or the operation of the order to any person except—

Monitoring orders not to be disclosed.

- (a) an officer or agent of the institution, for the purpose of ensuring that the order is complied with;
- (b) an attorney-at-law, for the purpose of obtaining legal advice or representation in relation to the order.

(2) A person referred to in subsection (1) (a) or (b) to whom disclosure of the existence or operation of a monitoring order has been made and a constable referred to in section 8 (1) shall not—

- (a) disclose the existence or operation of the order except to another person referred to in that subsection for the purposes of—
 - (i) the performance of that person's duties, if the disclosure is made by the constable referred to in section 8 (1);
 - (ii) ensuring that the order is complied with or obtaining the legal advice or representation in relation to the order, if the disclosure is made by an officer or agent of the institution; or
 - (iii) giving legal advice or making representations in relation to the order, if the disclosure is made by an attorney-at-law; or
- (b) make a record of or disclose the existence or the operation of the order in any circumstances even when he ceases to be a person referred to in subsection (1).

(3) Nothing in subsection (2) prevents the disclosure by a person referred to in subsection (1) (b) of the existence or operation of a monitoring order—

- (a) for the purposes of, or in connection with, legal proceedings; or
- (b) in the course of proceedings before a court.

(4) A person referred to in subsection (1) (b) shall not be required to disclose to any court the existence or operation of a monitoring order.

(5) A person who contravenes subsection (1) or (2) is guilty of an offence and is liable on summary conviction in a Resident Magistrate's Court—

(a) in the case of an individual, to a fine not exceeding two hundred thousand dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment;

(b) in the case of a body corporate, to a fine not exceeding six hundred thousand dollars.

(6) A reference in this section to disclosing the existence or operation of a monitoring order to a person includes a reference to disclosing information to the person from which that person could reasonably be expected to infer the existence or operation of the monitoring order.

Regula-
tions.

10. The Minister may make regulations generally for giving effect to the provisions and purposes of this Act.

SCHEDULE

(Section 2)

Specified Offences

1. The production, manufacture, extraction, preparation, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch (including dispatch in transit) transport, importation or exportation of or taking steps preparatory to the exportation of, or other dealing in any narcotic drug or any psychotropic substance contrary to the provisions of the Dangerous Drugs Act.

2. The cultivation of opium poppy, coca bush or cannabis plant contrary to the provisions of the Dangerous Drugs Act.

3. The possession or purchase of any narcotic drug or psychotropic substance for the purpose of any of the activities referred to in paragraph 1.

4. The transportation, importation or exportation of firearms in contravention of the provisions of the Firearms Act.

L.N.
1671/1999.

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SCHEDULE, *contd.*

5. Any offence involving fraud, dishonesty or corruption.

6. The organization, management or financing of any of the offences specified in paragraph 1, 2 or 3.

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1671/1999.

7. Publicly inciting or inducing others, by any means, to commit any of the other offences referred to in this Schedule or to use narcotic drugs or psychotropic substances contrary to the Dangerous Drugs Act.

8. Conspiracy to commit, attempts to commit and aiding, abetting, procuring or counselling the commission of any of the other offences listed in this Schedule.