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SCHEDULE

COMMONWEALTH OF DOMINICA**ACT NO. 8 OF 2011***I assent***E. I. WATTY**
*President (Ag.)*22nd November, 2011**AN ACT TO PROVIDE FOR THE PREVENTION OF
MONEY LAUNDERING AND FOR RELATED
MATTERS.**BE IT ENACTED by the Parliament of the Commonwealth of
Dominica as follows—(Gazetted 1st December, 2011)**PART I
PRELIMINARY****1.** This Act may be cited as the —

Short title.

**MONEY LAUNDERING (PREVENTION)
ACT, 2011.**

Interpretation.

2. (1) In this Act –

“Authority” means the Money Laundering Supervisory Authority established under section 7;

“business transaction” –

(a) means any arrangement 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; and

(b) includes –

(i) the opening of an account;

(ii) any deposit, withdrawal, exchange or transfer of funds in any currency whether in cash or by cheque, payment order or other instrument or by electronic or other non physical means;

(iii) the use of a safety deposit box or any other form of safe deposit;

(iv) entering into any fiduciary relationship;

(v) any payment made or received in satisfaction, in whole or in part, of any contractual or other legal obligation;

(vi) any payment made in respect of a lottery, bet or other game of chance;

(vii) an act or combination of acts performed for

or on behalf of a person in connection with purchasing, using or performing one or more services.

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

- (a) the identification of all the persons that are a 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;

“central authority” means the Attorney General appointed under section 4 of the Mutual Assistance in Criminal Matters Act;

Chap 12:19.

“Director” means the Director of the Authority appointed under section 5 of the Financial Services Unit Act, 2008;

Act No. 18 of 2008.

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

“Financial Services Unit” means the Financial Services Unit established under section 3 of the Financial Services Unit Act 2008;

“forfeiture” means the permanent deprivation of property by Order of a court;

“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;

“Fund” means the Asset Forfeiture Fund established under section 36;

“funds” means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital evidencing title to or interest in, such assets including but not limited to bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit;

“instrumentality” means any thing 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 Legal Affairs;

“money laundering” means conduct which constitutes an offence under section 3(1);

“money laundering offence” means an offence under section 3;

“person” includes an entity, natural or juridical, a corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture, or other unincorporated organization or group, capable of acquiring rights or entering into obligations;

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

“property” includes money, investments, holdings, possession,

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 listed in Part II of the Schedule;

“suspicious transaction report” means a report required to be made under section 19;

“Unit” means the Financial Intelligence Unit established under section 3 of the Financial Intelligence Unit Act 2011;

Act No. 7 of 2011.

(2) For the purpose of sections 11 and 12 -

“licence” has the meaning assigned to it in the Financial Services Act 2008;

Act No. 18 of 2008.

“regulatory authority” means an authority authorised to issue a licence, registration or recognition under an Act set out in Schedule I of the Financial Services Unit Act 2008;

(3) 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

3. (1) A person who -

- (a) receives, possesses, manages or invests;
- (b) conceals or disguises;
- (c) converts or transfers;

Money laundering offence.

(*d*) disposes of, brings into or takes out of Dominica;
or

(*e*) engages in a transaction which involves, property
that is the proceeds of crime, knowing or believing
the property to be the proceeds of crime commits
an offence.

(2) A person who attempts, aids, abets, counsels or
procures the commission of, or conspires to commit, an offence
under subsection (1) commits an offence.

(3) A person who commits an offence under subsection
(1) or (2) is liable, on conviction, to a fine not exceeding five million
dollars, and to imprisonment for a term not exceeding ten years.

Failure to disclose
knowledge or suspicion
of money laundering
offence.

4. (1) A person commits an offence if –

(*a*) he knows, suspects or has reasonable grounds to
suspect that another person is engaged in a
money laundering offence;

(*b*) the information, or the other matter, on which that
knowledge or suspicion is based came to his
attention in the course of his trade, profession,
business or employment; and

(*c*) he does not disclose the information or other
matter to the Unit as soon as is reasonably
practicable after it comes to his attention.

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

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

Tipping off.

(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 five years.

(3) A court may, on conviction of a person under subsection (1), order the suspension of the license of the person.

6. (1) A person who has reasonable grounds to believe that an investigation into a money laundering offence 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.

Falsification,
concealment,
destruction, disposal of
matter or thing.

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

PART III
MONEY LAUNDERING SUPERVISORY
AUTHORITY AND
ANTI-MONEY LAUNDERING ADVISORY
COMMITTEE

7. The Financial Services Unit is established as the Money Laundering Supervisory Authority.

Establishment of Money
Laundering Supervisor.

Functions of the
Authority.

8. The Authority shall –

- (a) supervise all financial institutions and persons carrying on a scheduled business;
- (b) develop anti-money laundering strategies for Dominica;
- (c) advise the Minister and the Minister of Finance with regard to any matter relating to money laundering;
- (d) 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 16 and 19 respectively;
- (e) conduct an inspection of any financial institution or scheduled business whenever, in its judgment an inspection is necessary or expedient to determine compliance by the financial institution or scheduled business with the requirements of this Act, Regulations made under this Act or any instructions relating to money laundering given by the Authority;
- (f) send to the Unit any information derived from an inspection carried out under paragraph (e) if it gives the Authority reasonable grounds to believe that a money laundering offence is being, has been, or is about to be committed.

Authority may issue
guidelines.

9. (1) The Authority may issue guidelines in respect of standards to be observed and measures to be implemented by financial institutions or persons carrying on a scheduled business to detect and prevent the abuse of the financial institutions or a scheduled business for the purpose of money laundering.

(2) The Authority shall make the guidelines and any amendments to them available for inspection by the public by electronic publication and otherwise.

(3) The Authority shall, at intervals determined by the Authority, review the guidelines.

(4) The guidelines and any amendments to them shall be published in the *Gazette*.

10. (1) Notwithstanding sections 11, 12 and 13 where it appears to the Authority that a financial institution or person carrying on a scheduled business is in contravention of this Act or Regulations made under this Act but the circumstances are not such as to justify the taking of action under section 11, 12 or 13, the Authority may, by written notice, give directives to the financial institution or person carrying on a scheduled business that the Authority considers appropriate.

Authority may give directives.

(2) Without prejudice to the generality of subsection (1), the Authority may direct a financial institution or person carrying on a scheduled business, within such period as the Authority specifies, to cease engaging in any activity, behaviour or practice or to take remedial measures or action that the Authority considers necessary for the financial institution or person carrying on a scheduled business to be in compliance with this Act.

(3) A financial institution or person carrying on a scheduled business shall comply with a directive given to the institution by the Authority under this section.

11. (1) Where the Authority is satisfied as to any of the following circumstances in respect of a financial institution or person carrying on a scheduled business, the Authority may take, as it considers appropriate, any action specified in subsection (2) —

Administrative sanctions.

- (a) the directors, managers and senior officers or any other individuals who manage or control the financial institution or person carrying on a scheduled business are not fit and proper persons to manage or control the financial institution or person carrying on a scheduled business;

(b) the financial institution or person carrying on a scheduled business has failed to comply with or contravened a guideline issued in accordance with section 9;

(c) the financial institution or person carrying on a scheduled business has failed to comply with a directive given in accordance with section 10; or

(d) the financial institution or person carrying on a scheduled business is otherwise contravening or has contravened this Act.

(2) The Authority may, pursuant to subsection (1) –

(a) issue a warning or reprimand to the financial institution or person carrying on a scheduled business;

(b) give directives as seem appropriate;

(c) impose on the financial institution or person carrying on a scheduled business, in accordance with section 13, a pecuniary penalty ; or

(d) recommend, in accordance with section 12 -

(i) the suspension of any or all of the activities that the financial institution or person carrying on a scheduled business may have otherwise conducted pursuant to the license of the financial institution or person carrying on a scheduled business; or

(ii) the suspension or revocation of the licence of the financial institution or person carrying on a scheduled business.

(3) A person who is aggrieved by a decision of the Authority or relevant regulatory authority under this section or section 12 or 13 may appeal to a judge in Chambers against the decision.

12. (1) Where the Authority is satisfied as to any of the circumstances referred in section 11 (1) in respect of a financial institution or person carrying on a scheduled business, the Authority may,

Suspension of activities and suspension and revocation of licence.

- (a) suspend any or all of the activities that the financial institution or person carrying on a scheduled business may have otherwise conducted under the licence; or
- (b) suspend or revoke the licence of the financial institution or person carrying on a scheduled business;
- (c) by written notice, recommend to the relevant regulatory authority responsible for issuing to the financial institution or person carrying on a scheduled business the licence under which the financial institution or person carrying on a scheduled business carries on business, that the regulatory authority –
 - (i) suspend any or all of the activities that the financial institution or person carrying on a scheduled business may have otherwise conducted under the licence; or
 - (ii) suspend or revoke the licence of the financial institution or person carrying on a scheduled business.

(2) Where the Authority makes a recommendation under subsection (1), the Authority shall –

- (a) specify the reasons for the recommendation; and

- (b) at the same time that the recommendation is sent to the relevant regulatory authority, send a copy of the recommendation to the financial institution or person carrying on a scheduled business.

Pecuniary penalties.

13. (1) Where the Authority is satisfied as to any of the circumstances referred to in section 11 (1) in respect of a financial institution or person carrying on a scheduled business, the Authority may, by written notice, impose on the financial institution or person carrying on a scheduled business, a penalty of five thousand dollars.

(2) Where by this Act or a Regulation or guideline made or directive given under this Act, a financial institution or person carrying on a scheduled business is required, by a specified time –

(a) to take a certain measure or action; or

(b) to cease a particular activity, behaviour or practice,

and the Authority is satisfied that the financial institution or person carrying on a scheduled business has failed to do so, the Authority may impose on the financial institution or person carrying on a scheduled business, in addition to the penalty specified in subsection (1), an additional penalty of five hundred dollars for every day or part of a day that the financial institution or person carrying on a scheduled business failed to take the measure or action or cease the particular activity, behaviour or practice.

(3) The penalty referred to in subsection (2) -

- (a) may be imposed from the day following the day by which the financial institution or person carrying on a scheduled business was supposed to have taken the measure or action or ceased the particular activity, behaviour or practice; and

(b) shall not be imposed in respect of a period of more than 30 days.

(4) Notwithstanding subsection (3), where the financial institution or person carrying on a scheduled business –

(a) takes the measure or action; or

(b) ceases the particular activity, behaviour or practice,

the penalty referred to in subsection (2) shall cease to be imposed on the day preceding the day on which the financial institution took the measure or action or ceased the particular activity, behaviour or practice.

(5) A penalty shall not be imposed on a financial institution or person carrying on a scheduled business under this section unless the institution is first given an opportunity to be heard and to show cause as to why the action should not be taken.

(6) Pecuniary penalties imposed and collected under this section shall be paid into the Consolidated Fund.

14 The Minister, the Authority, the Director or other staff of the Authority is not personally liable for or in respect of, any act done or omitted to be done in good faith, in the exercise of any functions under or power conferred by this Act.

Protection from liability.

15. (1) There shall be established a body called the Anti-Money Laundering Advisory Committee appointed by the Minister and consisting of -

Anti- Money laundering
Advisory Committee.

(a) the Attorney-General, who shall be the chairman;

(b) the Financial Secretary, who is the deputy chairman;

-
- (c) the Commissioner of Police;
 - (d) the Comptroller of Customs;
 - (e) the Director of the Authority;
 - (f) the Director of the Financial Intelligence Unit;
and
 - (g) the Comptroller of Inland Revenue.

(2) The Advisory Committee is responsible for -

- (a) the general oversight of the anti-money laundering policy of the Government;
- (b) determining the general administration of the business of the Authority;
- (c) overseeing and inspecting the work of the Authority;
- (d) reviewing annual reports submitted by the Director of the Unit under section 9 of the Financial Intelligence Unit Act 2011;
- (e) promoting effective collaboration between regulators and law enforcement agencies; and
- (f) monitoring interaction and co-operation with overseas financial intelligence regulators .

Act No. 7 of 2011.

(3) The Advisory Committee may regulate its own procedure.

(4) The validity of any proceedings of the Advisory

Committee shall not be affected by any vacancy among the members or by any defect in the appointment of a member.

PART IV
ANTI-MONEY LAUNDERING SUPERVISION

16. (1) A financial institution or person carrying on a scheduled business shall keep business transaction records of all business transactions for a period of seven years after the termination of the business transaction recorded.

Record keeping.

(2) A financial institution or person carrying on a scheduled business who willfully fails to comply with subsection (1) commits an offence.

17. (1) The Unit may, for the purpose of securing assistance with its analysis and investigations, request a financial institution or person carrying on a scheduled business, to allow any member of the Unit or person authorised by the Unit, to enter its business premises during normal working hours to -

Written request for information.

- (a) examine the business transaction records kept under section 16;
- (b) take notes of the whole or any part of the business transaction records;
- (c) make a copy of the whole or part of the business transaction records where the circumstances require that copies of the business transaction record be made;
- (d) ask questions of the financial institution or person carrying on a scheduled business in relation to its business transaction records.

(2) Where a request is made under subsection (1), the financial institution or person carrying on a scheduled business shall permit a member of the Unit or person authorised by the Unit to enter the premises and take the action specified in subsection (1)(a) to (c) and shall answer any question of the Unit or person authorised by the Unit in relation to the business transaction records.

(3) A request made under subsection (1) does not confer access to, information which is subject to legal privilege.

(4) A financial institution or person carrying on a scheduled business who willfully fails to comply with subsection (2) commits an offence.

(5) For the purposes of subsection (1)(c), the expression “to copy” includes making a photocopy, electronic, digital or microfiche copy.

Compliance with
instructions.

Act No. 7 of 2011.

18. (1) A financial institution or person carrying on a scheduled business shall comply with any instruction issued to it by the Unit under section 4(1)(g) of the Financial Intelligence Unit Act, 2011.

(2) A financial institution or person carrying on a scheduled business who fails to comply with subsection (1) may be issued a written warning by the Unit which shall contain a specific time within which the financial unit or person should comply with the instruction.

(3) A financial institution or person carrying on a scheduled business who fails to comply with subsection (1) or (2) commits an offence.

Reporting suspicious
transactions.

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

-
- (a)
 - (i) all complex, unusual or large business transactions, whether completed or not;
 - (ii) all unusual patterns of transactions, whether completed or not;
 - (iii) insignificant but periodic transactions, that have no apparent or visible economic or lawful purpose;
 - (b) electronic funds transfers that do not contain complete originator information;
 - (c) relations and transactions with persons, including business and other financial institutions, from countries that have not adopted comprehensive anti-money laundering legislation.

(2) Subject to Regulations, where a financial institution or person carrying on a scheduled business suspects or has reasonable grounds to suspect that a transaction, proposed transaction or attempted transaction, is related to a money laundering offence or that the funds or property are the proceeds of crime, it shall promptly report the transaction to the Unit in a form approved by the Director of the Unit.

(3) A financial institution, its employees, directors, owners or other authorised representatives or a person carrying on a scheduled business, who wilfully fail to comply with subsection (1) or (2) commits an offence.

(4) A report under subsection (2) -

- (a) must set out all particulars known by the financial institution or person carrying on the scheduled business regarding the transaction;
- (b) must contain a statement of the grounds on which

the financial institution or person carrying on the scheduled business holds the suspicion ; and

(c) must be signed or otherwise authenticated by the financial or scheduled business.

(5) A financial institution or person carrying on a scheduled business which has made a report under subsection (2) shall, when a request is made by the Unit, supply any further information requested by the Unit relating to the report.

(6) If the Unit, after consulting the financial institution or person carrying on a scheduled business that made a report under subsection (2) suspects or has reasonable grounds to suspect that a transaction or a proposed transaction involves or will likely involve money laundering, the Unit may direct the financial institution or person carrying on the scheduled business in writing, electronically or by telephone to be followed up in writing, not to proceed with carrying out the transaction or proposed transaction or any other transaction in respect of the funds affected by the transaction or proposed transaction for a period not exceeding 5 days, in order to allow the Unit -

(a) to make necessary inquiries concerning the transaction; and

(b) if it is considered appropriate, to inform and advise a supervisory authority.

(7) For the purposes of calculating the period of 5 days referred to in subsection (6) Saturdays, Sundays and public holidays shall not be taken into account.

Standard for reasonable suspicion.

20. The question whether a reasonable suspicion, for the purposes of section 19, has been formed shall be determined objectively having regard to all the facts and surrounding circumstances.

21. (1) A director, officer or employee of a financial institution or person carrying on a scheduled business who has made a suspicious transaction report shall not disclose that fact or any information regarding the contents of a suspicious transaction report to any other person, including the person in respect of whom the suspicious transaction report has been made, otherwise than for the purpose of -

Non-disclosure.

- (a) carrying out the provisions of this Act;
- (b) legal proceedings, including any proceeding before a judge in chambers;
- (c) complying with the terms of an Order of a Court; or
- (d) the Authority carrying out its powers and duties under the Financial Services Unit Act, 2008.

Act No. 18 of 2008.

(2) A director, officer or employee of a financial institution or person carrying on a scheduled business who contravenes subsection (1), commits an offence and is liable on conviction to a fine of five hundred thousand dollars and to imprisonment for a term not exceeding five years.

22. Without prejudice to any other liability, criminal or civil, in relation to a money laundering offence, a financial institution, its employees, directors, owners or other authorised representatives or a person carrying on a scheduled business, who contravenes section 16 or 17 or subsection (1) or (2) of section 19 is liable on conviction to a fine of two hundred and fifty thousand dollars or to imprisonment for a term of three years.

Penalty for
contravention of section
16, 17 or 19.

23. Where a suspicious transactions report is made in good faith the financial institution, its employees, staff directors, owners or other authorised representatives or a person carrying on a scheduled business are exempt from criminal, civil or administrative liability for complying with section 19 or for breach of any restriction on disclosure of information imposed by contract or by

Exemption from liability
for compliance with
section 19.

any legislative, regulatory or administrative provision, regardless of the result of the communication.

Search warrant.

24. A Judge of the High Court may, on an application by the Unit and 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 16;
- (b) a financial institution or person carrying on a scheduled business, has failed without reasonable excuse to comply with any instruction or written warning issued under section 18;
- (c) 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 19;
- (d) 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 authorizing 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.

25. (1) A Judge of the High Court may, on an application made without notice by the Unit, and 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 that any document relevant to –

- (a) identifying, locating or quantifying any property;
or
- (b) 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.

(2) The Court may seal an application made under this section where it is supported on affidavit evidence that it is necessary-

- (a) to prevent the undermining of the investigation being carried out by the Unit; or
- (b) in the interest of national security to do so.

26. (1) A Judge of the High Court may,-

Monitoring order.

- (a) on an application made without notice by the Unit;
and
- (b) 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
- (c) 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 that a financial institution or person carrying on a scheduled business immediately 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 19 conducted by or for that person with the institution or person carrying on a scheduled business during the period or after the date of the Order as the Judge directs.

(2) An order made under subsection (1) may require the financial institution or person carrying on the scheduled business to provide the Unit with a statement or explanation of the information produced.

(3) The Court may seal an application made under this section where it is supported on affidavit evidence that it is necessary –

- (a) to prevent the undermining of the investigation being carried out by the Unit; or
- (b) in the interest of national security to do so.

Mandatory injunction.

27. (1) A Judge of the High Court may, -

- (a) on an application by the Unit; and
- (b) 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 sections 16, 17, 18 or 19,

grant a mandatory injunction against an officer or employee of a financial institution or person carrying on a scheduled business in terms the court considers necessary to enforce compliance.

(2) In granting an injunction under subsection (1) the court may order that –

- (a) should the financial institution or any officer or employee of that institution or person carrying on a scheduled business fail without reasonable

excuse to comply with all or any of the provisions of the injunction the financial institution, officer or employee or person carrying on a scheduled business shall pay a penalty of fifty thousand dollars; and

- (b) the financial institution or any officer or employee of the institution or a person carrying on a scheduled business pay, in a manner directed by the court, an additional ten thousand dollars for every other day that the financial institution or any officer or employee of that institution or person carrying on a scheduled business fails to comply with the court Order.

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

Currency reporting.

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

(3) Notwithstanding subsection (2), the Unit may detain cash involved in a violation of subsection (1) 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.

(4) The Unit may apply to the court for an Order to extend the period under subsection (3) to further detain the cash.

(5) The court, in making a determination in respect of an application under subsection (4), shall satisfy itself, that the continued detention of the cash is justified while its origin or

derivation is further investigated or consideration is given to the institution, whether in Dominica or elsewhere of criminal proceedings against any person for an offence with which the cash is connected.

(6) An Order granted under subsection (4) shall not exceed six months beginning with the date of the Order.

(7) In this section 'cash' includes coins, notes in any currency, postal orders, travellers cheques, bank drafts, and other negotiable instruments.

PART V FREEZING AND FORFEITURE

Application for freezing order.

29. (1) The Director of Public Prosecutions may make an application to the Court for an Order to freeze the property of, or in the possession or under the control of a person charged or who is about to be charged with or is being investigated with a money laundering offence.

(2) An application under subsection (1) may be made without notice.

Freezing of property.

30. (1) On an application under section 29 the Court may, where it is satisfied that a person is 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.

(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 or 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 ceases to have effect after seven days of the it being made if the person against whom the freezing order was made is not charged with a money laundering offence within seven day period.

(4) The government is not 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.

31. (1) When a person is convicted of a money laundering offence, the court shall order that the property, proceeds or instrumentalities derived from or connected or related to the offence, are forfeited to the Government of Dominica.

Forfeiture of property
and instrumentalities.

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

- (a) the court shall apply the standard of proof required in civil proceedings; and
- (b) unless the contrary is proved, -
 - (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,

is deemed 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.

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

(4) The court may, on an application to the court by a person against whom a forfeiture Order, has been made under this section, require that a sum considered by the court to be the value of the property ordered to be forfeited, be paid by that person to the court and on satisfactory payment of that sum by that person, the property ordered to be forfeited shall be returned to that person.

Alternative forfeiture.

32. When, as a result of any act or omission of a person convicted of a money laundering offence, any of the property, proceeds or instrumentalities described in section 31 (1) cannot be forfeited, the court may order forfeiture of any other property of the person convicted, for an equivalent value.

Payment instead of forfeiture.

33. (1) Where a court is satisfied that a forfeiture order should be made in respect of the property of a person convicted of a money laundering offence but that the property or any part of the property or interest in it cannot be made subject to a forfeiture Order the Court may, instead of ordering the property or part of the property or interest in it to be forfeited, order the person to pay to the Government an amount equal to the value of the property, part or interest.

(2) An amount required to be paid under subsection (1) shall be treated as a fine payable on conviction for an offence.

34. The Court may -

Voidable transfers.

- (a) before making a forfeiture order; and
- (b) in the case of property in respect of which a freezing order was made and where the order was duly served,

set aside any conveyance or transfer of the property that occurred after the seizure of the property or the service of the freezing order, unless the conveyance or transfer was made for valuable consideration to a person acting in good faith and without notice.

35. (1) An order referred to in section 30 or 31 applies without prejudice to the rights of bona fide third parties.

Rights of bona fide third parties.

(2) Where an order has been made under section 30 or 31, the Director of Public Prosecutions shall published the Order in a weekly newspaper 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 the satisfaction of the Court 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.

Asset Forfeiture Fund.

36. (1) There shall be established an Asset Forfeiture Fund under the administration and control of the Minister of Finance in consultation with the Director.

(2) There shall be paid into the Fund -

(a) all property, proceeds, instrumentalities forfeited under section 30 (1); or

(b) all funds and the proceeds from the sale of property forfeited under section 31; or

(c) money paid to the State by a foreign jurisdiction in respect of forfeited assets whether under a treaty or arrangement providing for mutual assistance in criminal matters or otherwise.

(3) The Minister of Finance may authorise payment out of the Fund -

-
- (a) for the purposes related to -
- (i) the investigation of suspected cases of money laundering and drug trafficking by the police and the Unit;
 - (ii) drug prevention and for the treatment and rehabilitation of drug addicts;
 - (iii) public education in relation to money laundering, drugs and drug addiction;
- (c) to satisfy an obligation of the State to a foreign State in respect of confiscated assets, whether under a treaty or arrangement providing for mutual assistance in criminal matters or otherwise;
- (d) to share forfeited property with a foreign State;
- (e) to pay compensation or costs awarded under this Act;
- (f) to cover costs associated with the administration of the Fund;
- (g) to facilitate capacity building for law enforcement; and
- (h) for purposes as the Minister may by Order published in the *Gazette* determine.

37. The Government of Dominica may share with another State, on terms and conditions to be agreed in writing, property which has been directly or indirectly confiscated or forfeited as a result of a coordinated law enforcement action between Dominica and the other State.

Sharing confiscated and forfeited property.

PART VI
INTERNATIONAL COOPERATION

Interpretation.

38. In this Part “foreign counterpart agency” means a body or bodies in another State which performs functions similar to those of the Unit.

Assistance to other States.

39. The Court or the central authority may receive a request from the court of another State to identify, trace, freeze, seize, confiscate or forfeit -

(a) the property;

(b) any property of corresponding values;

(c) proceeds; or

(d) instrumentalities,

connected to money laundering offences, and may take appropriate action, including those specified in sections 30 and 31.

Information sharing with foreign counterpart agency.

40. The Unit may, on request, share information relating to the commission of a money laundering offence with a foreign counterpart agency, subject to reciprocity, and any conditions as may be considered appropriate by the Director, but the Unit shall not refuse a request on the ground that it involves matters of a fiscal nature.

Memorandum of understanding.

41. For the purpose of section 40 the Unit may enter into an agreement or arrangement in writing, with a foreign counterpart agency, that performs similar functions and is subject to similar secrecy obligations which the Director considers necessary or desirable for the discharge or performance of the functions of the Unit.

42. The Unit shall use any information provided to it under section 40 for the purposes of combating money laundering, with the consent of the foreign counterpart agency.

Use of information.

43. A money laundering offence is for the purposes of the Extradition Act an extraditable offence and this section applies whether or not there is an extradition treaty with the requesting State.

Application of
Extradition Act.
Chap 12:04.

44. Where the central authority receives a request for extradition in relation to a money laundering offence, committed in the State or elsewhere the central authority shall fulfil that request without undue delay.

Requests for Extradition.

PART VII MISCELLANEOUS

45. A person who has been convicted of a money laundering offence, whether in Dominica or elsewhere, is not eligible to be licensed to carry on the business of a financial institution or in any manner whatsoever participate in the ownership, management or control of a financial institution or scheduled business.

Restrictions on
conviction of money
laundering offence.

46. (1) Where a financial institution or person in charge of a scheduled business is convicted of any offence against this Act, the Court may, in addition to any other penalty, order the suspension or revocation of their licence.

Suspension or
revocation of licence by
Order of the Court.

(2) In this section “licence” means a licence, registration or recognition issued or granted under any law governing the financial institution or the scheduled business.

47. The Unit may investigate an offence under this Act, whether or not it occurred in or outside Dominica and the offence may be tried, judged and sentenced by a court in Dominica, without prejudice to extradition when applicable, in accordance with the law.

Jurisdiction.

Secrecy obligations
overridden.

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

Disclosure protected.

49. It is not unlawful for a person to make a disclosure in compliance with this Act.

Prosecution of offences.

50. Prosecution in respect of an offence committed under this Act or the Regulations made under this Act shall not be instituted except by or with the consent in writing of the Director of Public Prosecutions.

General penalty.

51. A person who commits an offence under this Act for which no penalty is specifically provided is liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of six months or to both.

Limitation of
proceedings.

52. Prosecution, action, suit or other proceeding shall not lie or be instituted for an offence, or for the recovery of any fine, penalty, or forfeiture, under this Act or the Regulations made under this Act, unless it is commenced within six years next after the date of the offence committed or the cause of action accrued.

Application of Proceeds
of Crime Act.
Chap. 12:29.

53. Part II and Part III of the Proceeds of Crime Act apply to this Act, to the extent that they are consistent with this Act and with the necessary modifications.

Regulations.

54. (1) The Minister may make Regulations generally for giving effect to the provisions of this Act and, without prejudice to the generality of the foregoing, may make Regulations -

(a) requiring financial institutions and scheduled businesses to establish and maintain procedures relating to -

(i) the identification of clients;

-
- (ii) record keeping;
 - (iii) reporting;
 - (iv) training;
 - (b) in consultation with the Authority, prescribing
 - (i) official or identifying documents, data, information or other evidence that is required for identification or verification;
 - (ii) threshold amounts and additional circumstances in which regulations made under subparagraph (i) apply;
 - (c) prescribing the circumstances in which procedures for identification and verification of the identity of customers or for ongoing due diligence -
 - (i) may be reduced or simplified; or
 - (ii) shall be enhanced.

(2) The Minister may make Regulations prescribing penalties to be imposed on summary conviction for contravention of a regulation, but the penalty prescribed shall not exceed a fine of fifty thousand dollars or a term of imprisonment of three years or both.

(3) Regulations made under this section are subject to negative resolution of the House.

55. The Minister may by Order subject to affirmative resolution of the House amend the Schedule.

Amendment of Schedule.

56. (1) The Money Laundering (Prevention) Act 2000 is repealed.

Repeal and savings
No. 20 of 2000.

(2) Notwithstanding subsection (1), the Regulations

made under the Money Laundering (Prevention) Act 2000 continue as if made under this Act until repealed or replaced.

(3) Notwithstanding subsection (1), any investigation or proceedings commenced under the Money Laundering (Prevention) Act 2000 shall continue as if commenced under this Act.

SCHEDULE

PART I

ACTIVITIES OF FINANCIAL INSTITUTIONS

No. 16 of 2005.

1. “Banking business” and “financial business” as defined in the Banking Act 2005;

No. 8 of 1996.

2. “Banking business” as defined in the Offshore Banking Act 1996;

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 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;

16. Securities Exchange

PART II

OTHER BUSINESS ACTIVITIES

1. Real Estate Business;

2. Car dealerships;

3. Casinos (gaming houses);

4. Courier services;
5. Jewellery Business;
6. Internet Gaming and wagering services;
7. Management companies;
8. Asset management and advice-custodial services;
9. Nominee service;
10. Registered agents;
11. Any business transaction conducted at a post office involving money orders;
12. Securities brokerage;
13. Telecommunications companies;
14. Utility companies;
15. Dominica Social Security;
16. Inland Revenue Department.

Passed in the House of Assembly this 26th day of October, 2011.

VERNANDA RAYMOND (MRS.)

Clerk of the House of Assembly (Ag.)

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