

# **An Act to facilitate the combatting of the laundering of proceeds derived from illegal activity including drug trafficking and for that purpose to impose upon certain financial institutions regulatory requirements.**

[Date of Assent - 12th March, 1996]

Enacted by the Parliament of The Bahamas.

## **1. Short title**

This Act may be cited as the Money Laundering (Proceeds of Crime) Act, 1996.

## **2. Interpretation**

In this Act -

" money laundering"

means doing any act which constitutes an offence under section 9 of this Act;

"Minister"

means the Minister responsible for Finance;

" Supervisory Authority"

means a person or persons designated by the Minister of Finance by notice in the Gazette to supervise those bodies specified in section 3 for the purposes of this Act.

## **3.- Application of Act**

(1) Section 4 of this Act applies to -

2. a bank or trust company to which the Banks and Trust Companies Regulation Act <sup>Ch. 287</sup> applies;
4. an insurance company registered under the Insurance Act;
6. a manager of gaming premises to whom a licence has been granted under section 34 of the Lotteries and Gaming Act;
8. a person engaged in the business of dealing in securities, including portfolio management; and
10. a person engaged in a business, profession or activity described in the schedule to this Act.

(2) The Minister may, by order, in the Gazette, amend or add to the Schedule to this Act.

## **4. Duties**

Every person to whom this section applies shall keep and retain records relating to financial activities

in accordance with the regulations made under section 5.

## **5. Regulations**

The Governor-General may after consultation with the Supervisory Authority make regulations -

1. prescribing the types of records to be kept and retained pursuant to section 4 and the information to be included in those records.
2. prescribing the period for which, and the methods by which, records referred to in paragraph (a) are to be retained;
3. prescribing measures that persons to whom this Act applies are to take to ascertain the accuracy of information referred to in paragraph (a); and
4. generally for carrying out the purposes and provisions of this Act.

## **6. Offences and punishment**

A person who contravenes or fails to comply with section 4 or the regulations made under section 5 is guilty of an offence and liable -

1. on summary conviction, to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding two years, or to both; or
2. on conviction on information, to a fine not exceeding two hundred and fifty-thousand dollars or to imprisonment for a term not exceeding five years, or to both.

## **7. Offences of corporations**

Where a body corporate commits an offence under this Act, any officer, director, or agent of the body corporate or any person purporting to act in any such capacity is guilty of the like offence and is liable on conviction to the punishment provided for the offence unless it is shown that the act or omission constituting the offence took place without his knowledge or consent or that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances."

## **8. Time limitation**

Proceedings under section 6(a) may be instituted within, three years following the act or omission constituting the alleged offence.

## **9.- Laundering proceeds of crime**

(1) A person is guilty of an offence if he uses, transfers the proceeds of, sends or delivers to any person or place, transports, transmits, alters, disposes of or otherwise deals with, in any manner and by any means, any property or any proceeds of any property with intent to conceal or convert that property or those proceeds and knowing that all or a part of that property or of

those proceeds was obtained or derived directly or indirectly as a result of -

(a) the commission in The Bahamas of any offence under the Dangerous Drugs Act;

(b) the commission in The Bahamas of any offence which is punishable by a term of imprisonment of not less than five years;

(c) an act or omission anywhere that, if it had, occurred in The Bahamas would have constituted an offence under the Dangerous Drugs Act;

(d) an act or omission anywhere that if it had occurred in The Bahamas would be punishable by a term of imprisonment of not less than five years.

2 A person who commits an offence under subsection (1) shall be liable -

(a) on conviction on information to imprisonment for a term not exceeding ten years; or

(b) on summary conviction to imprisonment for a term not exceeding five years.

## 10. Restraint Orders

(1) The Attorney-General may make an application in accordance with subsection (2) for a restraint order under subsection (3) in respect of any property to which it is alleged that section 9(1) applies.

(2) An application made under subsection (1) for a restraint order under subsection (3) in respect of any property may be made on an ex parte application to a judge in Chambers and shall be accompanied by an affidavit sworn on the information and belief of the Attorney-General or any other person deposing to the following matters, namely -

(a) the offence or matter under investigation;

(b) the person who is believed to be in possession of the property;

(c) the grounds for the belief that an order of forfeiture may be made under this Act; and

(d) a description of the property.

(3) an application for a restraint order is made to a judge under subsection (1), the judge may, if satisfied that there are reasonable grounds to believe that there exists any property in respect of which an order of forfeiture may be made under this Act, make an order-

(a) prohibiting any person from disposing of, or otherwise dealing with any interest in, the property specified in the order otherwise than in such manner as may be specified in the order; and

(b) at the request of the Attorney-General, where the judge is of the opinion that the circumstances so require,

(i) appointing a person to take control of and to manage or otherwise deal with all or part of that property in accordance with the directions of the judge, and

(ii) requiring any person having possession of that property to give possession of the property to the person appointed under subparagraph (i).

(4) An order made under subsection (3) may be subject to such reasonable conditions as the court thinks fit.

(5) Before making an order under subsection (3). the judge may require the Attorney-General to give such undertakings as the judge considers appropriate with respect to the payment of damages or costs, or both. in relation to the making and execution of the order.

(6) An order made under subsection (3) shall provide for notice to be given to persons affected by the order in such manner as the judge directs or as may be prescribed by rules of court.

(7) A copy of an order made under subsection (3) shall be filed in the Registry of the Supreme Court against any property affected by the order.

- (8) An order made under subsection (3) remains in effect until-
  - (a) it is revoked or varied under section 11 or revoked under section 19;
  - (b) it ceases to be in force under section 12;
  - (c) an order of forfeiture or restoration of the property is made under section 13(1), 14(2) or 17(3) or any other provision of this or any other act.
- (9) Any, person to whom notice of an order made under subsection (3) is given in accordance with this section and who, while the order is in force, acts in contravention of or fails to comply with the order is, without prejudice to any other remedy provided at law, guilty of an offence punishable on summary conviction to imprisonment for a term of two years.

## **11.- Application for review special warants and restraint orders**

- (1) Any person who has an interest in property in respect of which a restraint order was made , under section 10 may, at any time, apply to a judge -
  - (a) for an order under subsection (4); or
  - (b) for permission to examine the property.
- (2) Where an application is made under subsection (1)(a) -
  - (a) the application shall not, without the consent of the Attorney-General, be heard by a judge unless the applicant has given to the Attorney-General at least two clear days notice in writing of the application: and
  - (b) the judge may require notice of the application to be given to and may hear any person who, in the opinion of the judge, appears w have a valid interest in the property.
- (3) A court may, on application made to the judge under subsection (1)(b), order that the applicant be permitted to examine property subject to such terms as appear to the court to be necessary or desirable to ensure that the property is safeguarded and preserved for any purpose for which it may subsequently be required.
- (4) On an application made to a judge under subsection (1)(a) in respect of any property and after hearing the applicant and the Attorney-General and any other person to whom notice was given pursuant to subsection (2)(b), the judge may order that the property or a part thereof be returned to the applicant or, in the case of a restraint order made under section 10, revoke the order, vary the order to exclude the property or any interest in the property or part thereof from the application of the order or make the order subject to such reasonable conditions as the judge thinks fit -
  - (a) if the applicant enters into a recognizance before the court, with or without sureties, in such amount and with such conditions, if any, as the judge directs and where the judge considers it appropriate, deposits with the court such sum of money or other valuable security as the judge directs;
  - (b) if the conditions referred to in subsection (6) are satisfied; or
  - (c) for the purpose of -
    - (i) meeting the reasonable living expenses of the person who was in possession of the property at the time the warrant was executed or the order was made or any person who, in the opinion of the judge, has a valid interest in the property and of the dependants of that person,
    - (ii) meeting the reasonable business and legal expenses of a person referred to in subparagraph (i), or
    - (iii) permitting the use of the property in order to enter into a recognizance required of that person by a court.

(5) For the purpose of determining the reasonableness of legal expenses referred to in subsection (4)(c)(ii), a judge may hold a hearing in chambers and without the presence of the Attorney-General.

(6) An order under subsection (4)(b) in respect of property may be made by the court if the judge is satisfied -

(a) where the application is made by -

(i) a person charged with an offence referred to in section 9(1); or

(ii) any person who acquired title to or a right of possession in respect of that property from a person referred to in subparagraph (i) under circumstances that give rise to no reasonable inference that the title or right was transferred from that person for the purpose of avoiding forfeiture of the property;

(b) that a restraint order under section 10(3) should not have been made in respect of that property, or

(c) in any other case, that the applicant is the lawful owner of or lawfully entitled to possession of the property and appears innocent of complicity in any offence referred to in section 9(1) or of any collusion in relation to such offence,

and that the property will no longer be required for the purpose of any investigation or as evidence in any proceedings.

## **12. Automatic expiration of special warrants and restraint orders**

Where a restraint order has been made under section 10 in relation to property, the property shall not be detained or the order shall not continue in force, as the case may be, for a period of more than six months after the time of seizure or making of the order, as the case may be, unless, before the expiration of that period, the Attorney-General establishes to the satisfaction of the court that the property may be required after the expiration of that period for the purpose of section 14 or 15 or any other provision of this or any other Act respecting forfeiture or for the purpose of any investigation or as evidence in any proceedings.

## **13. - Order of forfeiture of property on conviction**

(1) Subject to this section and sections 15 to 17, where an offender is convicted or discharged absolutely or conditionally of an offence under section 9(1), on application of the Attorney-General, the court may, if satisfied, on a balance of probabilities, that any property is the proceeds of an offence referred to in section 9(1) and that the offence was committed in relation to that property, order that the property be forfeited to the Crown.

(2) The conviction under section 9(1) shall be conclusive proof that the property which was the subject matter of that offence constitutes proceeds as mentioned in subsection (1) unless an appeal is pending against that conviction or such appeal has been allowed.

(3) Where the court is satisfied that an order of forfeiture under subsection (1) should be made in respect of any property or a person convicted under section 9 but that the property or any part thereof or interest therein cannot be made subject to such an order and, in particular,

(a) cannot, on the exercise of due diligence, be located,

(b) has been transferred to a third party,

(c) is located outside The Bahamas,

(d) has been substantially diminished in value or rendered worthless, or

(e) has been commingled with other property that cannot be divided without difficulty, instead of ordering that property or part thereof or interest therein to be forfeited pursuant to subsection (1), the court may order the offender to pay an amount equal to the value of that property, part or interest.

(4) Where a court orders an offender to pay an amount under subsection (3), the amount may be sued for and recovered by the Attorney-General as a debt due to the Crown without prejudice to any other remedy provided at law.

#### **14.- Application for forfeiture**

(1) Where an information has been laid in respect of an offence under section 9 the Attorney-General may make an application to a judge for an order of forfeiture under subsection (2) in respect of any property with respect to which that offence is alleged to have been committed.

(2) Subject to sections 15 to 19 where an application is made to a judge under subsection (1), the court shall, if the judge is satisfied that -

(a) any property is, beyond a reasonable doubt, property or proceeds to which section 9 applies;

(b) proceedings in respect of that offence have been commenced; and

(c) the accused charged with the offence has died or absconded;

order that the property be forfeited to the Crown or otherwise dealt with in accordance with the law

(3) For the purposes of this section, a person shall be deemed to have absconded in connection with an offence if -

(a) an information has been laid alleging the commission of the offence by the person;

(b) a warrant for the arrest of the person has been issued in relation to that information, and

(c) reasonable attempts to arrest the person pursuant to the warrant have been unsuccessful during the period of six months commencing on the day the warrant was issued,

and the person shall be deemed to have so absconded on the first day of that period of six months.

#### **15.-**

(1) For the purpose of section 13(1) or 14(2), the court may infer that property was obtained or derived as a result of the commission of an offence referred to in section 13(1) where evidence established that the value, after the commission of that offence, of all the property of the person alleged to have committed the offence exceeds the value of all the property of that person before the commission of that offence and the court is satisfied that the income of that person from his legitimate sources as disclosed by him to the Court pursuant to subsection (2) cannot reasonably account for such an increase in value.

(2) A person convicted or absolutely or conditionally discharged of an offence referred to in section 9(1) may be summoned to appear before the court at the instance of the Attorney-General and to give information as to his legitimate sources of income.

#### **16. A court may -**

- (a) prior to ordering property to be forfeited under section 13(1) or 14(2), and
  - (b) in the case of property in respect of which a restraint order was made under section 10 where notice of the order was given in accordance with section 10(6),
- set aside any conveyance or transfer of the property that occurred after the seizure of the property, or the giving of notice of the order under section 10, unless the conveyance or transfer was for valuable consideration to a person acting in good faith and without notice.

## **17.- Notice**

- (1) Before making an order under section 13(1) or 14(2) in relation to any property, a court shall require notice in accordance with subsection (2) to be given to and may hear any person who, in the opinion of the court, appears to have a valid interest in the property.
- (2) A notice given under subsection (1) shall -
  - (a) be given or served in such manner as the court directs or as may be prescribed by rules of court;
  - (b) be of such duration as the court considers reasonable or as may be prescribed by rules of court; and
  - (c) set out the alleged offence which renders the property forfeitable and a description of the property.
- (3) Where a court is satisfied that any person other than -
  - (a) a person who is charged with an offence under section 9(1) or an offence referred to in paragraph (a) (b) (c) or (d) of that section; or
  - (b) a person who acquired title to or a right of possession in respect of that property from a person referred to in paragraph (a) under circumstances that give rise to a reasonable inference that the title or right was transferred for the purpose of avoiding the forfeiture of the property,is the lawful owner or is lawfully entitled to possession of any property or any part thereof that would otherwise be forfeited pursuant to section 13(1) or 14(2) and that the person appears innocent of any complicity in an offence referred to in paragraph (a) or of any collusion in relation to such an offence, the court may order that the property or part thereof be returned to that person.

## **18. Application by person claiming interest for relief from forfeiture**

- (1) Where any property is forfeited to the Crown under section 13(1) or 14(2). any person who claims an interest in the property, other than -
  - (a) a person who was charged with an offence under section 9(1) or an offence referred to in paragraph (a), (b), (c) or (d) of that section that was committed in relation to the property forfeited. or
  - (b) a person who acquired title to or a right of possession in respect of that property from a person referred to in paragraph (a) under circumstances that give rise to a reasonable inference that the title or right was transferred from that person for the purpose of avoiding the forfeiture of the property,may, within thirty days after that forfeiture, apply by summons to the court for an order under subsection (4).
- (2) Not less than thirty days after the date of filing of the application under subsection (1) shall

elapse before the hearing thereof.

(3) An applicant shall serve a notice of the application made under subsection (1) and of the hearing thereof on the Attorney-General at least fifteen days before the day fixed for the hearing.

(4) Where, on the hearing of an application made under subsection (1), the court is satisfied that the applicant is not a person referred to in paragraph (1)(a) or (b) of that subsection and appears innocent of any complicity in any offence under section 9(1) or an offence referred to in paragraph (a) (b) (c) or (d) of that section that resulted in the forfeiture of any property or of any collusion in relation to any such offence, the court may make an order declaring that the interest of the applicant is not affected by the forfeiture and declaring the nature and extent of the interest.

(5) An applicant or the Attorney-General may appeal to the Court of Appeal from an order under subsection (4) and the Court of Appeal Rules respecting appeals under section 10 of the Court of Appeal Act shall apply, with such modifications as the circumstances require, to appeals under this subsection.

(6) The Attorney-General shall, on application made to the Attorney-General by any person who has obtained an order under subsection (4) and where the periods with respect to the lodging of appeals against that order have expired or any appeal against that order made under subsection (5) has been determined -

(a) direct that the property or the part thereof to which the interest of the applicant relates be returned to the applicant; or

(b) direct that an amount equal to the value of the interest of the applicant, as declared in the order, be paid to the applicant.

## **19. Residual disposal of property seized or dealt with pursuant to orders**

Where a restraint order has been made under section 10 in relation to any property or a recognizance has been entered into pursuant to section 11(4)(a) in relation to any property and a court, on application made to it by the Attorney-General or any person having an interest in the property or on the court's own motion, after notice given to the Attorney-General and any other person having an interest in the property, is satisfied that the property will no longer be required for the purpose of section 13,14 or any other provision of this or any other Act respecting forfeiture or for the purpose of any investigation or as evidence in any proceeding, the court -

(a) in the case of a restraint order, shall revoke the order;

(b) in the case of a recognizance, shall cancel the recognizance; and

(c) in the case of property under the control of a person appointed pursuant to section 10(3)(b) (i) -

(i) if possession of it by the person from whom it was taken is lawful, shall order that it be returned to that person,

(ii) if possession of it by the person from whom it was taken is unlawful and the lawful owner or person who is lawfully entitled to its possession is known, shall order that it be returned to the lawful owner or the person who is lawfully entitled to its possession, or

(iii) if possession of it by the person from whom it was taken is unlawful and the lawful owner or person who is lawfully entitled to its possession is not known, may order that it be forfeited to the Crown or otherwise dealt with in accordance with the law.



## **20. Appeals from orders under section 14(2) or 19**

Any person aggrieved by an order may appeal from the order under section 14(2) or 19 may appeal from the order under section 10 of the Court of Appeal Act as if the order were an order of the Supreme Court given or made and the provisions of that Act may apply with such modifications as the circumstances require, to such an appeal.

## **21. Suspension of forfeiture pending appeal**

Notwithstanding anything in this Act the operation of suspension of forfeiture an order of forfeiture or restoration of property under section pending appeal. 11(4), 13(1). 14(2) or 17(3) or 19 is suspended pending -

- (a) any application made in respect of the property under any of those provisions or any other provision of this or any other Act that provides for the restoration or forfeiture of such property;
  - (b) any appeal taken against an order of forfeiture or restoration in respect of the property, or
  - (c) any other proceeding in which the right of seizure of the property is questioned,
- and property shall not be disposed of within thirty days after an order of forfeiture is made under any of those provisions.

## **22. Failure to disclose knowledge or suspicion of money laundering**

- (1) A person is guilty of an offence if -
  - (a) he knows or reasonably suspects that another person is engaged in money laundering;
  - (b) the information, or other matter in 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 Supervisory Authority or the Attorney-General as soon as is reasonably practicable after it comes to his attention.
- (2) It is a defence to a charge of committing an offence under this section that the person charged had a reasonable excuse for not disclosing the information or the matter in question.
- (3) person who contravenes or fails to comply with this section is guilty of an offence and liable on summary conviction, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding one year or both.

## **23. No civil or criminal liability incurred by informants**

- (1) A person is justified in disclosing to the Supervisory Authority, or the Attorney-General any acts on the basis of which that person reasonably suspects that any property is proceeds of an offence referred to in section 9(1), (a), (b), (c), or (d).
- (2) Any disclosure made pursuant to subsection (1) shall not be treated for the purposes of any law as a breach of any restriction respecting the disclosure of information imposed by law or otherwise.
- (3) A person who may have committed an act which is an offence under section 9 and who makes a disclosure pursuant to subsection (1) shall be deemed not to have committed that

offence in respect of the property, the subject of the disclosure, if the disclosure -

(a) is made before he does the act concerned, being an act done with the consent of a police officer, or

(b) is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it.

## 24.- Non-derogation

(1) Subject to subsection (2) the provisions of this Act are in addition to and not in derogation from the provisions of the Tracing and Forfeiture of Proceeds of Drug Trafficking Act.

(2) The provisions of sections 22 to 28 (inclusive of the Tracing and Forfeiture of Proceeds of Drug Trafficking Act) shall mutatis mutandis apply to investigations into an offence under section 9 as those provisions apply to investigations into an offence of drug trafficking.

(3) If a person does an act which is punishable under this Act and is also punishable under the Tracing and Forfeiture of Proceeds of Drug Trafficking Act he shall not be punished for such act under that law and also under this Act.

## SCHEDULE (Section 3(1))

1. Acceptance of deposits and other repayable funds from the public.
2. Lending/Borrowing.
3. Leasing.
4. Money transmission services.
5. Issuing and administering means of payment (for example, credit cards, travellers cheques and bankers drafts).
6. Guarantees and commitments.
7. Trading for own account or for the account of customers in:
  1. money market instruments;
  2. foreign exchange;
  3. financial futures and options;
  4. exchange and interest rate instruments;
  5. transferable securities;
8. Participation in securities issues and the provision of services relating to such issues.
9. Advice to businesses on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings.
10. Money brokering.
11. Safekeeping and administration of securities.
12. Credit reference service.
13. Safe custody services.