



ANGUILLA

DRUG TRAFFICKING OFFENCES (AMENDMENT) ACT 2004

PUBLISHED BY AUTHORITY

**DRUG TRAFFICKING OFFENCES
(AMENDMENT) ACT 2004**

ARRANGEMENT OF SECTIONS

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I Assent

Alan Huckle
Governor

ANGUILLA

NO. 12 OF 2004

DRUG TRAFFICKING OFFENCES

(AMENDMENT) ACT 2004

An Act to amend the Drug Trafficking Offences Act and to provide for incidental and connected matters.

[Gazetted: 14 September, 2004][Commencement: section 8]

ENACTED by the Legislature of Anguilla

Interpretation

1. In this Act, “principal Act” means the Drug Trafficking Offences Act, Revised Statutes of Anguilla, Chapter D50.

Amendment of section 1 of the principal Act

2. Section 1 of the principal Act is amended—

(a) by inserting after the definition of “Court” the following definition—

“drug money laundering” means doing any act which constitutes an offence under—

(a) section 22 of this Act, or

(b) section 13(1), 13(2) or 13A(1) of the Criminal Justice (International Co-operation) (Anguilla) Act;

or, in the case of an act done outside Anguilla, would constitute such an offence if done in Anguilla;”;

(b) in the definition of “drug trafficking”—

(i) by deleting the words “and includes a person doing the following, whether in Anguilla or elsewhere, that is, entering into or being otherwise concerned in an arrangement whereby—”,

(ii) by deleting paragraphs (e) and (f), and

(iii) by substituting the following—

“(e) entering into or being otherwise concerned in an arrangement whereby—

(i) the retention or control by or on behalf of another person of the other person’s proceeds of drug trafficking is facilitated, or

(ii) the proceeds of drug trafficking by another person are used to secure that funds are placed at the other person’s disposal or are used for the other person’s benefit to acquire property by way of investment; and”

(f) doing any act which constitutes an offence under section 13(1), 13(2) or 13A(1) of the Criminal Justice (International Co-operation) (Anguilla) Act or, in the case of an act done outside Anguilla, which would constitute such an offence if done in Anguilla.”;

(c) in the definition of “drug trafficking offence”—

(i) in paragraph (b), by deleting “attempting or”,

(ii) in paragraph (c), by deleting “(a) or (b)” and substituting “(a), (b) or (e)”, and

(iii) in paragraph (e), by deleting “13 or 16” and substituting “13, 13A or 16”;

(d) by inserting after the definition of “property” the following definitions—

“Regulations” means the Anti-Money Laundering Regulations made under section 3 of the Money Laundering Reporting Authority Act, R.S.A. c. M100; and

“relevant financial business” has the meaning specified in the Regulations; and

(e) by inserting after subsection (1) the following subsection—

“(1A) For the purposes of the definition of drug money laundering in subsection (1), having possession of any property shall be taken to be doing an act in relation to it.”.

Amendment of section 22 of the principal Act

3. Section 22 of the principal Act is amended—

(a) in subsection (1), by deleting “knowing or suspecting” and substituting “knowing, suspecting or having reasonable grounds to suspect”;

- (b) in subsection (3)(a) by inserting after “contract” the words “or by any enactment, rule of law or otherwise and shall not give rise to any civil proceedings”; and
- (c) by inserting after subsection (4) the following subsection—

“(4A) In the case of a person who was in employment at the relevant time, subsections (3) and (4) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to the Reporting Authority.”.

Insertion of sections 22A and 22B into the principal Act

4. The principal Act is amended by inserting after section 22 the following sections—

“Requirement to disclose knowledge or suspicion of drug money laundering

22A. (1) Where a person—

- (a) knows, or suspects, or has reasonable grounds for knowing or suspecting, that another person is engaged in drug money laundering; and
- (b) the information or other matter on which his knowledge or suspicion is based, or which gives reasonable grounds for such knowledge or suspicion, comes to him in the course of a relevant financial business;

he shall disclose the information or other matter as soon as is practicable after it comes to him to a nominated officer or to the Reporting Authority.

(2) A disclosure under subsection (1) to the Reporting Authority shall be in the form and manner, if any, that may be prescribed in the Regulations.

(3) A person who does not disclose any information or other matter as required by subsection (1) is guilty of an offence.

(4) A person does not commit an offence under subsection (2) if—

- (a) he has a reasonable excuse for not disclosing the information or other matter; or
- (b) he is a professional legal advisor and the information or other matter came to him in privileged circumstances.

(5) Without limiting subsection (3)(a), a person has a reasonable excuse for not disclosing information or another matter under subsection (1) if—

- (a) he does not know or suspect that another person is engaged in drug money laundering; and
- (b) he has not been provided by his employer with anti-money laundering training as required by the Regulations.

(6) Subject to subsection (7), for the purposes of this section, any information or other matter comes to a professional legal advisor in privileged circumstances if it is communicated or given to him—

- (a) by, or by a representative of, a client of his in connection with the giving by the advisor of legal advice to the client;
- (b) by, or by a representative of, a person seeking legal advice from the advisor; or
- (c) by a person in connection with legal proceedings or contemplated legal proceedings.

(7) Subsection (6) does not apply to any information or other matter, which is communicated or given with the intention of furthering a criminal purpose.

(8) A person makes a disclosure to a nominated officer under subsection (1) if he make the disclosure—

- (a) to an individual nominated to receive disclosures under this section by his employer; and
- (b) is made by in the course of his employment and in accordance with the procedures established by his employer for the purpose.”.

“Tipping Off”

22B.(1) A person is guilty of an offence if—

- (a) he knows or suspects that the Reporting Authority, or a member of the Reporting Authority, a police officer or other authorised person is acting, or proposing to act, in connection with an investigation that is being, or is about to be, conducted into drug money laundering; and”;
- (b) he discloses to any other person information or any other matter that is likely to prejudice that investigation or proposed investigation.

(2) A person is guilty of an offence if—

- (a) he knows or suspects that a disclosure (the “disclosure”) has been made to the Reporting Authority under section 22 or 22A or under section 13A of the Criminal Justice (International Co-operation) (Anguilla) Act; and
- (b) he discloses to any other person information or any other matter that is likely to prejudice any investigation that might be conducted following the disclosure.

(3) A person is guilty of an offence if—

- (a) he knows or suspects that a disclosure (“the disclosure”) has been made—
 - (i) to the appropriate person under section 22(4A) or under section 13A(8) of the Criminal Justice (International Co-operation) (Anguilla) Act, or

(ii) to a nominated officer under section 22A(1) of this Act; and

(b) he discloses to any person information or any other matter that is likely to prejudice any investigation that might be conducted following the disclosure.

(4) Nothing in subsections (1) to (3) makes it an offence for any person to disclose information or any other matter to a professional legal adviser for the purpose of legal advice or for a professional legal adviser to disclose any information or other matter—

(a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client; or

(b) to any person—

(i) in contemplation of, or in connection with, legal proceedings, and

(ii) for the purpose of those proceedings.

(5) Subsection (4) does not apply in relation to any information or other matter that is disclosed with a view to furthering any criminal purpose.

(6) In proceedings against a person for an offence under subsection (1), (2) or (3), it is a defence to prove that he did not know or suspect that the disclosure was likely to be prejudicial in the way mentioned in that subsection.

(7) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term of 12 months or to a fine of \$20,000 or to both; or

(b) on conviction on indictment, to imprisonment for a term of 5 years or to a fine without limit or to both.

(8) No police officer, member of the Reporting Authority or other person is guilty of an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of this Act or the Criminal Justice (International Co-operation) (Anguilla) Act.

Amendment of section 25 of the principal Act

5. Section 25 of the principal Act is amended—

(a) in subsection (7) by inserting after “contained in”, the words “or accessible by means of”; and

(b) by inserting after subsection (8) the following subsections—

“(10) An application under this section may be made *ex parte* to the judge in Chambers.

(11) A police officer may take copies of any material which is produced, or to which access is given, in compliance with an order under this section.”.

Amendment of section 26 of the principal Act

6. Section 26 of the principal Act is amended by inserting after subsection (5) the following—

“(6) A police officer may take copies of any material seized under this section.”.

Insertion of new section 30A into the principal Act

7. The principal Act is amended by inserting after section 30 the following section—

“Account monitoring orders

30A. (1) A police officer or the Attorney General may, for the purpose of an investigation into drug trafficking, apply to the High Court for an account monitoring order under subsection (2).

(2) If on an application under subsection (1), the Court is satisfied that the conditions specified in subsection (5) are fulfilled, he may make an order that the financial institution specified in the application must, for the period stated in the order, which shall not exceed 90 days, provide account information of the description specified in the order to a police officer in the manner, and at or by the time or times, stated in the order.

(3) For the purposes of subsection (2), “account information” is information relating to an account or accounts held at the financial institution specified in the order by the person specified in the order, whether solely or jointly with one or more other persons.

(4) An order under subsection (2) may specify account information relating to—

- (a) all accounts held by the person and at the financial institution specified in the order;
- (b) a particular description, or particular descriptions, of accounts so held; or
- (c) a particular account, or particular accounts, so held.

(5) The conditions referred to in subsection (2) are—

- (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking;
- (b) that there are reasonable grounds for believing that account information which may be provided in compliance with the order is likely to be of substantial value, whether by itself or with other information or material, to the investigation for the purpose of which the application is made; and
- (c) that there are reasonable grounds for believing that it is in the public interest for the account information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

(6) Provision may be made by rules of court as to—

- (a) the discharge and variation of orders under this section; and

(b) proceedings relating to such orders.

(7) An application under subsection (1) may be made *ex parte* to a Judge of the High Court in Chambers.”

Citation and commencement

8. This Act may be cited as the Drug Trafficking Offences (Amendment) Act 2004, and shall come into force on such day as the Governor may by order appoint.

Speaker

Passed by the House of Assembly this 6th day of September, 2004.

Clerk of the House of Assembly