



ANGUILLA

**PROCEEDS OF CRIMINAL CONDUCT (ANGUILLA)
(AMENDMENT) ACT 2004**

PUBLISHED BY AUTHORITY

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(AMENDMENT) ACT 2004**

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I Assent

Alan Huckle
Governor

ANGUILLA

NO. 10 OF 2004

**PROCEEDS OF CRIMINAL CONDUCT
(AMENDMENT) ACT 2004**

An Act to amend the Proceeds of Criminal Conduct Act and to provide for incidental and connected matters.

[Gazetted: 14 September, 2004][Commencement: section 10]

ENACTED by the Legislature of Anguilla

Interpretation

1. In this Act, “principal Act” means the Proceeds of Criminal Conduct Act, Revised Statutes of Anguilla, Chapter P100.

Amendment of section 27 of the principal Act

2. Section 27 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”; and
- (b) by inserting after “imposed” the words “by contract or”.

Amendment of section 28 of the principal Act

3. Section 28 of the principal Act is amended—

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

- (b) in subsection (3)(a), by inserting after “imposed” the words “by contract or by”.

Amendment of section 29 of the principal Act

4. Section 29 of the principal Act is amended in subsection (2) by deleting “knowing” and substituting “knowing, suspecting”.

Insertion of section 29A into the principal Act

5. The principal Act is amended by inserting after section 29 the following section—

“Requirement to disclose knowledge or suspicion of money laundering

29A. (1) In this section—

- (a) “money laundering” means doing any act that constitutes an offence under section 27, 28 or 29 of this Act or, in the case of an act done otherwise than in Anguilla, would constitute such an offence if done in Anguilla and, for these purposes, having possession of any property shall be taken to be doing an act in relation to it; and
- (b) “relevant financial business” has the same meaning as in the Anti-Money Laundering Regulations made under the Money Laundering Reporting Authority Act, R.S.A. c. M100.

(2) Where a person—

- (a) knows, or suspects, or has reasonable grounds for knowing or suspecting, that another person is engaged in 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.

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

- (4) A person who does not disclose any information or other matter as required by subsection (2) is guilty of an offence.

- (5) 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.

- (6) Without limiting subsection (5)(a), a person has a reasonable excuse for not disclosing information or another matter under subsection (2) if—

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

(7) Subject to subsection (8), 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.

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

(9) A person makes a disclosure to a nominated officer under subsection (2) 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.”.

Amendment of section 30 of the principal Act

6. Section 30 of the principal Act is amended—

- (a) in subsection (2)(a)—
 - (i) by inserting after “knows or suspects” the words “or has reasonable grounds to suspect”, and
 - (ii) by deleting “sections 27(3) or 28(5)” and substituting “sections 27(3), 28(5) or 29A”;
- (b) in subsection (3), by deleting paragraph (a) and substituting the following—

“(a) he knows, suspects or has reasonable grounds to suspect that a disclosure (“the disclosure”)—

 - (i) of a kind mentioned in section 27(5) or 28(8), or
 - (ii) to a nominated officer under section 29A(2); and

- (c) in subsection (6), by inserting after “know or suspect” the words “or have reasonable grounds for suspecting”

Amendment of section 31 of the principal Act

7. Section 31 of the principal Act is amended—

- (a) in subsection (1), by inserting after “for the purposes of”, the words “a money laundering investigation or”;
- (b) in subsection (4)(a), by inserting after “specified person”, the words “has carried on money laundering or”;
- (c) in subsection (8), by inserting after “contained in”, the words “or accessible by means of”;
- (d) by inserting after subsection (9) the following—

“(9A) 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 32 of the principal Act

8. Section 32 of the principal Act is amended—

- (a) in subsection (1), by inserting after “for the purposes of”, the words “a money laundering investigation or”;
- (b) in subsection (3)(a) and (4)(a), by inserting after “specified person has” the words “carried on money laundering or”; and
- (c) by inserting after subsection (6) the following subsection—

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

Insertion of section 32A into the principal Act

9. The principal Act is amended by inserting after section 32 the following—

“Account monitoring orders

32A. (1) A police officer of the rank of inspector or above may, for the purposes of a money laundering investigation or an investigation into whether any person has benefited from any criminal conduct or into the extent or whereabouts of the proceeds of any criminal conduct, 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, it 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 money laundering or has benefited from any criminal conduct;
- (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) Rules of Court may provide for—

- (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 the judge in Chambers.

Citation and commencement

10. This Act may be cited as the Proceeds of Criminal Conduct (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