



## REPUBLIC OF NAURU

### The Anti Money Laundering Act 2001

( 3 of 2001)

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# REPUBLIC OF NAURU

## A BILL FOR AN ACT

No. of 2001

For the purpose of preventing money laundering, to establish a Financial Institutions Supervisory authority, to cooperate with foreign States, and for related purposes.

{Certified: 28/8/01 }

Enacted by the Parliament of Nauru as follows-

### Citation and Commencement

1. (1). This Act may be cited as the Anti Money Laundering Act 2001.
- (2). This Act comes into force upon a date to be notified by the Minister in the Gazette

### Definitions

2. In this Act-

**“business transaction”** means any arrangement, including opening an account, between two or more persons where the purpose of the arrangement is to facilitate a transaction between the persons concerned and includes any related transaction between any of the persons concerned and another person.

**“business transaction record”** includes where relevant to a business transaction –

- (a) the identification records of all the persons 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 (if any); and
- (d) the total value of the transaction.

**“facilitating property”** means something that is used in or intended for use in any manner in the commission of any unlawful activity.

**“financial institution”** means any person whose regular occupation or business is, for the account of that person, the carrying out in Nauru of—

- (a) any activity listed in the Schedule to the Act;
- (b) any other activity defined by Cabinet as such by an order published in the Gazette amending the Schedule to this Act

whether or not that person also carries on any business outside Nauru.

**“Financial Institution Supervisory Authority” or “Authority”** means the authority established by section 7.

**“identification record”** means -

- (a) where the person is a corporate body, the details-
  - (i) of the certificate of incorporation;
  - (ii) of the most recent annual return to the registry of the corporate body;
  - (iii) of any officer of the corporation as required in the following subparagraph
- (b) otherwise, sufficient documentary evidence to prove to the satisfaction of a financial institution that the person is who that person claims to be:

and for these purposes “person” shall include any person who is a nominee, agent, beneficiary or principal in relation to a business transaction;

**“money laundering”** means -

- (a) (i) engaging, directly or indirectly, in a transaction that involves property
- (b) (i) knowing, or having reasonable grounds for believing that the property is derived or realised directly or indirectly, from some form of unlawful activity; or
- (ii) having a duty so to do, without reasonable excuse failing to take reasonable steps to ascertain whether or not the property is derived or realised directly or indirectly, from some form of unlawful activity.
- (c) benefiting directly or indirectly in a transaction that involves property that is the proceeds of crime.

**“proceeds of crime”** means any property derived from or obtained directly or indirectly through the commission of any unlawful activity and includes any property which is mingled with property that is unlawful activity or traceable thereto.

**“property”** includes money and all other property real or personal, including things in action and other intangible or incorporeal property wherever situate and includes any interest in such property.

**“Request”** has the meaning given by Part IV.

**“requesting State”** means any State which makes a Request.

**“transaction”** includes a purchase, sale, loan, pledge, gift, transfer, delivery or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase of sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

**“unlawful activity”** means any activity which under any law anywhere is a crime, other than a law relating to the non-payment or avoidance of any form of taxation, and is punishable by more than five years imprisonment except where in the opinion of the Court such law or the punishment thereof is unconscionable or excessive and ought not be enforced.

## PART II

### MONEY LAUNDERING PROHIBITED

#### **Offence of money laundering**

3. A person who, after the commencement of this Act, engages in money laundering is guilty of an offence.

#### **Offence committed by a corporation or body of persons**

4. Where an offence under section 3 is committed by a body corporate or an unincorporated body of persons, every person who, at the time of the commission of the offence, acted in an official capacity for or on behalf of such body, whether as a director, manager, secretary or other similar officer, or was purporting to act in such capacity, shall if such person is shown to have knowledge of, or should reasonably have had knowledge of, the commission of the offence, be guilty of that offence.

#### **Attempts; Aiding and Abetting; Conspiracy**

5. A person who attempts or who aids, abets, counsels, or procures the commission of, or who conspires to commit the offence of, money laundering is guilty of an offence.

**Jurisdiction**

6. Any act -
- (a) by a citizen of Nauru anywhere;
  - (b) by a corporation established or incorporated in Nauru, or any officer of such corporation, anywhere;
  - (c) by a person on a ship or aircraft registered in Nauru; or
  - (d) by a person outside Nauru with intent to do that act within Nauru;

Shall, if it would be an offence by that person in Nauru under the provisions of this part, be an offence under those provisions.

**PART III**

**ANTI-MONEY LAUNDERING SUPERVISION**

**Cabinet to Appoint a Financial Institutions Supervisory Authority**

7. Cabinet shall appoint a person or persons to be known as the Financial Institutions Supervisory Authority to supervise financial institutions in accordance with this Act.

**Powers of the Financial Institutions Supervisory Authority**

8. The Financial Institutions Supervisory Authority -
- (1) shall receive the reports issued by financial institutions pursuant to the provisions of section 9(2);
  - (2) shall send any such report to the Director of Public Prosecutions if, having considered the report, the Financial Institutions Supervisory Authority also has reasonable grounds to believe that a money laundering offence is being, has been or is about to be committed;
  - (3) or a person authorised by the Financial Institutions Supervisory Authority for such a purpose, may enter into the premises of any financial institution during public service working hours to inspect any business transaction record kept by that financial institution pursuant to the provisions of section 9(3) and ask any questions relevant to such record and to make any notes or take any copies of the whole or any part of any such record;
  - (4) shall send to the Director of Public Prosecutions any information derived from an inspection carried out pursuant to the provisions of sub-section (3) if it gives the Financial Institutions Supervisory Authority reasonable grounds to believe that a money laundering offence is being, has been or is

about to be committed;

- (5) shall destroy any note or copy thereof made or taken pursuant to the provisions of sub-section (3) within three years of the inspection save where any such note or copy has been sent to the Director of Public Prosecutions;
- (6) may instruct any financial institution to take such steps as may be appropriate to facilitate any investigation anticipated by the Financial Institutions Supervisory Authority following a report or investigation made under the provisions of this section;
- (7) may compile statistics and records, disseminate information within or without, make recommendations arising out of any information received, issue guidelines to financial institutions; and
- (8) shall create training requirements and provide such training for any financial institution in respect of the business transaction record keeping and reporting obligations as provided in sub-sections (1) and (2) of section 9.

#### **Assistance Given by Financial Institutions**

9. A financial institution shall -

- (1) keep a business transaction record of any business transaction for a period of five years after the termination of the business transaction so recorded;
- (2) be attentive to all suspicious transactions, including, but not limited to those which are complex, unusual or large transactions, whether completed or not, and to all unusual patterns of transactions, and to otherwise insignificant but periodic transactions, which have no apparent economic or lawful purpose. The Authority may provide from time to time additional information or criteria to be used in identifying suspicious transactions under this paragraph;
- (3) upon suspicion that the transactions described in paragraph (2) of this Section could constitute or be related to any illegal activity, each financial institution shall report such suspicion promptly to the Authority, but no later than three (3) working days from the date of any suspicious transaction or transactions, and wherever possible before the transaction is carried out;
- (4) permit any member of the Authority, or a person so authorised in writing by the Authority, upon request to enter into any premises of the financial institution during the public service working hours and inspect the records kept pursuant to the provisions of sub-section (1) and to make any notes or take any copies of the whole or any part of any such record to answer any questions of the Authority in relation to such records;

- (5) comply with any guidelines and training requirements issued and provided by the Authority respectively in accordance with section 8(6) and (7);
- (6) financial institutions, its employees, officers or directors, shall not notify any person or entity other than the Authority, the Director of Public Prosecutions, a court of competent jurisdiction upon process issued, or other person as may be authorized by law, of the information, record, or report that has been prepared, or otherwise referred or furnished to the Authority, Director of Public Prosecutions, court of competent jurisdiction, or other lawfully authorized person. Any person or financial institution who improperly discloses such information commits an offence, punishable by a fine of not more than \$5,000 or imprisonment for not more than 1 year, or both;
- (7) develop and apply internal policies, procedures and controls to combat money laundering and develop audit functions to evaluate such policies, procedures and control;
- (8) develop a procedure to audit compliance with this section.

#### Customer Identification

9A. A financial institution shall: -

- (1)
  - (i) maintain accounts in the name of the account holder. They shall not open or keep anonymous accounts or accounts which are in fictitious or incorrect names;
  - (ii) record and verify the identity, representative capacity, domicile, legal capacity, occupation or business purpose of persons, as well as other identifying information on those persons, whether they be occasional or usual clients, through the use of documents such as identity documents, passports, birth certificates, driver's licenses, partnership contracts and incorporation papers, in addition to documents providing convincing evidence of their legal existence and the powers of their legal representative, or any other official or private documents when initiating or conducting business relations, especially when opening new accounts or passbooks, entering into fiduciary transactions, renting of safe deposit boxes, or performing any other type of business transaction.
- (2)
  - (i) a financial institution or its employees, officers or directors, wilfully violating the requirements of Section 9 or 9A commits an offence punishable by a fine of not more than \$5,000 or imprisonment for not more than 1 year, or both.  
[ALTERNATIVELY OR IN ADDITION TO: A financial institution wilfully violating the requirements of Section 9 or 9A is liable to the Republic of Nauru Government for a civil penalty of not more than the greater of the amount involved in the transaction (if any) or \$25,000.]

**Financial Institution Supervisory Authority's Power to Obtain Search Warrant**

10. The Financial Institutions Supervisory Authority or the Director of Public Prosecutions, upon application to a Magistrate and satisfying him that there are reasonable grounds to believe that –

- (1) a financial institution has failed to keep a business transaction record as provided by the provisions of section 9(1);
- (2) a financial institution has failed to report any business transaction as provided by the provisions of section 9(2); or
- (3) an officer or employee of a financial institution is committing, has committed or is about to commit a money laundering offence;

may obtain a warrant to enter any premises belonging to, in the possession or control of the financial institution or any officer or employee of such institution and to search the premises and remove any document, material or other thing therein for the purposes of the Financial Institutions Supervisory Authority or Director of Public Prosecutions as ordered by the Magistrate and specified in the warrant.

**Property Tracking and Monitoring Orders**

11. The Financial Institutions Supervisory Authority or Director of Public Prosecutions upon application to a Magistrate and satisfying him that there are reasonable grounds for believing that a person is committing, has committed or is about to commit a money laundering offence may obtain an order: -

- (1) 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 Financial Institutions Supervisory Authority or Director of Public Prosecutions;

- (2) that a financial institution forthwith produce to the Financial Institutions Supervisory Authority or Director of Public Prosecutions all information obtained by the institution about any business transaction conducted by or for that person with the institution during such period or after the date of the Order as the Magistrate directs.

**Mandatory Injunction to Enforce Compliance**

12. The Financial Institutions Supervisory Authority upon application to a judge of the Supreme Court and satisfying him that a financial institution has failed without

reasonable excuse to comply in whole or in part with any obligation as provided in sub-sections (1), (2), (4), or (5) of section 9 may obtain a mandatory injunction against any or all of the officers or employees of that financial institution in such terms as the Court deems necessary to enforce compliance with such obligation.

#### **Other Measures to Avoid Currency Laundering**

13. (1) A person who has been convicted of a cognisable offence, an offence of a kind described in Part VI of the Criminal Code, or the offence of money laundering must not be licensed to carry on the business of a financial institution.
- (2) For the purposes of this section an offence referred to in sub-section (1) includes any similar offence committed abroad.

### **PART IV**

#### **FREEZING AND FORFEITURE OF ASSETS IN RELATION TO MONEY LAUNDERING**

##### **Freezing of Property**

14. (1) The Director of Public Prosecutions upon application to a judge of the Supreme Court and satisfying him that the authority has charged or is about to charge a person with a money laundering offence may apply for an order freezing of, or in the possession or under the control of, that person whenever it may be.
- (2) The Court in making any order freezing the property of that person may give directions as to the disposal of that property for the purpose of: -
- (i) determining any dispute as to the ownership of the property or any part thereof;
  - (ii) its proper administration during the period of freezing;
  - (iii) the payment of debts due to creditors prior to the order; and
  - (iv) the payment of moneys to that person for the reasonable subsistence of that person and his family.
- (3) An order made under the provision of sub-section (1) shall cease to have effect at the end of the period of forty eight hours following the hour the order was made should the person against whom such order was made not have been charged with a money laundering offence within that time.

**Forfeiture of Property**

15. (1) When a person is convicted of a money laundering offence, the Court shall order that the property constituting, derived from or traceable to the proceeds of unlawful activity or any facilitating property connected to a money laundering offence be forfeited.
- (2) When as a result of any act or omission of the person convicted, any of the property constituting derived from or traceable to the proceeds of unlawful activity or any facilitating property connected to a money laundering cannot be forfeited, the Court shall order the forfeiture of any other property of the person convicted for an equivalent value or shall order the person convicted to pay a fine of such value;
- (3) When the accused charged with a money laundering offence has died or absconded from the jurisdiction of the Republic of Nauru prior to conviction, the Court shall order that the property constituting, derived from or traceable to the proceeds of unlawful activity or any facilitating property connected to a money laundering offence be forfeited;
- (4) In determining whether or not any property constitutes, is derived from or is traceable to the proceeds of unlawful activity or is facilitating property connected to a money laundering offence, the Court will apply the standard of proof required to civil proceedings.
- (5) In making a forfeiture order the Court may give directions: -
- (i) for the purpose of determining any dispute as to the ownership of property or any part thereof;
  - (ii) as to the disposal of the property.

**Property Tracking and Monitoring**

16. For the purpose of determining whether any property belongs to, is in the possession, or under the control of any person the Court may upon application by the Director of Public Prosecutions order:

- (1) that any document relevant to:
  - (a) identifying locating or quantifying property of that person;
  - (b) identifying or locating any document necessary for the transfer of property of that, person;

be delivered forthwith to the Director of Public Prosecutions;

- (2) a financial institution forthwith to produce to the Director of Public Prosecutions all information obtained by the institution about any business transaction conducted by or for that person with the institution during such period before or after the date of the order as the Court directs;
- (3) upon being satisfied by the Director of Public Prosecutions that any person is failing to comply with, is delaying or is otherwise obstructing, an order made in accordance with the provisions of sub-section (1) or (2), that the Director of Public Prosecutions may enter any premises of that person, search the premises and remove documents material or other things therein in execution of such order.

**Limitations on Freezing and Forfeiture of Property**

17. The provisions of sections 14 & 15 only apply to property coming into the possession or under the control of a person after the coming into force of this Act.

**PART V**

**MUTUAL ASSISTANCE IN RELATION TO MONEY LAUNDERING**

**Co-operation with a Foreign State**

18. Subject to the provision of section 23, where a foreign State makes a Request for assistance in the investigation or prosecution of a money laundering offence, the Director of Public Prosecutions shall:

- (1) execute the Request forthwith; or
- (2) inform the foreign State making the Request of any reason-
  - (a) for not executing the Request forthwith; or
  - (b) for delaying the execution of the Request.

**Director of Public Prosecution's Power to Obtain Search Warrant**

19. The Director of Public Prosecutions may upon production to the Magistrate of a Request received pursuant to section 18, apply for a warrant to enter any premises belonging to, in the possession or control of any person named in the warrant and search the premises and remove any document, material or other thing for the purpose of executing the Request as directed in the warrant.

**Property Tracking and Monitoring Orders**

20. The Director of Public Prosecutions upon application to a Magistrate and upon production to the Magistrate of a Request may obtain an Order:-

- (1) 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, in the possession or under the control of any person the subject of the Request be delivered to the Director of Public Prosecutions;

- (2) that a financial institution forthwith produce to the Director of Public Prosecutions all information obtained by the institution about any business transaction conducted by or for a person the subject of the Request with the institution during such period before or after the date of the order as the Magistrate directs.

**Freezing and Forfeiture of Property**

21. Subject to the provision of section 23, the Director of Public Prosecutions upon application to a judge of the Supreme Court and upon production to the judge of a Request for the freezing or forfeiture of property of or in the possession or under the control of a person named in the Request may obtain an order

- (1)
  - (a) freezing the property of or in the possession or under the control of the person named in the Request;
  - (b) giving directions as to the disposal of that property for the purpose of:
    - (i) determining any dispute as to ownership of the property or any part thereof;
    - (ii) its proper administration during the period of freezing;
    - (iii) the payment of debts due to creditors prior to the Request; and
    - (iv) the payment of moneys to that person for the reasonable subsistence of that person and his family.
- (2) forfeiting the property of any person named in the Request.

**Request Accompanied by an Evidence Order**

22. (1) Subject to the provisions of section 26 the Director of Public Prosecutions may upon application to a judge of the Supreme Court and upon production to the judge of a Request accompanied by an order, issued by a

competent court of the requesting State, directed to any person within the jurisdiction of the Supreme Court to deliver himself or any document or material in his possession or under his control to the jurisdiction of the Court of the requesting State for the purpose of giving evidence in specified proceedings in the Court, obtain an order directed to that person in the same terms as in the order accompanying the Request.

- (2) Upon being served with an order issued in accordance with the provisions of sub-section (1) the person served shall for the purpose of the order either: -
  - (a) deliver himself to the jurisdiction of the Supreme Court; or
  - (b) deliver himself to the jurisdiction of the court of the requesting State, in accordance with the directions in the order.
- (3) if a person served with an order issued in accordance with the provisions of sub-section (1) elects to deliver himself to the jurisdiction of the court of the requesting State and fails to comply with any direction in the order he shall be deemed immediately to have delivered himself to the jurisdiction of the Supreme Court as provided in sub-section (2)(a).
- (4) The Supreme Court shall conduct such proceedings as are necessary to take the evidence of any person delivering himself to the jurisdiction of the court pursuant to the provisions of sub-section (2)(a). Such evidence shall subsequently be transmitted by the Director of Public Prosecutions to the requesting State.

#### **Limitations on Compliance with Request**

23. (1) The competent authority may refuse to comply with a Request if: -
  - (a) the action sought by the Request is contrary to any provision of the Constitution, or
  - (b) the execution of the Request is likely to prejudice the national interest.
- (2) The provisions of section 21 apply only to property coming into the possession or under the control of a person after the coming into force of this Act.

#### **Requests to Other States**

24. The Director of Public Prosecutions may issue to a foreign State a Request accompanied, if required, by an order issued in accordance with section 25.

**Issuing Evidence Order Against Foreign Resident**

25. The Director of Public Prosecutions upon application to a judge of the Supreme Court may in respect of any proceedings for a money laundering offence apply for an order directed to any person resident in a foreign State to deliver himself or any document or material in his possession or under his control to the jurisdiction of the Supreme Court or, subject to the approval of the foreign State, to the jurisdiction of the court of the foreign State for the purpose of giving evidence in relation to those proceedings.

**Evidence Pursuant to a Request**

26. Evidence taken pursuant to a Request in any proceedings in a court of a foreign State shall be received as prima facie evidence in any proceedings to which such evidence relates.

**Requests**

27. A Request shall be in writing, including facsimile transmitted writing, dated and signed by or on behalf of the person making the Request but a Request sent by a form of facsimile shall lapse if the original thereof has not been received by the Director of Public Prosecutions before the expiration of 14 days following the receipt by the director of Public Prosecutions of the facsimile.

**Requirements for Request**

28. A Request shall: -

- (1) confirm either that an investigation or prosecution is being conducted into or for a suspected money laundering offence or that a person has been convicted of a money laundering offence;
- (2) state the grounds on which any person is being investigated or prosecuted for the money laundering offence referred to in sub-section (1) or give details of the convictions of the person referred to in sub-section (1);
- (3) give particulars sufficient to identify any person referred to in sub-section (2);
- (4) give particulars sufficient to identify any financial institution or other person believed to have information, documents or material or assistance to the investigation or prosecution referred to in sub-section (1);
- (5) request the Director of Public Prosecutions to whom the Request is addressed to obtain from a financial institution or other person referred to in sub-section (4) all and any information, documents or material of assistance to the investigation or prosecution referred to in sub-section (1);
- (6) specify the manner in which and to whom any information, documents or material obtained pursuant to the Request is to be produced;
- (7) state whether or not a freezing or forfeiture order is required;

- (8) contain such other information as may assist the execution of the Request.

**Request for Forfeiture**

29. A Request for forfeiture shall have attached to it a copy of the final forfeiture order of the court and a statement signed by a judge of that court to the effect that no further appeal against such order can be made.

**Request Not to be Invalidated**

30. A Request shall not be invalidated for the purpose of commencing any legal proceedings by reason of any failure to comply with the provision of section 28 provided the Director of Public Prosecutions is satisfied that there is sufficient compliance to enable him properly to execute the Request but nothing herein shall derogate from the power of the Supreme Court to refuse to make an order if it considers that any such failure is such that an order ought not, in the circumstances, be made.

**PART VI**

**MISCELLANEOUS**

**Offences and Penalties**

31. (1) It is an offence:
- (a) for any person to falsify, conceal, destroy or otherwise dispose of or cause or permit the falsification, concealment, destruction or disposal of any document or material which is likely to be relevant to the execution of any order made in accordance with this Act;
  - (b) for any person who knows or suspects that an investigation into money laundering has been, is being or is about to be made to divulge that fact to other information to another whereby the investigation is likely to be prejudiced.
- (2) A person guilty of an offence under the provisions of section 3 or 4 is on conviction liable to imprisonment for 12 months or a fine of \$10,000 or both.
- (3) A person guilty of an offence under the provisions of section 5 or section 31 (1)(a) is on conviction liable to imprisonment for 6 months or a fine of \$5,000 or both.
- (4) A person guilty of an offence under the provisions of section 31(1)(b) is on conviction liable to imprisonment for 3 months or a fine of \$2000 or both.

**Effect of this Act**

32. (1) Subject to the Constitution and the national interest, if there is any conflict

between any provision of this Act and any written law regulating the disclosure of information of a confidential nature, the provisions of this Act shall prevail.

- (2) A certificate under the hand of the President shall be conclusive evidence that the disclosure of information referred to in the certificate would be against the national interest.

**Disclosure Protected**

33. It shall not be unlawful for any person to make a disclosure in compliance with this Act.

**Money Laundering an Offence for Extradition Purposes**

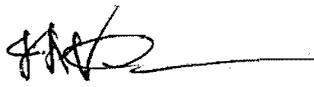
34. The Schedule to the Extradition of Fugitive Offenders Act 1972 is amended by inserting the following immediately below the number and words "29. Hi-jacking aircraft" -

"30 - Money laundering".

**Regulations**

35. Cabinet may make regulations as may be required for carrying into effect any of the provisions of this Act.

I hereby certify that the above is a fair print of a Bill for an Act entitled **Anti Money Laundering Act 2001**, that has been passed by Parliament of Nauru and is now presented to the Speaker for his Certificate under Article 47 of the Constitution.



Clerk of Parliament  
28<sup>th</sup> August 2001

Pursuant to Article 47 of the Constitution, I, **LUDWIG D. SCOTTY**, Speaker of Parliament, hereby certify that the **Anti Money Laundering Act 2001** has been passed by the Parliament of Nauru.



Speaker  
28<sup>th</sup> August 2001