

CHAPTER 174 FINANCIAL INTELLIGENCE UNIT ACT

• Act • Subsidiary Legislation •

ACT

Act No. 38 of 2001

Amended by

Act No. 24 of 2002

Act No. 13 of 2006

Act No. 38 of 2007

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CHAPTER 174 FINANCIAL INTELLIGENCE UNIT ACT

An Act to provide for the establishment of a Financial Intelligence Unit which will be the national centralised unit in Saint Vincent and the Grenadines for the collection, analysis and dissemination of suspicious transaction information to competent authorities.

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines and by the authority of the same, as follows.

[Act No. 38 of 2001 amended by Act No. 24 of 2002, Act No. 13 of 2006, Act No. 38 of 2007.]

[Date of commencement: 28th December, 2001.]

1. Short title and commencement

This Act may be cited as the Financial Intelligence Unit Act, 2001, and shall come into operation on such day as the Governor-General may appoint by notice published in the *Gazette*.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

“**business plan**”, for a financial year, means—

- (a) the business plan approved under section 9; and
- (b) all amendments to the business plan approved under that section,

for the financial year;

[Definition of “business plan” inserted by Act No. 38 of 2007.]

“**Director**” means the director of the Financial Intelligence Unit, appointed pursuant to section 3;

“**Financial Intelligence Unit**” means the Financial Intelligence Unit established pursuant to section 3;

“**financial year**” means the financial year referred to in section 7A;

[Definition of “financial year” inserted by Act No. 38 of 2007.]

“**Foreign Financial Intelligence Unit**” means such body or bodies outside of Saint Vincent and the Grenadines as may be designated by the order of the Minister and which performs functions similar to those of the Financial Intelligence Unit;

“**Minister**” means the Minister responsible for Finance.

(2) The terms financial institutions, relevant offence and relevant business activity shall have the same meaning given to them under the Proceeds of Crime and Money Laundering (Prevention) Act, 2001.

[Chapter 181.]

3. Establishment of the Financial Intelligence Unit

(1) There is hereby established a body to be known as the Financial Intelligence Unit.

(2) The Financial Intelligence Unit shall consist of—

- (a) a director appointed in writing by the Minister who shall be the chief executive officer of the Financial Intelligence Unit;
- (b) an attorney appointed in writing by the Minister;
- (c) a public accountant appointed in writing by the Minister;
- (d) the assignment of such number of police officers appointed by the Minister on the recommendation of the Commissioner of Police and Customs Officers appointed by the Minister on the recommendation of the Comptroller of Customs;
- (e) such consultants having suitable qualifications and experience to provide services to the Financial Intelligence Unit, appointed in writing by the Minister; and
- (f) such other personnel as the Minister considers necessary.

4. Functions of the Financial Intelligence Unit

(1) In the exercise of its functions under subsection (2), the Financial Intelligence Unit shall act as the agency responsible for receiving, analysing, obtaining and disseminating information which relates to or may relate to the proceeds of the offences created by the Proceeds of Crime and Money Laundering (Prevention) Act, 2001, and offences under the United Nations (Anti-Terrorism Measures) Act, 2002, to competent authorities including the Royal Saint Vincent and the Grenadines Police Force and the Director of Public Prosecutions.

[Chapter 181, Chapter 183. Subsection (1) amended by Act No. 13 of 2006.]

(2) Without limiting the foregoing and notwithstanding any other law to the contrary the Financial Intelligence Unit—

- (a) shall receive all suspicious transaction reports as are required to be made pursuant to the provisions of the Proceeds of Crime and Money Laundering (Prevention) Act 2001, and the United Nations (Anti-Terrorism Measures) Act, 2002, which are relevant to its functions, including information from any Foreign Financial Intelligence Unit;
- (b) where it appears to the Director that there are reasonable grounds to suspect that a relevant offence has been committed, the Director may require the production of such information (excluding information subjected to legal professional privilege) from financial institutions or a person engaged in a relevant business activity that the Financial Intelligence Unit considers necessary for the purpose of investigating the relevant offence;
- (c) shall retain a record which shall be kept confidential of all information that it receives for a minimum of five years after the information is received;
- (d) shall provide information, subject to such conditions as may be determined by the Minister to the Commissioner of Police where the information may relate to the commission of an offence;
- (e) may provide information relating to the commission of an offence or a suspected offence or information relating to a suspicious transaction report to any Foreign Financial Intelligence Unit, subject to any conditions as may be considered appropriate by the Director on the advice of the Minister;
- (f) may enter into any agreement or arrangement, in writing, with a Foreign Financial Intelligence Unit which the Director on the advice of the Minister considers necessary for the discharge of the functions of the Financial Intelligence Unit;
- (g) shall inform financial and business institutions of their obligations under measures that have been or might be taken to detect, prevent and deter the commission of offences under the Proceeds of Crime and Money Laundering (Prevention) Act, 2001, and the United Nations (Anti-Terrorism Measures) Act, 2002.

[Paragraph (e) amended by Act No. 24 of 2002. Subsection (2) amended by Act No. 13 of 2006.]

(3) Any person failing or refusing to provide such information as is required by subsection (2)(b) is guilty of an offence and shall be liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

5. No liability or order

(1) No action shall lie against the Minister, Director, officers or personnel of the Financial Intelligence Unit or any person acting under the direction of the Director for anything done or omitted to be done in good faith and in the administration or discharge of any functions, duties or powers under this Act.

(2) Notwithstanding the provisions of any other Act, no order for the provision of information, documents, or evidence may be issued in respect of the Financial Intelligence Unit or against the Minister, Director, officers or personnel of the Financial Intelligence Unit or any person engaged pursuant to this Act.

6. No criminal or civil liability for information

(1) No proceedings for breach of banking or professional confidentiality may be instituted against any person or against directors or employees of a financial institution who in good faith submit suspicious transaction or suspicious activity reports to the Financial Intelligence Unit in accordance with the Proceeds of Crime and Money Laundering (Prevention) Act, 2001, and the United Nations (Anti-Terrorism Measures) Act, 2002.

[Subsection (1) amended by Act No. 13 of 2006.]

(2) No civil or criminal liability action may be brought nor any professional sanction taken against any person or against directors or employees of a financial institution who in good faith transmit information or submit reports to the Financial Intelligence Unit.

7. Confidentiality

(1) Any person who obtains information in any form as a result of his connection with the Financial Intelligence Unit shall not disclose that information to any person except so far as it is required or permitted under this Act or other written law.

(2) Any person who wilfully discloses information to any person in contravention of subsection (1) above shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

7A. Financial year

The financial year of the Financial Intelligence Unit is the twelve month period beginning on the 1st day of January and ending 31st day of December.

[Section 7A inserted by Act No. 38 of 2007.]

8. Annual report

(1) The Director shall—

- (a) advise the Minister of the work of the Financial Intelligence Unit and in particular on matters that could affect public policy or the priorities of the Financial Intelligence Unit;
- (b) within three months after the end of each financial year prepare and submit to the Minister an annual report reviewing the work of the Financial Intelligence Unit;
- (c) prepare and submit interim reports every three months reviewing the work of the Financial Intelligence Unit.

[Subsection (1) amended by Act No. 38 of 2007.]

(2) The Minister shall lay or cause to be laid a copy of every annual report on the table of the House of Assembly.

9. Annual business plan

(1) The Financial Intelligence Unit shall, not later than four months before the commencement of each financial year and in such form as the Minister requires, prepare in respect of the financial year, and submit to the Minister, a proposal for a business plan for the financial year that must contain—

- (a) a statement of the Financial Intelligence Unit's objectives and priorities in carrying out its responsibilities for the financial year and the following two financial years;
- (b) a comprehensive plan that—

- (i) shows how resources, including but not limited to financial resources, will be allocated to meeting the objectives and priorities of the Financial Intelligence Unit for the financial year, and
- (ii) includes *pro forma* financial statements as required by the Minister;
- (c) a comparison of the *pro forma* financial statements with the actual financial statements for the previous financial year;
- (d) a statement as to how the Financial Intelligence Unit proposes to measure its performance in carrying out its responsibilities in the financial year; and
- (e) any other information required by the Minister by written notice to the Financial Intelligence Unit.

(2) The Minister may, on the request of the Financial Intelligence Unit, extend the time for submitting a proposal for a business plan.

(3) The Minister shall, as soon as practicable, consider the proposal for a business plan and may—

- (a) approve the proposal as submitted;
- (b) with the approval of the Financial Intelligence Unit, amend the proposal and approve it as amended; or
- (c) refer the proposal back to the Financial Intelligence Unit with directions that the Financial Intelligence Unit take any further action with respect to it that the Minister considers appropriate.

(4) Where the Minister refers the proposal for a business plan back to the Financial Intelligence Unit under subsection (3)(c), he shall provide the Financial Intelligence Unit with his reasons for not approving it.

(5) A proposal for a business plan that is referred back to the Financial Intelligence Unit under subsection (3)(c) must be resubmitted to the Minister as directed by the Minister and, when it is resubmitted, subsections (3) and (4) apply.

(6) When a proposal in relation to a financial year is approved by the Minister, it becomes the business plan for that financial year.

(7) The Financial Intelligence Unit—

- (a) may, of its own motion, submit to the Minister a proposal to amend an approved business plan; and
- (b) shall, on request of the Minister and within the time required by the Minister, submit to the Minister a proposal to amend an approved business plan.

(8) Subsections (3), (4), (5) and (6) apply to a proposal submitted to the Minister under subsection (7).

[Section 9 repealed and replaced by Act No. 38 of 2007.]

9A. Financial Intelligence Unit obligated to implement business plan

The Financial Intelligence Unit—

- (a) shall in each financial year implement the business plan for that financial year; and
- (b) shall establish a mechanism for monitoring the implementation of the financial plan.

[Section 9A inserted by Act No. 38 of 2007.]

10. Accounts

(1) The Financial Intelligence Unit shall—

- (a) keep proper books of accounts of its income and other receipts and expenditures; and
- (b) ensure that—
 - (i) all money received is promptly and properly brought to account,
 - (ii) all payments out of its money are correctly made and properly authorised, and
 - (iii) adequate control is maintained over its property and over the incurring of liabilities by the Financial Intelligence Unit.

(2) The books of account kept under subsection (1) shall—

- (a) be sufficient to record and explain the Financial Intelligence Unit's transactions;
- (b) enable the Financial Intelligence Unit's financial position to be determined with reasonable accuracy at any time; and
- (c) be sufficient to enable financial statements to be prepared and audited in accordance with this section.

(3) Within three months after the end of each financial year, the Financial Intelligence Unit shall cause to be prepared—

- (a) the following financial statements together with proper and adequate explanatory notes—
 - (i) a statement of the assets and liabilities of the Financial Intelligence Unit at the end of the financial year,
 - (ii) a statement of the revenue and expenditure of the Financial Intelligence Unit during the financial year,
 - (iii) such other financial statements for the financial year as may be specified in writing by the Minister; and
- (b) an annual report of the Financial Intelligence Unit on the implementation of the business plan including the review referred to in section 8(1)(b) and such other matters as the Financial Intelligence Unit considers advisable or the Minister directs.

(4) Without delay after the completion of the financial statements and the annual report, the Financial Intelligence Unit shall furnish a copy of each to the Director of Audit.

[Section 10 repealed and replaced by Act No. 38 of 2007.]

10A. Audit by Director of Audit and report to the House

(1) Not later than three months after receipt of the financial statements and annual report from the Financial Intelligence Unit, the Director of Audit shall audit the financial statements in accordance with the Audit Act.

[Chapter 245.]

(2) Without delay after the completion of his audit of the Financial Intelligence Unit, the Director of Audit shall submit a copy of his report together with the financial statements and the annual report to the Minister and the Financial Intelligence Unit.

(3) The Minister shall, not later than seven days after the House of Assembly first meets after he has received the report together with the financial statements and annual report of the Financial Intelligence Unit, lay it before the House.

(4) If the Minister fails to lay the report together with the financial statements and the annual report of the Financial Intelligence Unit before the House of Assembly in accordance with subsection (3), the Director of Audit shall transmit the report, the financial statements and the annual report to the Speaker who shall, as soon as practicable, present them to the House of Assembly.

(5) As soon as reasonably practicable after the report together with the financial statements and the annual report of the Financial Intelligence Unit have been laid before the House of Assembly, the Financial Intelligence Unit shall cause the report, the financial statements and the annual report of the Financial Intelligence Unit to be published in the *Gazette*.

[Section 10A inserted by Act No. 38 of 2007.]

11. Regulations

The Minister may make regulations prescribing all matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary to be prescribed for carrying out or giving effect to this Act.

CHAPTER 174 FINANCIAL INTELLIGENCE UNIT ACT

SUBSIDIARY LEGISLATION

No Subsidiary Legislation
