

LAWS OF BRUNEI

CHAPTER 209

ANTI MONEY-LAUNDERING

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REVISED EDITION 2011

CHAPTER 209
ANTI MONEY-LAUNDERING

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SCHEDULE — ACTIVITIES

ANTI MONEY-LAUNDERING ACT

An Act to prevent the use of the financial system for money-laundering

Commencement: 1st July 2000
[S 57/00]

Citation.

1. This Act may be cited as the Anti Money-Laundering Act.

Interpretation.

2. (1) In this Act —

“applicant for business” means a person seeking to form a business relationship, or carry out a one-off transaction, with a person who is carrying out relevant business in Brunei Darussalam;

[S 75/10]

“Authority” means the Autoriti Monetari Brunei Darussalam established by the Autoriti Monetari Brunei Darussalam Order, 2010 (S 103/10);

[S 103/10]

“business relationship” has the meaning given by section 3(2);

“Case 1”, “Case 2”, “Case 3” and “Case 4” have the meanings respectively given by section 7;

“money-laundering” has the meaning given by subsection (2);

“one-off transaction” means any transaction other than a transaction carried out in the course of an established business relationship formed by a person acting in the course of relevant business;

[S 75/10]

“relevant business” has the meaning given by section 4(1);

[S 75/10]

“supervisory authority” has the meaning given by section 15.

(2) In this Act, except in so far as the context otherwise requires, “money-laundering” means doing any act which constitutes an offence under —

(a) section 20 or 22 of the Drug Trafficking (Recovery of Proceeds) Act (Chapter 178); or

[S 75/10]

(b) section 21 to 24 of the Criminal Conduct (Recovery of Proceeds) Order, 2000 (S 52/00).

[S 75/10]

(3) For the purpose of this section, a business relationship formed by any person acting in the course of relevant business is an established business relationship where that person has obtained, under procedures maintained by him in accordance with section 7, satisfactory evidence of the identity of the person who, in relation to the formation of that business relationship, was the applicant for business.

[S 75/10]

Business relationships.

3. (1) Any reference in this section to an arrangement between 2 or more persons is a reference to an arrangement in which at least one person is acting in the course of a business.

(2) For the purposes of this Act, “business relationship” means any arrangement between 2 or more persons where —

(a) the purpose of the arrangement is to facilitate the carrying out of transactions between the persons concerned on a frequent, habitual or regular basis; and

(b) the total amount of any payment to be made by any person to any other in the course of that arrangement is not known or not capable of being ascertained at the time the arrangement is made.

Relevant business. [S 75/10]

4. (1) For the purposes of this Act, “relevant business” means, subject to subsection (2), the business of engaging in one or more of the following —

[S 75/10]

(a) the business of receiving money on deposit account transacted by a company in possession of a licence granted by the Authority authorising it to do so in accordance with the provisions of the Banking Order, 2006 (S 45/06), the Finance Companies Act (Chapter 89) or of any other law relating to domestic banking;

[S 75/10; S 103/10]

(b) any activity carried on by a company in possession of a licence authorising it to do so under the International Banking Order, 2000 (S 53/00);

[S 75/10]

(c) any of the activities referred to in the Schedule, other than an activity falling within paragraph (a) or (b);

(d) long-term insurance business carried on by a person who has been authorised to do so by or in pursuance of any written law.

(2) Business is not relevant business in so far as it consists of activities carried on by any person designated by the Authority by order published in the *Gazette*.

[S 75/10; S 103/10]

(3) The Authority may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, amend the Schedule by order published in the *Gazette*.

[S 103/10]

Systems and training to prevent money-laundering.

5. (1) No person shall, in the course of relevant business carried on by him in Brunei Darussalam, form a business relationship or carry out a one-off transaction, with or for another, unless that person —

[S 75/10]

(a) maintains the following procedures established in relation to that business —

- (i) identification procedures in accordance with sections 7 and 9;
- (ii) record-keeping procedures in accordance with section 12;
- (iii) except where the person concerned is an individual who in the course of relevant business does not employ or act in association with any other person, internal reporting procedures in accordance with section 14; and

[S 75/10]

- (iv) such other procedures of internal control and communication as may be appropriate for the purpose of forestalling and preventing money-laundering;

(b) takes appropriate measures from time to time for the purpose of making employees whose duties include the handling of relevant business aware of —

[S 75/10]

- (i) the procedures under paragraph (a) which are maintained by him and which relate to the relevant business; and

[S 75/10]

- (ii) the provisions of this Act and of all other written laws relating to money-laundering; and

(c) provides such employees from time to time with training in the recognition and handling of transactions carried out by, or on behalf of, any person who is, or appears to be, engaged in money-laundering.

(2) Any person who contravenes this section is guilty of an offence and liable on conviction to a fine, imprisonment for a term not exceeding 2 years or both.

(3) In determining whether a person has complied with the requirements of subsection (1), a court may take account of —

(a) any relevant supervisory or regulatory guidance which applies to that person;

(b) in a case where no guidance falling within paragraph (a) applies, any other relevant guidance issued by a body that regulates, or is representative of, any trade, profession, business or employment carried on by that person.

(4) In proceedings against any person for an offence against this section, it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(5) In this section, “supervisory or regulatory guidance” means guidance issued, adopted or approved by a supervisory authority.

Offences against section 5 committed by bodies corporate, partnerships and unincorporated associations.

6. (1) Where an offence against section 5 committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of that body, or of a person purporting to act in any such capacity, he, as well as the body corporate, is also guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In relation to a body corporate whose affairs are managed by its members, “director”, in subsection (1), means any member of that body corporate.

(3) Where a partnership or other unincorporated association is guilty of an offence against section 5, every partner in the partnership or (as the case may be) every person concerned in the management or control of the association, other than a partner or (as the case may be) a person who is proved to have been ignorant of or to have attempted to prevent the commission of the offence, is also guilty of the offence and liable to be proceeded against and punished accordingly.

Identification procedures; business relationships and transactions.

7. (1) Subject to sections 8 and 10, identification procedures maintained by a person are in accordance with this section if in Case 1 to Case 4 they require, as soon as is reasonably practicable, after contact is first made between that person and an applicant for business concerning any particular business relationship or one-off transaction —

(a) the production by the applicant for business of satisfactory evidence of his identity; or

(b) the taking of such measures specified in the procedures as will produce satisfactory evidence of his identity,

and the procedures are, subject to subsection (6), in accordance with this section if they require that, where that evidence is not obtained, the business relationship or one-off transaction in question shall not proceed any further.

(2) Case 1 is any case where the parties form or resolve to form a business relationship between them.

(3) Case 2 is any case where, in respect of any one-off transaction, any person handling the transaction knows or suspects that the applicant for business is engaged in money-laundering, or that the transaction is carried out on behalf of another person engaged in money-laundering.

(4) Case 3 is any case where, in respect of any one-off transaction, payment is to be made by or to the applicant for business of the amount of \$20,000 or more.

(5) Case 4 is any case where, in respect of 2 or more one-off transactions —

(a) it appears at the outset to a person handling any of the transactions that —

(i) the transactions are linked; and

- (ii) the total amount, in respect of all of the transactions, which is payable by or to the applicant for business is \$30,000 or more; or

(b) at any later stage, it comes to the attention of such a person that paragraphs (a)(i) and (ii) have been satisfied.

(6) The procedures referred to in subsection (1) are in accordance with this section if, when a report is made in circumstances falling within Case 2 (whether in accordance with section 14 or directly to a police officer), they provided for steps to be taken in relation to the one-off transaction in accordance with any directions that may be given by a police officer.

(7) In this Act, a reference to satisfactory evidence of a person's identity shall be construed in accordance with section 11(1).

Payment by post etc.

8. (1) Where satisfactory evidence of the identity of an applicant for business would, apart from this subsection, be required under identification procedures in accordance with section 7 but —

(a) the circumstances are such that a payment is to be made by the applicant for business; and

(b) it is reasonable in all the circumstances for —

- (i) the payment to be sent by post or by any electronic means which is effective to transfer funds; or
- (ii) the details of the payment to be sent by post, to be given on the telephone or to be given by any other electronic means,

then, subject to subsection (2), the fact that the payment is debited from an account held in the applicant's name with a finance company (as defined in section 2 of the Finance Companies Act (Chapter 89)) authorised by the Authority, whether the account is held by the applicant alone or jointly with one or more other persons, shall be capable of constituting the required evidence of identity.

[S 103/10]

(2) Subsection (1) shall not have effect to the extent that the circumstances of the payment fall within Case 2 or the payment is made by any person for the purpose of opening a relevant account with a finance company authorised by the Authority.

[S 103/10]

(3) For the purpose of subsection (1)(b), it shall be immaterial whether the payment or its details are sent or given to a person who is bound by section 5(1) or to some other person acting on his behalf.

(4) In this section, “relevant account” means an account from which a payment may be made by any means to a person other than the applicant for business, whether such a payment may be made —

(a) directly to such a person from the account by or on behalf of the applicant for business; or

(b) indirectly to such a person as a result of —

(i) a direct transfer of funds from an account from which no such direct payment may be made to another account; or

(ii) a change in any of the characteristics of the account.

Identification procedures; transactions on behalf of another.

9. (1) This section applies where, in relation to a person who is bound by section 5(1), an applicant for business is or appears to be acting otherwise than as a principal.

(2) Subject to section 10, identification procedures maintained by a person are in accordance with this section if, in a case to which this section applies, they require reasonable measures to be taken for the purpose of establishing the identity of any person on whose behalf the applicant for business is acting.

(3) In determining, for the purpose of subsection (2), what constitutes reasonable measures in any particular case regard shall be had to all the circumstances of the case and, in particular, to best practice which, for

the time being, is followed in the relevant field of business and which is applicable to those circumstances.

(4) Without prejudice to the generality of subsection (3), if the condition mentioned in subsection (5) is fulfilled in relation to an applicant for business who is, or appears to be, acting as an agent for a principal (whether undisclosed or disclosed for reference purposes only) it shall be reasonable for a person bound by section 5(1) to accept a written assurance from the applicant for business to the effect that evidence of the identity of any principal on whose behalf the applicant for business may act in relation to that person will have been obtained and recorded under procedures maintained by the applicant for business.

(5) The condition referred to in subsection (4) is that, in relation to the business relationship or transaction, there are reasonable grounds for believing that an applicant for business based, incorporated in or founded under the law of any country or territory outside Brunei Darussalam is subject, in respect of that transaction or business, to provisions in relation to money-laundering at least equivalent to those under this Act and is subject to supervision by an overseas regulatory authority.

(6) In subsection (5), “overseas regulatory authority” means any authority exercising regulatory functions relating to companies or financial services in any country or territory outside Brunei Darussalam.

[S 75/10]

Identification procedures; exemptions.

10. (1) Subject to subsection (2), identification procedures under sections 7 and 9 shall not require any steps to be taken to obtain evidence of any person’s identity —

(a) where there are reasonable grounds for believing that the applicant for business is a person who is bound by the provisions of section 5(1);

(b) where any one-off transaction is carried out with or for a third party pursuant to an introduction effected by a person who has provided an assurance that evidence of the identity of all third parties introduced by him will have been obtained and recorded under

procedures maintained by him, where that person identifies the third party and where —

- (i) that person falls within paragraph (a); or
- (ii) there are reasonable grounds for believing that the condition mentioned in section 9(5) has been fulfilled in relation to him;

(c) where the person who would otherwise be required to be identified, in relation to a one-off transaction, is the person to whom the proceeds of that transaction are payable but to whom no payment is made because all of those proceeds are directly re-invested on his behalf in another transaction —

- (i) of which a record is kept; and
- (ii) which can result only in another re-investment made on that person's behalf or in a payment made directly to that person;

(d) in relation to insurance business consisting of a policy of insurance in connection with a pension scheme taken out by virtue of a person's contract of employment or occupation, where the policy —

- (i) contains no surrender clause; and
- (ii) may not be used as collateral for a loan;

(e) in relation to long term insurance business in respect of which a premium is payable in one instalment of an amount not exceeding \$5,000; or

(f) in relation to long term insurance business in respect of which a periodic premium is payable and where the total payable in respect of any calendar year does not exceed \$1,500.

(2) Nothing in this section applies in circumstances falling within Case 2.

(3) In subsection (1)(f), “calendar year” means a period of 12 months beginning on 31st December.

Identification procedures; supplementary provisions.

11. (1) For the purposes of this Act, evidence of identity is satisfactory if —

(a) it is reasonably capable of establishing that the applicant is the person he claims to be; and

(b) the person who obtains the evidence is satisfied, in accordance with the procedures maintained under this Act in relation to the relevant business concerned, that it does establish that fact.

[S 75/10]

(2) In determining for the purpose of section 7(1) the time-span in which satisfactory evidence of a person’s identity has to be obtained in relation to any particular business relationship or one-off transaction, all the circumstances shall be taken into account including —

(a) the nature of the business relationship or one-off transaction concerned;

(b) the geographical locations of the parties;

(c) whether it is practical to obtain the evidence before commitments are entered into between the parties or before money passes;

(d) in relation to Case 3 or Case 4, the earliest stage at which there are reasonable grounds for believing that the total amount payable by an applicant for business is \$20,000 or more.

Opening account in false etc. name. [S 75/10]

11A. (1) No person shall open, operate or authorise the opening or the operation of an account with a person carrying on any relevant business in a false, fictitious or incorrect name.

(2) Where a person is commonly known by 2 or more different names, he shall not use one of those names in opening an account with a person carrying on any relevant business unless he has previously disclosed the other name or names to that person.

(3) Where a person using a particular name in his dealings with a person carrying on any business discloses to him a different name or names by which he is commonly known, the person carrying on any relevant business shall make a record of the disclosure and shall, upon request in writing from a supervisory authority, give the supervisory authority a copy of that record.

(4) For the purposes of this section —

(a) a person opens an account in a false, fictitious or incorrect name if he, in opening the account, or becoming a signatory to the account, uses a name other than a name by which he is commonly known;

(b) a person operates an account in a false, fictitious or incorrect name if he does any act or thing in relation to the account (whether by way of making a deposit or withdrawal or by way of communication with a person carrying on any relevant business or otherwise) and, in doing so, uses a name other than a name by which he is commonly known; and

(c) an account is in a false, fictitious or incorrect name if it was opened in a false, fictitious or incorrect name, whether before or after 1st July 2000, being the commencement date of this Act.

(5) Any person who contravenes this section is guilty of an offence and liable on conviction to a fine not exceeding \$1,000,000 imprisonment for a term not exceeding one or both.

[S 75/10]

Record-keeping procedures.

12. (1) Record-keeping procedures maintained by a person are in accordance with this section if they require the keeping, for the prescribed period, of the following records —

(a) in any case where, in relation to any business relationship that is formed or one-off transaction that is carried out, evidence of a person's identity is obtained under procedures maintained in accordance with section 7 or 9, a record that indicates the nature of the evidence and —

- (i) comprises a copy of the evidence;
- (ii) provides such information as would enable a copy of it to be obtained; or
- (iii) in a case where it is not reasonably practicable to comply with sub-paragraph (i) or (ii), provides sufficient information to enable the details as to a person's identity contained in the relevant evidence to be re-obtained; and

(b) a record containing details relating to all transactions carried out by that person in the course of relevant business.

[S 75/10]

(2) For the purpose of subsection (1), the prescribed period is, subject to subsection (3), the period of at least 5 years commencing with —

(a) in relation to such records as are described in subsection (1)(a), the date on which the relevant business was completed within the meaning of subsection (4); and

(b) in relation to such records as are described in subsection (1)(b), the date on which all activities taking place in the course of the transaction were completed.

(3) Where a person who is bound by the provisions of section 5(1) —

(a) forms a business relationship or carries out a one-off transaction with another person;

(b) has reasonable grounds for believing that that person has become insolvent; and

(c) after forming that belief, takes any step for the purpose of recovering all or part of the amount of any debt payable to him by that person which has fallen due,

the prescribed period for the purpose of subsection (1) is the period of at least 5 years commencing with the date on which the first such step is taken.

(4) For the purpose of subsection (2)(a), the date on which relevant business was completed is —

(a) in circumstances falling within Case 1, the date of the ending of the business relationship in respect of whose formation the record under subsection (1)(a) was compiled;

(b) in circumstances falling within Case 2 or Case 3, the date of the completion of all activities taking place in the course of the one-off transaction in respect of which the record under subsection (1)(a) was compiled;

(c) in circumstances falling within Case 4, the date of the completion of all activities taking place in the course of the last one-off transaction in respect of which the record under subsection (1)(a) was compiled,

and where the formalities necessary to end a business relationship have not been observed, but a period of 5 years has elapsed since the date on which the last transaction was carried out in the course of that relationship, then the date of the completion of all activities taking place in the course of that last transaction shall be treated as the date on which the relevant business was completed.

Insolvency.

13. For the purpose of section 12(3)(b), a person shall be taken to be insolvent if, in Brunei Darussalam —

(a) he has been adjudged bankrupt or has made a composition or scheme with his creditors;

(b) he being dead, his estate is administered in accordance with an order under section 112 of the Bankruptcy Act (Chapter 67); or

(c) where that person is a company, a winding-up order has been made or a resolution for voluntary winding-up has been passed with respect to it, or a receiver or manager of its undertaking has been duly appointed, or possession has been taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge.

Internal reporting procedures.

14. Internal reporting procedures maintained by a person are in accordance with this section if they include provision —

(a) identifying a person (in this section called “the appropriate person”) to whom a report is to be made of any information or other matter which comes to the attention of a person handling relevant business and which, in the opinion of the person handling that business, gives rise to a knowledge or suspicion that another person is engaged in money-laundering;

[S 75/10]

(b) requiring that any such report be considered in the light of all other relevant information by the appropriate person or any other designated person, for the purpose of determining whether or not the information or other matter contained in the report does give rise to such a knowledge or suspicion;

(c) for any person charged with considering a report in accordance with paragraph (b) to have reasonable access to other information which may be of assistance to him and which is available to the person responsible for maintaining the internal reporting procedures concerned; and

(d) for securing that the information or other matter contained in a report is disclosed to a supervisory authority or a police officer where the person who has considered the report under the procedures maintained in accordance with the preceding provisions of this

section knows or suspects that another person is engaged in money-laundering.

[S 75/10]

Supervisory authorities.

15. (1) References in this Act to a supervisory authority shall be construed in accordance with subsection (2).

(2) For the purposes of this Act, each of the following is a supervisory authority —

(a) the Authority;

[S 103/10]

(b) such person or department of Government as the Authority may, for the purpose of this section, designate by order published in the *Gazette*.

[S 103/10]

Supervisors etc. to report evidence of money-laundering.

16. (1) Subject to subsection (2), where a supervisory authority —

(a) obtains any information; and

(b) is of the opinion that the information indicates that any person has or may have been engaged in money-laundering,

the authority shall, as soon as is reasonably practicable, disclose that information to a police officer.

(2) Where any person is a secondary recipient of information obtained by a supervisory authority and that person forms the opinion mentioned in subsection (1)(b), that person may disclose the information to a police officer.

(3) Where any person within subsection (6) —

(a) obtains any information whilst acting in the course of any investigation, or discharging any functions, to which his appointment or authorisation relates; and

(b) is of the opinion that the information indicates that any person has or may have been engaged in money-laundering,

that person shall, as soon as is reasonably practicable, either disclose that information to a police officer or disclose that information to the supervisory authority by whom he was appointed or authorised.

(4) Any disclosure made by virtue of subsections (1) to (3) shall not be treated as a breach of any restriction imposed by any written law or otherwise.

(5) Any information which —

(a) has been disclosed to a police officer by virtue of subsections (1) to (4); and

(b) would, apart from subsection (4), be subject to such a restriction as is mentioned in that subsection,

may be disclosed by the police officer, or any person obtaining the information directly or indirectly from him, in connection with the investigation of any criminal offence or for the purpose of any criminal proceedings, but not otherwise.

(6) Persons falling within this section are such persons as the Authority may, for the purpose of this section, designate by order published in the *Gazette*.

[S 103/10]

(7) In subsection (2), “secondary recipient”, in relation to information obtained by a supervisory authority, means any person to whom that information has been passed by that authority.

Cross border movements of physical currency and bearer negotiable instruments: Object. [S 75/10]

17. The object of sections 17 to 24 is to impose measures for the disclosure of information regarding movements of physical currency and bearer negotiable instruments into and out of Brunei Darussalam for the purpose of detecting, investigating and prosecuting any offence involving money-laundering and related offences made under any written law.

Interpretation of sections 17 to 24. [S 75/10]

18. (1) In sections 17 to 24 —

“authorised officer” means an immigration officer, officer of customs, police officer, officer of the Anti-Corruption Bureau, officer of the Narcotics Control Bureau or such other person as the Authority may authorise;

[S 103/10]

“bearer negotiable instrument” means —

(a) a traveller’s cheque; or

(b) any negotiable instrument that is in bearer form, indorsed without any restriction, made out to a fictitious payee or otherwise in such form that title thereto passes upon delivery,

and includes a negotiable instrument that has been signed but with the payee’s name omitted;

“business day” means a day other than a Saturday, Sunday or public holiday;

“cash” means physical currency or a bearer negotiable instrument;

“commercial goods carrier” means a person who, in the normal course of a business, carries goods or mail for reward, and includes his employee;

“commercial passenger carrier” means a person who, in the normal course of a business, carries passengers for reward, and includes his employee;

“eligible place” means any islet, landing place, wharf, dock or quay or premises of a provider of port services or facilities licensed

or exempted under the Merchant Shipping Order, 2002 (S 27/02), Ports Act (Chapter 144) or the Civil Aviation Order, 2006 (S 63/06);

“embarkation location” means an immigration control post, place of embarkation, authorised airport, authorised point of departure or authorised departing place prescribed under section 5(2) of the Immigration Act (Chapter 17);

“physical currency” means the coin and printed money (whether of Brunei Darussalam or of a foreign country) that —

(a) is designated as legal tender; and

(b) circulates as, and is customarily used and accepted as, a medium of exchange in the country or territory of issue;

“printed money” means money comprising a note printed, written or otherwise made on polymer, paper or any other material;

“send” includes send through the post or by means of another person.

(2) In determining whether an amount of foreign currency (including an amount in which a document is denominated) is equivalent to a Brunei Darussalam dollar amount under sections 17 to 23, the amount of foreign currency is to be translated to Brunei Darussalam currency at the exchange rate applicable at the relevant time.

(3) For the purposes of sections 17 to 23 —

(a) a person moves cash out of Brunei Darussalam if the person takes or sends the cash (whether in a receptacle or otherwise) out of Brunei Darussalam; and

(b) a person moves cash into Brunei Darussalam if the person brings or sends the cash (whether in a receptacle or otherwise) into Brunei Darussalam.

Reports about cross border movements of cash. [S 75/10]

19. (1) A person shall not move or attempt to move into or out of Brunei Darussalam cash the total value of which exceeds the prescribed amount, without giving a report in respect of the movement in accordance with this section.

(2) A person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$50,000, imprisonment for a term not exceeding 3 years or both.

(3) It shall be a defence for a person charged with an offence under subsection (2) to prove that he did not know and had no reasonable grounds to believe that the receptacle within which the cash was moved or attempted to be moved contained cash.

(4) For the purposes of subsection (1), the prescribed amount is \$15,000 (or its equivalent in a foreign currency) or such other amount as the Authority may, by notification published in the *Gazette*, specify.

[S 103/10]

(5) A report under this section shall —

(a) be in a form approved by a supervisory authority;

(b) contain full and accurate information relating to the matter being reported as is specified in the form;

(c) be given —

(i) to an officer of customs or an immigration officer, if the movement of the cash is to be effected by a person bringing or taking the cash into or out of Brunei Darussalam with the person; or

(ii) in any other case, to a supervisory authority or, if regulations permit, to an authorised officer; and

(d) be given at the prescribed time.

(6) The Authority may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations for the matters referred to in subsections (5)(a), (c) and (d); and may, for the purposes of subsections (5)(a) and (d), prescribe different forms and different times —

[S 103/10]

(a) for different manners of moving cash into and out of Brunei Darussalam; and

(b) for different classes of persons.

(7) Subsection (1) shall not apply if —

(a) the person is a commercial passenger carrier; and

(b) the cash is in the possession of any of the carrier's passengers.

(8) Subsection (1) shall not apply if —

(a) the person is a commercial goods carrier;

(b) the cash is carried on behalf of another person;

(c) the other person has not disclosed to the carrier that the goods carried on behalf of the other person include cash; and

(d) the carrier does not know and has no reasonable grounds to believe that the goods carried on behalf of the other person include cash.

(9) The burden of proving the matters referred to in subsection (7) or (8) lies with the person who wishes to rely on that subsection.

Obligation of immigration officers or officers of customs. *[S 75/10]*

20. If a report under section 19 is given to an immigration officer or officer of customs, he shall, on request, forward it to a supervisory authority.

Reports about receipts of cash from outside Brunei Darussalam.

[S 75/10]

21. (1) A person who receives cash the total value of which exceeds the prescribed amount, which is moved to the person from outside Brunei Darussalam, shall make a report in respect of the receipt in accordance with this section before the end of the period of 5 business days beginning on the day of the receipt.

(2) A person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$50,000, imprisonment for a term not exceeding 3 years or both.

(3) It shall be a defence for a person charged with an offence against subsection (2) to prove that he did not know and had no reasonable ground to believe that the cash was moved from outside Brunei Darussalam.

(4) For the purposes of subsection (1), the prescribed amount is \$15,000 (or its equivalent in a foreign currency) or such other amount as the Authority may, by notification published in the *Gazette*, specify.

[S 103/10]

(5) A report under this section shall —

(a) be in a form approved by a supervisory authority;

(b) contain full and accurate information relating to the receipt being reported as is specified in the form; and

(c) be given to a supervisory authority.

Questioning and search powers in relation to cash. [S 75/10]

22. (1) A person who —

(a) is about to leave Brunei Darussalam;

(b) is in an embarkation location for the purpose of leaving Brunei Darussalam; or

(c) arrives in Brunei Darussalam,

shall, if required to do so by an authorised officer —

- (i) declare whether or not he has with him any cash;
- (ii) declare the total value of any cash that he has with him;
- (iii) declare whether or not, to the best of his knowledge and belief, a report under section 19 has been given in respect of any cash that he has with him;
- (iv) produce to the officer any cash that he has with him; and
- (v) answer any question the officer may have with respect to the cash.

(2) An authorised officer may, with such assistance as is reasonable and necessary, examine any article or baggage which a person has with him if he —

(a) is about to leave Brunei Darussalam;

(b) is in an embarkation location for the purpose of leaving Brunei Darussalam; or

(c) has arrived in Brunei Darussalam,

for the purpose of finding out whether he has with him any cash in respect of which a report under section 19 is required.

(3) An authorised officer, may, with such assistance as is reasonable and necessary, search a person for the purpose of finding out whether he has with him any cash in respect of which a report under section 19 is required, so long as —

(a) he —

- (i) is about to leave Brunei Darussalam;

(ii) is in an embarkation location for the purpose of leaving Brunei Darussalam; or

(iii) has arrived in Brunei Darussalam; and

(b) the officer has reasonable grounds to suspect that there is on him or in clothing being worn by him, cash in respect of which a report under section 19 is required.

(4) If an authorised officer has reasonable grounds to suspect that any cash found in the course of an examination or search under subsection (2) or (3) may afford evidence as to the commission of an offence against section 19, he may seize the cash and surrender the cash so seized to any appropriate authority for further investigation.

(5) A person must not be searched under subsection (3) except by a person of the same sex.

(6) An authorised officer and any person assisting the officer may board any motor vehicle, vessel or aircraft or enter any premises for the purpose of exercising the powers conferred by subsections (1), (2), (3) and (4).

(7) An authorised officer may, with such assistance as is reasonable and necessary —

(a) board a motor vehicle, vessel or aircraft; and

(b) examine or search that motor vehicle, vessel or aircraft, and any thing found on that motor vehicle, vessel or aircraft,

for the purpose of ascertaining whether there is on board that motor vehicle, vessel or aircraft any cash in respect of which a report under section 19 is required.

(8) Where an authorised officer has reasonable grounds to suspect that an offence against section 19 may have been committed, he may, with such assistance as is reasonable and necessary —

- (a) enter any eligible place; and
- (b) search that place and any thing found at or in it,

for the purpose of ascertaining whether there is at or in the place, or in the thing, any cash in respect of which a report under section 19 is required.

(9) If an authorised officer has reasonable grounds to suspect that any cash found in the course of a search under subsection (7) or (8) may afford evidence as to the commission of an offence against section 19, he may seize the cash and surrender the cash so seized to any appropriate authority for further investigation.

(10) A person who, without reasonable excuse, fails to comply with a requirement under subsection (1), or pursuant to any such requirement knowingly or recklessly makes a declaration or gives an answer that is false in a material particular, is guilty of an offence and liable on conviction to a fine not exceeding \$50,000, imprisonment for a term not exceeding 3 years or both.

Power to exempt. [S 75/10]

23. The Authority may, with the approval of His Majesty the Sultan and Yang Di-Pertuan and by order published in the *Gazette*, with or without conditions, exempt any person or class of person from section 19 or 21 or both.

[S 103/10]

Obstructing supervisory authority and authorised officers. [S 75/10]

24. Any person who obstructs or hinders a supervisory authority and authorised officer acting in the discharge of his duty under this Act or any regulations made thereunder is guilty of an offence and liable on conviction to a fine not exceeding \$2,000, imprisonment for a term not exceeding 6 months or both.

Directions to discharge Brunei Darussalam's international obligations.

[S 75/10]

25. (1) The Authority may issue such directions to any person or any class of person as it considers necessary in order to discharge or facilitate the

discharge of any international obligation binding on Brunei Darussalam relating to money-laundering.

[S 103/10]

(2) Any person or any class of person to which the direction has been issued shall comply with it notwithstanding any other duty imposed on him by any written law, rule of law or contract.

(3) No person or any class of person shall disclose any direction issued to him if the Authority has notified him that it is of the opinion that any such disclosure would be against public interest.

[S 103/10]

(4) Any person or class of person who fails or refuses to comply with a direction issued to him, or which discloses a direction issued to him in contravention of subsection (3), is guilty of an offence and liable on conviction to a fine not exceeding \$20,000.

Communication of information to foreign authority. [S 75/10]

26. (1) Notwithstanding any other written law, a supervisory authority may communicate anything —

(a) disclosed to him under section 14(d), 19 or 21; or

(b) forwarded to him under section 20,

to a corresponding authority of a foreign country or territory if —

(i) that thing may be relevant to an investigation by that authority into an offence involving money-laundering and related offences made under any written law; and

(ii) the conditions in subsection (2) are satisfied.

(2) The conditions referred to in subsection (1) are as follows —

(a) there exists an arrangement under which the corresponding authority of the foreign country or territory has agreed to communicate to Brunei Darussalam, information received by the

corresponding authority that corresponds to any thing required to be disclosed to a supervisory authority under section 14(d), 19 or 21;

(b) the supervisory authority is satisfied that the corresponding authority has given appropriate undertakings —

- (i) for protecting the confidentiality of any thing communicated to it; and
- (ii) for controlling the use that will be made of it, including an undertaking that it will not be used as evidence in any proceedings; and

(c) such other conditions as the Authority may determine.

[S 103/10]

(3) In this section “corresponding authority” means, in relation to a foreign country or territory, the authority of that foreign country or territory responsible for receiving information that corresponds to any information required to be reported to a supervisory authority under section 14(d), 19, 20 or 21.

Power to issue directions, guidelines etc. *[S 75/10]*

27. (1) A supervisory authority may issue such directions, guidelines, circulars or notices concerning any relevant business or class of relevant business as a supervisory authority may consider desirable in respect of any particular provision of this Act or generally for the prevention of money-laundering.

(2) Any relevant business which fails or refuses to comply with any guidelines, circulars or notices issued under subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$1,000,000 and, in the case of a continuing offence, to a further fine of \$100,000 for every day during which the offence continues after conviction.

Immunity from proceedings. [S 75/10]

28. No action, suit or other legal proceedings shall lie against —

(a) any party to a contract for failing, neglecting or refusing to carry out any act required by that contract; or

(b) any person for failing, neglecting or refusing to carry out any act under any written law,

where such failure, neglect or refusal is solely attributable to, or occasioned by, the provisions of this Act or any directions, guidelines, circulars or notices made under section 27.

Regulations. [S 75/10]

29. The Authority may, with the approval from His Majesty the Sultan and Yang Di-Pertuan, make such regulations as it considers necessary or expedient for giving effect to or carrying out the provisions of this Act.

[S 103/10]

SCHEDULE

(section 4(1)(c))

ACTIVITIES

1. Acceptance of deposits and other repayable funds from the public.
2. Lending.
3. Financial leasing.
4. Money transmission services.
5. Issuing and administering means of payment (credit cards, travellers' cheques, bankers' drafts and the like).
6. Guarantees and commitments.
7. Trading for own account or for account of customers in —
 - (a) money market instruments (cheques, bills, certificates of deposit and the like);
 - (b) foreign exchange;
 - (c) financial futures and options;
 - (d) exchange and interest rate instruments;
 - (e) transferable securities.
8. Participation in securities issues and the provision of services related to such issues.
9. Advice to undertakings on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings.
10. Money broking.
11. Portfolio management and advice.
12. Safekeeping and administration of securities.
13. Safe custody services.
14. International offshore financial services.
15. *Bureau de change* business.
16. Provision of cheque cash services.
17. Transmission or receipt of funds by wire or other electronic means.

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18. Services for which a licence is required under the Registered Agents and Trustees Licensing Order, 2000 (S 54/00).

19. Real Estate.

[S 75/10]

20. Dealings in precious metals.

[S 75/10]

21. Dealings in precious stones.

[S 75/10]

22. Services provided by an advocate and solicitor under the Legal Profession Act (Chapter 132).

[S 75/10]

23. Services provided by any person registered under any written law relating to accountants.

[S 75/10]

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LAWS OF BRUNEI

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[Subsidiary]

SUBSIDIARY LEGISLATION

Order made under section 15(2)(b)

Order of designation of supervisory authority

The Minister of Finance has designated the Permanent Secretary of the Ministry of Finance as a supervisory authority for the purpose of section 15.