

I assent,



CUTHBERT M SEBASTIAN

Governor-General.

4th November 2005.

SAINT CHRISTOPHER AND NEVIS

No. 26 of 2005

AN ACT to amend the Financial Intelligence Unit Act,
No. 15 of 2000.

BE IT ENACTED by the Queen's Most Excellent Majesty,
by and with the advice and consent of the National Assembly of
Saint Christopher and Nevis, and by the authority of the same as follows:

1. This Act may be cited as the Financial Intelligence Unit
(Amendment) Act, 2005.

Short title.

2. Section 4 of the principal Act is amended as follows:

Amendment of
section 4.

(a) by inserting immediately after subsection (1) thereof the
following new subsection:

“(1) A. For the purposes of this section, the term
“production of financial records” shall not include a mere
request as to whether an account exists or not or for the
number of an account.”

(b) by replacing subsection (2) paragraph (d) thereof with the
following new paragraph:

“(d) shall apply to the Court for an Order requiring the
production of financial records that the Intelligence
Unit considers relevant to the fulfilment of its
functions.”

(c) by replacing subsection (3) thereof with the following
subsections:

“(3) (a) An application made under section 4
subsection (2) shall be made *ex parte*, in
writing and supported by an affidavit.

(b) The application in paragraph (2) shall
be made in respect of a suspicious
transaction connected with a regulated
business activity or other person.

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(4) Where an application is made under subsection (2) paragraph (d) for an order against a person, the Judge may, subject to subsections (6) and (7) make an order requiring the person to

- (a) produce to the Intelligence Unit any financial records of the kind referred to in subsection (3)(b) that is in the person's possession or control; or
- (b) make available to the Intelligence Unit for inspection, any financial records of the kind referred to in subsection (3)(b) that is in the person's possession or control.

(5) An order made under paragraph (a) of subsection (4) shall not be in respect of accounting records used in the ordinary business of banking including ledger, day-books, cash books and account books.

(6) A Judge shall not make an order under this section unless

- (a) the applicant or some other person has given the Judge by affidavit, such information as the Judge requires concerning the grounds on which the order is sought; and
- (b) the Judge is satisfied that there are reasonable grounds for making the order.

(7) An order made to the effect that a person produces information to the Intelligence Unit shall specify the time or times when the information is to be made available.

(8) An order made to the effect that a person makes information available to the Intelligence Unit for inspection shall specify the time or times when the document is to be made available.

(d) by inserting immediately after section 4 thereof the following new sections:

"Production
or inspection
of documents.

4A. (1) Where a document is produced or made available to the Intelligence Unit pursuant to an order made under subsection (2) paragraph (d), the Intelligence Unit may

- (a) inspect the information;
- (b) take extracts from the information;

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- (c) make copies of the information; or
- (d) retain the original containing the information for such time only as the Court may specify in the production order.

(2) Where the Intelligence Unit retains a document pursuant to an made under section (2) paragraph (d), the Intelligence Unit shall

- (a) give the person to whom the order was addressed a copy of the document certified by the Intelligence Unit in writing to be a true copy of the document retained; and
- (b) unless the person has received a copy of the document under paragraph (a), permit the person to
 - (i) inspect the document;
 - (ii) make copies of the document.

Variation of production order.

4B. Where a Judge makes a production order requiring a person to produce a document to the Intelligence Unit, the person may apply to the Judge or to another Judge for a variation of the order and if the Judge hearing the application is satisfied that the information is essential to the business activities of the person, the Judge may vary the production order so that it requires the person to make the information available to the Intelligence Unit for inspection only, or on such terms as the Judge thinks fit or may vary or set aside.

Offence of non-compliance.

4C. (1) Where a person is required by a production order to produce or make information available to the Intelligence Unit for inspection, the person commits an offence against this subsection if the person,

- (a) contravenes the order without reasonable excuse; or

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- (b) in purported compliance with the order produces or makes available a document known to the person to be false or misleading in a material particular without
 - (i) indicating to the Intelligence Unit to whom the document is produced or made available that the document is false or misleading and the respect in which the document is false or misleading; and
 - (ii) providing correct information to the Intelligence Unit if the person is in possession of, or can reasonably acquire, the correct information.

(2) A person who fails or refuses to provide the information referred to in subsection (1) of paragraph (d) commits 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 both.”.

MARCELLA A LIBURD
Speaker

Passed by the National Assembly this 28th day of October 2005.

JOSÉ LLOYD
Clerk of the National Assembly

GOVERNMENT PRINTERY
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