

CONFIDENTIAL RELATIONSHIPS ORDINANCE, 1981

AN ORDINANCE to give sanction to the duty of non-divulgence of information imparted under conditions of business or professional confidence whether expressed or implied and for purposes connected therewith.

[Gazetted 4 December, 1981]

ENACTED by the Legislature of Anguilla

1. Short Title

This Ordinance may be cited as the Confidential Relationships Ordinance, 1981.

2. Interpretation

In this Ordinance, unless the context otherwise requires -

"bank" means any bank or other financial institution to which the provisions of the Banking Act 1967 apply;

"business of a professional nature" includes the relationship between a professional person and his principal, by whatever term the latter may be described, and also the relationship between a bank and a customer of that bank;

"confidential information" includes information concerning any property, or relating to any business of a professional nature or commercial transaction which has taken place, or which any party concerned contemplates may take place, which the recipient thereof is not, otherwise than in the normal course of business or professional practice authorised by the principal to divulge;

"entitled to possession of confidential information" means so entitled, in the normal course of business or professional practice or by the specific consent of the party who but for the giving of such consent, would be entitled to require the preservation of the confidentiality of that information;

"Minister" means the person charged for the time being with responsibility for finance;

"normal course of business or professional practice" means the ordinary and necessary routine involved in the efficient carrying out of the instructions of a principal including compliance with such laws and legal processes as arises out of or in connection therewith and the routine exchange of information between professional persons;

"principal" means a person who has imparted to another person confidential information in

the course of his business or professional relationship with that other person, and includes a customer or a bank in relation to his business transactions with that bank;

"professional person" includes an accountant, an attorney (or other legal practitioner by whatever name called), a broker or other kind of commercial agent or adviser, a bank or other financial institution, any public officer or other government official or employee, and such other persons as may be prescribed as being professional persons for the purposes of this Ordinance and whether or not any such person was licensed or authorised, under any law for the time being in force, to act in that capacity; and also includes any person subordinate to or in the employment or under the control of any such person for the purpose of his professional activities;

"property" includes every present, contingent or future interest or claim, direct or indirect, legal or equitable, positive or negative, in any money or money's worth, real personal, moveable or immovable, rights, charges and securities thereover and all documents and things evidencing or relating thereto.

3. Application of Ordinance

(1) Subject to the provisions of subsection (2), this Ordinance shall apply to all confidential information with respect to business of a professional nature which arises in or is brought into Anguilla and to all persons who come into possession of such information at any time thereafter, whether within or without Anguilla.

(2) This Ordinance shall not apply to confidential information given to or received by -

- (a) any professional person acting in the normal course of business or professional practice or with the consent, express or implied, of the relevant principal;
- (b) any person in the course of the taking or giving of evidence, whether within or without Anguilla, for the purpose of or in the course of the trial or any person in respect of an alleged criminal offence triable within Anguilla or which would have been triable if it had been committed within Anguilla;
- (c) a police officer in the execution of his duties whether within or without Anguilla, investigating any criminal offence alleged to have been committed within Anguilla or which, if it had been committed within Anguilla, would have been a criminal offence under the law of Anguilla;
- (d) the Minister or a person exercising powers of examination or investigation under any of the provisions of the Banking Act 1967 or any law repealing or replacing that Act.

4. Offences and penalties

- (1) Subject to the provisions of subsection (2) of section 3, any person who -
 - (a) being in possession of confidential information, however obtained -
 - (i) divulges it to any person not entitled to possession thereof; or
 - (ii) attempts, offers or threatens to divulge it to any person not entitled to possession thereof;
 - (b) obtains or attempts to obtain confidential information to which he is not entitled,

shall be guilty of an offence:

Provided that it shall be a defence for a person charged with an offence under this subsection if he proves to the satisfaction of the court that, at the time when he divulged, attempted, offered or threatened to divulge or obtained or attempted to obtain (as the case may be), the confidential information in question, he did not know and did not have reasonable grounds to suspect that so doing would be a breach of an express or implied duty to preserve confidentiality or would be contrary to the provisions of this Ordinance.

(2) Any person who, being in possession of information which he knows or has reason to suppose is confidential information, makes use thereof, without the consent of the principal, for the benefit of himself or any other person, shall be guilty of an offence.

(3) Any person who commits an offence under this section shall be liable on summary conviction -

- (a) in the case of an individual to a fine of five thousand dollars or to imprisonment for 12 months or to both such fine and imprisonment; or
- (b) in the case of a body corporate to a fine of twenty-five thousand dollars;

Provided that where an offence under this section is committed by a professional person, that person shall be liable on conviction -

- (i) in the case of an individual to a fine of ten thousand dollars or to imprisonment for 12 months or to both such fine and imprisonment; or
- (ii) in the case of a body corporate to a fine of fifty thousand dollars.

(4) Any person who is convicted of an offence under subsection (1) and is proved to have solicited, received or offered (as the case may be), on behalf of himself or any other person, any reward for doing the act which constituted the offence, shall be liable, in addition to any penalty imposed under subsection (3), to a further fine equivalent to the amount or value of the reward solicited, received or offered and to forfeit the amount or value of any reward actually received

by him.

(5) Where an offence under this section is committed by a body corporate and is proved to the satisfaction of the court to have been committed with the consent or connivance of, or to have been attributed to any neglect on the part of, any director, manager, secretary or similar officer (by whatever name called) of that body corporate, or by any person purporting to act in any such capacity, he as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished accordingly.

(6) For the avoidance of doubt, it is hereby declared that, subject to subsection (2) of section 3, a bank which gives credit reference in respect of a customer, without first obtaining the authority of that customer, shall be guilty of an offence under subsection (1).

5. Saving

Nothing in this Ordinance shall be deemed to affect or derogate from any rule of law or the rights of any person with regard to the civil liability of any person for any breach of any express or implied condition of confidentiality with regard to any business or professional relations or transactions between them.

6. Regulations

The Commissioner may make regulations for carrying into effect the provisions of this Ordinance and for prescribing anything which is required to be prescribed under any such provisions.

7. Attorney General's Fiat

No prosecution shall be instituted under this Ordinance except by or with the written consent of the Attorney-General.