



MONTSERRAT

CHAPTER 11.16

EXCHANGE OF INFORMATION ACT

Revised Edition

showing the law as at 1 January 2008

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

EXCHANGE OF INFORMATION ACT

Act 17 of 1999 .. in force 17 January 2000 (S.R.O. 6/2000)

Amended by Act 9 of 2002 .. in force 11 February 2003 (S.R.O. 32 of 2003)

Page

3



MONTSERRAT

CHAPTER 11.16

EXCHANGE OF INFORMATION ACT

Revised Edition

showing the law as at 1 January 2008

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

EXCHANGE OF INFORMATION ACT

Act 17 of 1999 .. in force 17 January 2000 (S.R.O. 60/2000)

Amended by Act 9 of 2002 .. in force 11 February 2003 (S.R.O. 32 of 2003)

Page

3

CHAPTER 11.16

EXCHANGE OF INFORMATION ACT

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Application
4. Matters to be considered in relation to requests for assistance
5. Powers of Commission to require information to be furnished
6. Powers of Commission to seek assistance
7. Restriction on the disclosure of information
8. Immunity from suit
9. Offences and penalties

SCHEDULE

CHAPTER 11.16

EXCHANGE OF INFORMATION ACT

(Acts 17 of 1999 and 9 of 2002)

AN ACT TO MAKE PROVISION FOR ASSISTING OVERSEAS REGULATORY AUTHORITIES TO OBTAIN INFORMATION FROM WITHIN MONTSERRAT AND OTHER MATTERS CONNECTED THEREWITH.

Commencement

[17 January 2000]

Short title

1. This Act may be cited as the Exchange of Information Act.

Interpretation

2. In this Act, unless the context otherwise requires—
“**competent authority**” means any authority specified in an Order made by the Governor;

“Commission” means the Financial Services Commission established under the Financial Services Commission Act; (*Inserted by Act 9 of 2002*)

“foreign regulatory authority” means an authority which, in a country or territory outside Montserrat, exercises functions corresponding to any functions of a regulatory authority under any enactment, or exercises functions which in the opinion of the Governor relates to companies or financial services;

“regulatory authority” means any authority specified in the Schedule to this Act;

“regulatory functions” means functions corresponding to any functions of a regulatory authority under any enactment, and any other functions relating to companies or financial services, not being the imposition, calculation or collection of taxes.

Application

3. (1) A regulatory authority may disclose information received in the exercise of its functions under any Act for the purpose of enabling or assisting a foreign regulatory authority to exercise regulatory functions.

(2) Assistance under subsection (1) shall not extend to any matters relating directly or indirectly to the imposition, calculation or collection of taxes.

Matters to be considered in relation to requests for assistance

4. (1) Subject to subsection (2), the powers conferred by section 5 are exercisable by the Commission for the purpose of assisting a foreign regulatory authority which has requested assistance in connection with inquiries being carried out by it or on its behalf in respect of any regulatory functions.

(2) The Commission shall not exercise the powers conferred by section 5 unless it is satisfied either that the assistance requested by the foreign regulatory authority may be granted under any agreement to which Montserrat and the State of the foreign requesting authority are parties or, having consulted the Attorney General, that the assistance is necessary for the purposes of the regulatory functions of that authority and that that authority is subject to adequate legal restrictions on further disclosure of information.

(3) In deciding whether to exercise the powers conferred by section 5, the matters that the Commission may take into account shall include—

- (a)** whether corresponding assistance would be given in the relevant country or territory to an authority exercising regulatory functions in Montserrat;
- (b)** whether the inquiries relate to the possible breach of law or other requirement which has no parallel in Montserrat or

involves the assertion of a jurisdiction not recognised by Montserrat;

- (c) the nature and seriousness of the matter to which the inquiries relate, the importance to the inquiries of the information sought in Montserrat and whether the assistance could be obtained by other means;
- (d) whether it is appropriate in the public interest to give the assistance sought.

(4) For the purposes of subsection (3)(a), the Commission may require the foreign regulatory authority requesting assistance to give a written undertaking to provide corresponding assistance to an authority exercising regulatory functions in Montserrat.

(5) Where the Commission requires a written undertaking from a foreign regulatory authority under subsection (4), the undertaking shall be in such form as the Commission may determine.

(6) Where a foreign regulatory authority fails to comply with a requirement made under subsection (4), the Commission may refuse to provide the assistance sought.

(7) The Commission may decline to exercise the powers conferred under section 5 unless—

- (a) it is satisfied that any information provided to the foreign regulatory authority will not be used in any criminal proceedings against the person furnishing it, other than proceedings for an offence of perjury or any like offence; and
- (b) the foreign regulatory authority undertakes in writing to make such contributions towards the costs of the exercise of those powers as the Commission considers appropriate.

(8) In subsection (3)(a), “**relevant country or territory**” means the country or territory from which the request for assistance is received by the Commission.

(Amended by Act 9 of 2002)

Powers of Commission to require information to be furnished

5. (1) Where in accordance with the requirements of section 5 the Commission is satisfied that assistance should be provided with respect to a request by a foreign regulatory authority, the Commission may direct in writing any person—

- (a) to furnish it with information with respect to any matter relevant to the inquiries to which the request relates;
- (b) to produce any documents relevant to the inquiries to which the request relates;

(c) to provide it with such assistance in relation to the inquiries to which the request relates as the Commission may specify.

(1A) The Commission may require—

(a) any information provided under this section to be provided in such form as the Commission may require; and

(b) any information provided or documents produced under this section to be verified or authenticated in such manner as it may reasonably require.

(2) Where a person fails to comply with a direction issued under subsection (1) within 3 days from the date of the direction or such longer period as the Commission may permit, the Commission may apply to a Magistrate for an order requiring the person to comply with the direction.

(3) Where pursuant to a direction issued under subsection (1) the Commission considers it necessary to examine a person on oath, the Commission may apply to a Magistrate to have that person summoned to court to be examined by the Commission.

(4) An application to a Magistrate under subsection (3) or (4) shall be processed by the Magistrate within 7 days of the application and a copy of the record of the examination shall be provided to the Commission within a reasonable period not exceeding 7 days.

(5) Where documents are produced pursuant to this section, the Commission may take copies or extracts from them.

(6) A person shall not under this section be required to disclose information or produce a document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings, except that a barrister or solicitor may be required to furnish the name and address of his client.

(7) Where a person claims a lien on a document, its production under this section is without prejudice to his lien.

(8) In this section, “**document**” includes information recorded in any form, and, in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of it in legible form.

(Amended by Act 9 of 2002)

Power of Commission to seek assistance

6. (1) In the exercise of its powers under this Act, the Commission may seek the assistance of the Commissioner of Police or authorise any person the Commission considers fit to perform such responsibility as the Commission may direct.

(2) Any assistance sought or authority conferred under subsection (1) shall be for the purpose of investigating—

- (a) the affairs, or any aspect of the affairs, of a person specified by the Commission; or
 - (b) a subject matter specified by the Commission,
- being a person who or subject matter which, is the subject of inquiries being carried out for or on behalf of a foreign regulatory authority.

(3) Where the Commission seeks assistance or confers an authority under subsection (1), the assistance or authority shall be provided or executed in such manner as the Commission may determine.

(Amended by Act 9 of 2002)

Restriction on the disclosure of information

7. (1) No information which—

- (a) is supplied by a foreign regulatory authority in connection with a request for assistance; or
 - (b) is obtained by virtue of the exercise of powers under this Act,
- shall, except as permitted by subsection (2), be disclosed for any purpose by the primary recipient, or by any person obtaining the information directly or indirectly from him, without the consent of the person from whom the primary recipient obtained the information and, if different, the person to whom it relates.

(2) Information to which subsection (1) applies may be disclosed—

- (a) to any person with a view to the institution of, or otherwise for the purpose of—
 - (i) criminal proceedings;
 - (ii) disciplinary proceedings relating to the exercise by a barrister or solicitor, auditor, accountant, valuer or actuary of his professional duties;
 - (iii) disciplinary proceedings relating to the discharge by a public officer of his duties;
- (b) for the purpose of carrying out any duty imposed under any law in force in Montserrat or by any international agreement to which Montserrat is a party;
- (c) on the order of a court of competent jurisdiction for the purposes of any criminal or civil proceedings;
- (d) for the purpose of enabling or assisting a competent authority to discharge any function under any enactment;
- (e) to the Governor, Minister of Finance, Commission or a public officer approved by the Commission;
- (f) if the information is or has been made available to the public from other sources;

- (g) in the form of a summary or collection of information framed in such a way as not to enable the identity of a person to whom the information relates to be ascertained;
- (h) to a foreign regulatory authority for the purposes of its regulatory functions.

(3) In subsection (1), “**the primary recipient**” means, as the case may be—

- (a) the Commission; or
- (b) a person authorised under section 6 or the Commissioner of Police or any of his officers.

(Amended by Act 9 of 2002)

Immunity from suit

8. No suit shall lie against the Commission or any person acting under the Commission’s authority for anything done by him, in good faith, in the exercise of any power or the performance of any function under this Act.

(Amended by Act 9 of 2002)

Offences and penalties

9. (1) A person who—

- (a) without lawful authority or excuse, refuses or fails to comply with any direction given by the Commission or order made by the court under section 5; or
- (b) intentionally furnishes false information in purported compliance with any such direction or order,

commits an offence.

(2) Where a person mutilates, obliterates or in any way destroys or does anything to prevent the production of a document, or does anything to impede the provision of information, in relation to any matter relevant to any inquiry to which a request from a foreign regulatory authority relates, he commits an offence.

(3) A person who contravenes section 7 commits an offence.

(4) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding \$50,000.

(Amended by Act 9 of 2002)

SCHEDULE

(Section 2)

1. The Attorney General
2. The Registrar of Companies
3. The Registrar of Offshore Companies
4. The Commission

(Amended by Act 9 of 2002)
