

**SAINT VINCENT AND THE GRENADINES
EXCHANGE OF INFORMATION BILL 2008
ARRANGEMENT OF SECTIONS**

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Schedule



SAINT VINCENT AND THE GRENADINES

ACT NO. OF 2008
I ASSENT

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Governor-General

AN ACT to repeal and replace the Exchange of Information Act 2002 and to make provision for assisting domestic regulatory authorities to obtain information and for assisting foreign regulatory authorities to obtain information from within Saint Vincent and the Grenadines and other related matters.

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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:

1. (1) This Act may be cited as the Exchange of Information Act, 2008.

(2) This Act comes into operation on a day to be appointed by the Governor-General by Proclamation published in the *Gazette*.

2. In this Act:

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

“foreign regulatory authority” means an authority which, in a country or territory outside Saint Vincent and the Grenadines, is governed by statute and exercises the functions of a regulatory authority of the kind specified in the Schedule to this Act;

“legal professional privilege” means a privilege which relates to information that exists in connection with the giving of advice by a professional legal adviser to his client or to any person in connection with legal proceedings or contemplated legal proceedings but does not include information that exists for the purposes of furthering a criminal purpose;

“Minister” means the Minister responsible for finance;

“regulatory functions” means the statutory functions of a domestic regulatory authority or foreign regulatory authority;

3. (1) Subject to subsection (2), the powers conferred by section 4 are exercisable by a domestic regulatory authority for the purpose of assisting another domestic regulatory authority

or 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 of its regulatory functions.

(2) A domestic regulatory authority of whom a request is made shall not exercise the powers conferred by section 4 unless:

- (a) in relation to a request for assistance by a foreign regulatory authority, the nature and seriousness of the matter to which the inquiry relates would warrant the disclosure of the information by a domestic regulatory authority if such information were to be requested in Saint Vincent and the Grenadines; and
- (b) one or more of the following conditions are satisfied:
 - (i) the assistance is necessary for the purpose of enabling or assisting another domestic regulatory authority or a foreign regulatory authority in the exercise of its regulatory functions;
 - (ii) the assistance requested by a foreign regulatory authority is pursuant to an agreement to which Saint Vincent and the Grenadines and the State of the foreign regulatory authority are parties;
 - (iii) the foreign regulatory authority gives a written undertaking to provide corresponding assistance to a domestic regulatory authority;
 - (iv) the State of the requesting foreign regulatory authority has enacted similar laws with regard to the exchange of information.

(3) If there are public interest considerations in giving of the assistance sought by the foreign regulatory authority, the domestic regulatory authority must obtain a written direction from the Attorney General before providing the information requested.

(4) Where a domestic regulatory authority requires a written undertaking from a foreign regulatory authority under subsection (2), the undertaking shall be in such form as the domestic regulatory authority may determine, but shall not be required in a form which would render the giving of the information nugatory.

(5) A domestic regulatory authority may decline to exercise the powers conferred under section 4 unless the foreign regulatory authority undertakes in writing to make a reasonable contribution towards the cost of the exercise of those powers as is proportionate to the work required to be undertaken by the domestic regulatory authority in order to supply the information.

4. (1) If in accordance with the requirements of section 3 a domestic regulatory authority is satisfied that assistance should be provided with respect to a request by another domestic regulatory authority or a foreign regulatory authority, it may request in writing any person to:

- (a) furnish it with information with respect to any matter relevant to the inquiries to which the request relates;
- (b) produce any document relevant to the inquiries to which the request relates; or
- (c) provide it with any assistance in relation to the inquiries to which the request relates as the domestic regulatory authority may specify.

(2) If a person receiving a request in writing issued under subsection (1) fails to comply with a request within three days from the date of the request or such longer period as the domestic regulatory authority may permit, the Attorney General at the request of the domestic regulatory authority may apply to a Judge in Chambers for an order requiring the person to comply with the request.

(3) Notice of an application made pursuant to subsection (2) shall be served on the person against whom an order is sought and he shall be given an opportunity to be heard.

(4) Upon hearing an application pursuant to subsection (3), a Judge in Chambers may make any order that he considers appropriate in order to secure compliance with the request made by the requesting domestic regulatory authority.

(5) Where documents are produced pursuant to this section, a domestic regulatory authority may take copies or extracts from them.

(6) This section shall not operate to make admissible in criminal proceedings in Saint Vincent and the Grenadines material which would not otherwise be admissible following the production of the material under other enactments which permit for the production of material for the purposes of criminal proceedings.

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

(8) Where a person claims a lien on a document, its production under this section is without prejudice to that lien, but the existence of the lien is not a reasonable excuse for failing to comply with a request of the domestic regulatory authority or with an order of a judge in chambers.

(9) In this section, "document" includes information recorded or held 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 its legible form.

5. (1) Subject to subsection (2), information that:

(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 not be disclosed by a domestic regulatory authority or by any person who obtains the information directly or indirectly from it, without the consent of the authority from whom the domestic regulatory authority obtained the information.

(2) Information obtained in accordance with this Act may be disclosed:

(a) pursuant to an order of a court of competent jurisdiction in Saint Vincent and the Grenadines;

(b) to any domestic regulatory authority or foreign regulatory authority;

- (c) to any person for the purpose of discharging any duty or exercising any power or function under this Act,

for the purpose of the relevant regulatory authority carrying out any of its regulatory functions but shall not be used without an order of the High Court for the purposes of any criminal proceedings.

(3) A Judge in Chambers may, upon the application of a domestic regulatory authority whether on behalf of itself, another domestic regulatory authority or a foreign regulatory authority, make such order as he considers appropriate permitting the use of the disclosed material in criminal proceedings provided that the Judge is satisfied that the material could have been obtained pursuant to some other enactment in Saint Vincent and the Grenadines that would permit the material to be produced by the holder of the material and then used in criminal proceedings whether in Saint Vincent and the Grenadines or elsewhere.

6. (1) No suit shall lie against a domestic regulatory authority or any person acting under its authority for any thing done in good faith in the exercise of any power or the performance of any function under this Act.

(2) A person shall not be required to disclose any information or produce any document under this Act if to do so would expose him to prosecution for an offence in Saint Vincent and the Grenadines.

7. (1) A person commits an offence if he:

- (a) fails to comply with an order of the High Court made pursuant to section 4 (4); or
- (b) intentionally furnishes false information in purported compliance with any such order.

(2) A person commits an offence if that person intentionally mutilates, obliterates or in any way destroys or does any thing to prevent the production of a document, or does any thing to impede the provision of information in relation to any matter relevant to an inquiry, being a matter relevant to execution of a request for assistance made by a domestic regulatory authority or foreign regulatory authority.

(3) A person who contravenes section 5 (1) commits an offence.

(4) A person who commits an offence under:

- (a) section 7 (1) or section 7 (2) is liable on summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding two years or both fine and imprisonment;
- (b) section 7 (3) is liable on summary conviction to a fine of fifty thousand dollars or to imprisonment for a term of six months or both fine and imprisonment.

8. The Minister may by Order published in the Gazette, amend the Schedule.

9. The Exchange of Information Act 2002 is repealed.

SCHEDULE

(Section 2)

DOMESTIC REGULATORY AUTHORITIES

1. The Attorney General
2. The Registrar of Companies
3. The Registrar of International Business Companies
4. The International Financial Services Authority
5. Ministry of Finance
6. The Registrar of International Insurance
7. The Registrar of Insurance
8. The Registrar of International Trusts
9. The Registrar of Mutual Funds
10. The Eastern Caribbean Central Bank
11. The Registrar of Shipping
12. The National Telecommunications Regulatory Commission

Passed in the House of Assembly this _____ day of _____ 2008.

Clerk of the House of Assembly

OBJECTS AND REASONS

The object of this Bill is to repeal the Exchange of Information Act of 2002 and replace it with a more flexible mechanism for regulators to obtain information, whether they are within or outside of Saint Vincent and the Grenadines.

Dr. the Hon. Ralph Gonsalves
Prime Minister, Minister of Finance,
Economic Planning, National
Security, Public Service, Legal
Affairs and Grenadines Affairs