

MONTSERAT

FINANCIAL INTELLIGENCE UNIT ACT

No. 12 of 2023

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I ASSENT

(Sgd.) Sarah Tucker
Governor

DATE: 01.11.2023

M O N T S E R R A T

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AN ACT TO ESTABLISH A DEPARTMENT OF GOVERNMENT TO BE KNOWN AS THE FINANCIAL INTELLIGENCE UNIT TO RECEIVE REPORTS OF SUSPICIOUS TRANSACTIONS FROM FINANCIAL INSTITUTIONS AND OTHER PERSONS; TO GATHER, STORE, ANALYSE, INVESTIGATE AND DISSEMINATE INFORMATION TO LAW ENFORCEMENT AUTHORITIES AND RELEVANT BODIES; AND FOR CONNECTED PURPOSES.

BE IT ENACTED by The King's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Montserrat and by the authority of the same as follows:—

PART 1—PRELIMINARY

1 Short title

- (1) This Act may be cited as the Financial Intelligence Unit Act, 2023.
- (2) This Act comes into force on a date appointed by the Governor by Order.

2 Interpretation

(1) In this Act—

“**Supervisory Board**” means the Financial Intelligence Supervisory Board established under section 13;

“**benefit**” includes any property, service or advantage, whether obtained directly or indirectly;

“**business of a financial nature**” has the meaning assigned to it in the Banking Act (Cap. 11.03);

“**Chairperson**” means a person appointed as Chairperson of the Board under section 14;

“**criminal property**” has the meaning specified in the Proceeds of Crime Act;

“**Director**” means the Director of the Financial Intelligence Unit appointed under section 10;

“**financial offence**” means an offence involving money or other benefits and includes an offence involving fraud, dishonesty, corruption, smuggling and trafficking in people, money laundering, terrorist financing, proliferation financing or the breach of any international or domestic sanction prescribed by or under any enactment;

“**financial institution**” means—

(a) a licensed financial institution under the Banking Act (Cap. 11.03); or

(b) a company or other body which conducts business of a financial nature;

“**Financial Intelligence Unit**” or “**Unit**” means the Financial Intelligence Unit established under section 3;

“**foreign financial intelligence authority**” means a competent authority in another jurisdiction which exercises functions corresponding to the functions of the Unit in this Act;

“**member**” means a member of the Supervisory Board;

“**money laundering**” has the same meaning assigned to it in the Proceeds of Crime Act;

“**money laundering offence**” has the same meaning assigned to it in the Proceeds of Crime Act;

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“operational analysis” means the use of available and obtainable information to identify specific targets, including persons, assets, criminal networks and associations, to follow the trail of particular activities or transactions, and to determine links between those targets and possible criminal property, money laundering, predicate offences, terrorist financing or proliferation financing;

“Proceeds of Crime Act” means the Proceeds of Crime Act (Cap. 4.04);

“proliferation financing” means the provision of funds or financial services for use, in whole or in part, in the manufacture, acquisition, development, export, trans-shipment, brokering, transport, transfer, stockpiling of, or otherwise in connection with the possession or use of, chemical, biological, radiological or nuclear weapons, including the provision of funds or financial services in connection with the means of delivery of such weapons and other chemical, biological, radiological or nuclear related goods and technology, in contravention of any international or domestic sanction prescribed by or under any enactment;

“Public Finance Management and Accountability Act” means the Public Finance Management and Accountability Act (17.07);

“strategic analysis” means the use of available and obtainable information, including data that may be provided by a competent authority, to identify money laundering, terrorist financing and proliferation financing related trends and patterns and to determine money laundering and terrorist financing related threats and vulnerabilities;

“terrorist financing” has the same meaning assigned to it in the Proceeds of Crime Act; and

“terrorist financing offence” means an offence under—

- (a) articles 3, 4, 5 and 6 of the Terrorism (United Nations Measures) (Overseas Territories) Order 2001;

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- (b) articles 6, 7, 8 and 9 of the Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002; or
- (c) articles 8 to 13 of the The ISIL (Da'esh) and Al-Qaida (United Nations Sanctions) (EU Exit) Regulations 2019.
- (2) For the purposes of this Act, “**privileged material**” means—
- (a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;
- (b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; or
- (c) material enclosed with or referred to in communications under paragraph (a) or (b) and made—
- (i) in connection with the giving of legal advice; or
- (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings, when they are in the possession of a person who is entitled to possession of them.
- (3) Privileged material held with the intention of furthering a criminal purpose is not privileged material.
- (4) The definition of “**constable**” under section 3(1) of the Anti-Terrorist (Financial and Other Measures) (Overseas Territories) Order 2002 (S.I. 2002/1822) shall be construed under this Act to include the Financial Intelligence Unit.

**PART 2—ESTABLISHMENT AND FUNCTIONS OF THE
FINANCIAL INTELLIGENCE UNIT**

3 Establishment of the Unit

The Financial Intelligence Unit is established.

4 Administration and staff of the Unit

(1) The Unit is comprised of—

(a) a Director; and

(b) such other members of staff as may be necessary for the efficient operation of the Unit.

(2) The persons referred to in subsection (1) shall be responsible for the due administration and the performance of the Unit's functions under this Act or any other Act.

5 Functions of the Unit

(1) The functions of the Unit are to—

(a) receive, gather, store, analyse and disseminate information relating to suspected criminal property, potential money laundering and money laundering offences, potential terrorist financing and terrorist financing offences, potential proliferation financing and proliferation financing offences and potential cybercrime and cybercrime offences, including receiving, analysing and disseminating disclosures made under the Proceeds of Crime Act or any other enactment;

(b) conduct inquiries for purposes of gathering information under this Act, the Proceeds of Crime Act or any other enactment;

(c) request, access, exchange, receive, process, maintain, correlate, store, analyse, interpret and provide feedback on—

(i) information (including information from any foreign financial intelligence authority) disclosed

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to it, or obtained by it, for the purposes of this Act, the Proceeds of Crime Act or any other enactment;

- (ii) suspicious transaction reports and other reports made to or received by the Unit under this Act, or under any other enactment;
 - (iii) customs information regarding cross border monetary declarations;
 - (vi) trends and typologies for the combating of money laundering activities, terrorist financing, proliferation activities and cybercrime activities;
- (d) conduct operational analysis and strategic analysis of information received and held by the Unit; and
- (e) investigate potential money laundering and money laundering offences, potential terrorist financing and terrorist financing offences, potential proliferation financing and proliferation financing offences and potential cybercrime and cybercrime offences.

(2) Without limiting subsection (1), the Unit—

- (a) shall receive all disclosures of information, including information from a foreign financial intelligence authority, which—
 - (i) concern criminal property, money laundering, terrorism, terrorist financing, proliferation financing, cybercrime or suspected criminal property, suspected money laundering, suspected terrorism, suspected terrorist financing, suspected proliferation financing or suspected cybercrime; and
 - (ii) are relevant to its responsibilities as a financial intelligence agency;
- (b) may, by written notice, require any person to provide the Unit with information, other than information that is privileged material, for the purpose of clarifying or amplifying information disclosed to the Unit;

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- (c) shall receive requests for information from a foreign financial intelligence authority concerning criminal property, money laundering, terrorism, terrorist financing, proliferation financing or cybercrime or suspected criminal property, suspected money laundering, suspected terrorism, suspected terrorist financing, suspected proliferation financing or suspected cybercrime;
 - (d) may enter into such written agreements, arrangements or memoranda of understanding with domestic authorities or foreign financial intelligence authorities as the Unit considers necessary or desirable for the discharge or performance of the functions of the Unit including for the exchange of information;
 - (e) shall retain for a minimum period of seven years a written record of—

 - (i) all information received, requested or disseminated by the Unit; and
 - (ii) all agreements, arrangements or memoranda of understanding entered into under paragraph (c);
 - (f) may provide such feedback to persons who have disclosed information to the Unit as it considers appropriate;
 - (g) shall collect, compile and publish annually in such manner and form as the Unit determines, statistical information relating to disclosures made to the Unit and any dissemination of such disclosures by the Unit; and
 - (h) has such other functions as may be specified in this or any other Act.
- (3)** A member of staff of the Unit has the investigative, search, arrest and seizure powers of a police officer in accordance with section 24 of the Police Act (Cap. 10.01), to the extent necessary for the execution of his functions under this Act.

- (4) If a constable other than the Unit, or another police officer receives a terrorist financing disclosure, he shall immediately submit the disclosure to the Unit.
- (5) If, in an enactment relating to a financial offence, the jurisdiction of the Unit is not specifically excluded, the Unit shall have the authority to deal with the financial offence to the extent of the powers granted to it under that enactment.

6 Independence and autonomy of the Unit

The Unit is operationally independent and autonomous and—

- (a) is not subject to the direction or control of any other person or authority in the execution of its functions; and
- (b) may make arrangements or engage independently with other domestic authorities or agencies or foreign intelligence units on the exchange of information;

7 Assistance of experts

- (1) The Director may engage or co-opt a person with the required expertise to assist with the receiving, gathering, storing, analysing, investigating and disseminating information relating to—
 - (a) suspected criminal property;
 - (b) potential money laundering and money laundering offences;
 - (c) potential terrorist financing and terrorist financing offences;
 - (d) potential proliferation financing and proliferation financing offences; and
 - (e) potential cybercrime and cybercrime offences.
- (2) A person to whom this section applies must regard and deal with as secret and confidential all information that, by

reason of his engagement or assistance, comes into his possession.

8 Other investigatory powers not affected

The conferral of power of investigation on the Unit under section 5 shall not be construed as affecting the exercise of any investigatory powers conferred on a law enforcement agency in Montserrat or any other body or agency.

9 Power of the Unit to freeze funds or other valuable items

- (1) The Unit may, in the course of inquiring into a suspicious transaction relating to money laundering and money laundering offences, terrorist financing and terrorist financing offences, proliferation financing and proliferation financing offences, cybercrime and cybercrime offences or other financial offence, serve notice on a relevant financial institution in Montserrat, requiring it to freeze or not to make available any funds or other valuable items held by the financial institution to any person specified in the notice.
- (2) A notice served in terms of subsection (1) shall be in writing and may require the relevant financial institution to freeze or not make available funds or other valuable items held by the financial institution for a period of ten days.
- (3) In calculating the ten days specified in subsection (2), the following shall be excluded—
 - (a) a Saturday and a Sunday; and
 - (b) a day which is a public holiday under the Public Holidays Act (Cap. 6.09).
- (4) A financial institution which fails to comply with a notice made under this section commits an offence and is liable on conviction on indictment to a fine of \$500,000.
- (5) In this section, “**funds**” means money or any monetary or negotiable instrument deposited or held in an account or a safety deposit box.

**PART 3—APPOINTMENT AND FUNCTIONS OF
DIRECTOR**

10 Appointment of Director

- (1) The Governor shall, after consultation with the Supervisory Board, appoint a Director of the Unit, who shall report to the Governor.
- (2) The Director is the chief executive officer of the Unit.
- (3) The Governor shall cause the appointment, removal or resignation of the Director to be published by Notice in the *Gazette*.

11 Functions of Director

- (1) The Director is responsible for the administration and management of the Unit.
- (2) In administering and managing the Unit, the Director is responsible for—
 - (a) the day-to-day management of the affairs of the Unit;
 - (b) the discharge of the Unit’s functions and the exercise of its powers;
 - (c) doing anything or entering into any arrangement which, in the opinion of the Director, is incidental or conducive to the proper performance of his functions; and
 - (d) formulating and implementing management guidelines and policies and an annual plan approved by the Supervisory Board for the control and prevention of money laundering, terrorist financing, proliferation financing, cybercrime or other financial offence;
 - (e) collecting, compiling and publishing annually in such manner and form as approved by the Supervisory Board, statistical information relating to disclosures made to the Unit and any dissemination of such disclosures by the Unit; and

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(f) the discharge of such functions and exercise of such powers as may be assigned to, or conferred on him by this enactment or any other related enactment.

12 Reports

- (1) The Director shall prepare and submit to the Supervisory Board and the Governor quarterly reports on the performance of the functions of the Unit and in particular, on matters that may affect the public policy or the priorities of the Unit.
- (2) The Director shall within three months after the end of each financial year or within such longer period as the Governor may in special circumstances approve, cause to be made and transmitted to the Attorney General, the Supervisory Board and the Governor, an annual report dealing generally with the activities of the Unit during the preceding financial year.
- (3) The Attorney General shall cause a copy of the annual report under subsection (2) to be laid before the Legislative Assembly.
- (4) The Director shall not disclose in a report under this section—
 - (a) any information that would directly or indirectly identify a person who provided a report to the Unit or a person about whom a report was provided under this Act; or
 - (b) any information in the possession of the Unit, received in the conduct of its duties under this Act.
- (5) For the purposes of this section, “**financial year**” means a period of twelve months ending on 31 March.

PART 4—FINANCIAL INTELLIGENCE SUPERVISORY BOARD

13 Establishment of Financial Intelligence Supervisory Board

There is established a Financial Intelligence Supervisory Board.

14 Membership of the Supervisory Board

(1) The membership of the Supervisory Board is as follows—

(a) as *ex officio* members—

- (i) the Commissioner of the Financial Services Commission, who is the Chairperson;
- (ii) the representative of the Attorney General;
- (iii) the Financial Secretary;
- (iv) the Commissioner of Police;
- (v) the Chief Immigration Officer;
- (vi) the Director General of the Montserrat Customs and Revenue Services; and

(b) one other member with expertise and experience in law enforcement, financial service or financial regulation, as the Governor may appoint.

(2) A member of the Supervisory Board under subsection (1)(b) holds office for two years and is eligible for reappointment.

(3) A member of the Supervisory Board under subsection (1)(b) may be paid such allowance as the Governor acting on the advice of Cabinet may approve.

15 Functions of the Supervisory Board

(1) The Supervisory Board is the coordination agency for financial intelligence in Montserrat.

(2) Without limiting the generality of subsection (1), the Supervisory Board shall be responsible for—

(a) guiding the Director on the operation of the Unit;

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- (b) formulating policy advice for the Government on the collection and analysis of financial intelligence;
- (c) advising on the risks of money laundering, terrorist financing, proliferation financing and cybercrime to the effective operation of Montserrat's financial system;
- (d) providing support and advice to the Governor and the Government to ensure the Government's compliance with standards of best practice in combatting money laundering, terrorist financing, proliferation financing and cybercrime; and
- (e) undertaking such responsibilities and functions as are assigned to it under the Proceeds of Crime Act or under any other enactment.

16 Disqualification, removal and resignation of members

- (1) A person shall not be appointed as a member of the Supervisory Board under section 14(1)(b) who—
 - (a) has in terms of any law in force in any country or in Montserrat—
 - (i) been adjudged or otherwise declared bankrupt or insolvent and has not been rehabilitated or discharged; or
 - (ii) made an assignment, arrangement or composition with his creditors, which has not been rescinded or set aside;
 - (b) within a period of ten years immediately preceding the date of his proposed appointment, has been convicted—
 - (i) in Montserrat, of a criminal offence; or
 - (ii) outside Montserrat, of an offence which if committed in Montserrat, would have been a criminal offence,and sentenced by a court of competent jurisdiction to six months' imprisonment or more without the option

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- of a fine, whether that sentence has been suspended or not, and for which he has not received a free pardon;
- (c) is an elected member of the Legislative Assembly; or
 - (d) is certified as being mentally ill or of unsound mind.
- (2) The Governor may by notice in writing revoke the appointment of a member under section 14(1)(b)—
- (a) in the event of the occurrence of anything which would render the member ineligible for appointment, under subsection (1);
 - (b) if the member is absent, without leave from the Chairperson, from three consecutive meetings of which he has been given notice;
 - (c) if the member contravenes the provisions of this Act or otherwise misconducts himself to the detriment of the objectives of the Supervisory Board or of the public interest;
 - (d) where the member fails to comply with sections 21 and 23; or
 - (e) if the Governor thinks it is expedient to do so.
- (3) A member appointed under section 14(1)(b) may at any time resign his office by notice in writing to the Governor and transmitted through the Chairperson and from the date of receipt of the instrument by the Governor, that person ceases to be a member.
- (4) For purposes of subsection (2)(c), “**misconduct**” includes any act done without reasonable excuse by a member which—
- (a) amounts to failure to perform in a proper manner any duty imposed on the member;
 - (b) is prejudicial to the efficient conduct of the Supervisory Board; or
 - (c) tends to bring the Supervisory Board into disrepute.

17 Vacancy in membership

The office of a member appointed under section 14(1)(b) becomes vacant—

- (a) in the event of the occurrence of anything which would render a member ineligible for appointment as member, under section 16(1);
- (b) upon the death of a member;
- (c) if the appointment of a member is revoked under section 16(2); or
- (d) upon delivery of written resignation by a member under section 16(3).

18 Filling of vacancy

- (1) Where the Governor is satisfied that a member under section 14(1)(b) is temporarily incapacitated by illness, absence or other cause from satisfactorily performing the duties of his office, the Governor may appoint another person to act temporarily in his place for a period not exceeding six months, or as the Governor may specify.
- (2) On the death of or vacating of office by a member under section 14(1)(b), the Governor shall appoint another person to be a member in place of the member who vacates office, for the remaining period of office of the deceased or vacating member.
- (3) Subsection (2) shall not apply where the remainder of the period for which the member whose office has been vacated is less than six months.

19 Publication of change in membership of Board

The Governor shall cause the appointment, resignation, removal from office or death of a member to be published by Notice in the *Gazette*.

**PART 5—MEETINGS AND PROCEEDINGS OF THE
SUPERVISORY BOARD**

20 Procedures and meetings

- (1) Subject to this Act, the Supervisory Board shall regulate its own procedure.
- (2) The Supervisory Board shall meet as often as is necessary or expedient for the discharge of its functions, but in any case, at least four times a year, and the meetings shall be held virtually or in person at a place, day and time as the Chairperson may determine.
- (3) An *ex-officio* member of the Supervisory Board shall give priority to attendance at meetings of the Supervisory Board, but an *ex-officio* member may appoint his deputy or, in the absence of his deputy, a member of his staff of suitable seniority, to act as his alternate and to attend meetings of the Supervisory Board in his place.
- (4) The Chairperson may convene a meeting of the Supervisory Board by giving not less than fourteen days' written notice, but may call a meeting by giving shorter notice where the urgency of any matter does not require the giving of fourteen days' written notice.
- (5) Four members of the Supervisory Board constitute a quorum of the Supervisory Board.
- (6) The Chairperson shall preside at meetings of the Supervisory Board and in his absence from a meeting, a member elected by the members present at the meeting shall preside at the meeting.
- (7) A decision of the Supervisory Board at a meeting is passed by a majority of votes of the members present and voting.
- (8) In the event of an equal division of the votes at a meeting, the Chairperson or other member presiding at the meeting shall cast a deciding vote in addition to his original vote.
- (9) The Supervisory Board shall keep the minutes of a meeting in a proper form, and shall confirm the minutes as soon as practicable at a subsequent meeting.

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(10) The Supervisory Board may, in its discretion, invite a person to attend a meeting of the Supervisory Board to assist or advise at any deliberation of the Supervisory Board, but that person shall not form part of the quorum and is not entitled to vote.

21 Disclosure of interest

- (1) Where a member is present at a meeting of the Supervisory Board at which a matter which is the subject of consideration is one in which the member has a pecuniary interest, the member shall as soon as practicable after the commencement of the meeting and before the matter is discussed, disclose his interest and shall not, unless the Supervisory Board otherwise directs, be present for any consideration or discussion of any question touching on the matter.
- (2) Where a member has disclosed his interest in a matter and the Supervisory Board allows the member to take part in any consideration or discussion on the matter, the member shall not vote on the matter.
- (3) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it was made.
- (4) If a member fails to disclose his interest under subsection (1) and a decision by the Supervisory Board is made benefiting the member, such decision shall be null and void to the extent to which it benefits that member.

22 Pecuniary interest

- (1) For the purposes of section 21, a member shall be treated as having an indirect pecuniary interest in a contract, proposed contract, licence or other matter if—
 - (a) the member or any nominee of his is a member of a company or other body which has a direct or indirect pecuniary interest in the contract, proposed contract, licence or other matter under consideration;

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- (b)* the member is a partner, or in the employment of a person with whom the contract was made or is proposed to be made, or who has a direct or indirect pecuniary interest in a contract, proposed contract, licence or other matter under consideration;
 - (c)* the member or any partner of his is a professional adviser to a person who has a direct or indirect pecuniary interest in a contract, proposed contract, licence or other matter under consideration; or
 - (d)* the member's spouse, partner or child has a direct or indirect pecuniary interest in a contract, proposed contract, licence or other matter under consideration.
- (2) Subsection (1) does not apply to membership of, or employment by, any public body.

23 Confidentiality

- (1) A member of the Supervisory Board or any person assisting the Supervisory Board shall observe and preserve the confidentiality of all matters coming before the Board and such confidentiality shall subsist even after the termination of the term of office or the mandate.
- (2) A member or person to whom confidential information is revealed through working with the Supervisory Board shall not disclose that information to any person, unless he is required or permitted to do so in terms of any law or for purposes of any judicial proceedings.
- (3) A member of the Supervisory Board shall take the oath or affirmation in the form set out in Part B of Schedule 1 before undertaking the functions of the Supervisory Board.
- (4) A member or person who contravenes this section commits an offence and is liable—
 - (a)* on summary conviction, to a fine of \$20,000 or to twelve months' imprisonment or to both; or
 - (b)* on conviction on indictment, to a fine of \$100,000 or to five years' imprisonment or to both.

24 Validity of decisions

The validity of any act or proceedings of the Supervisory Board shall not be affected by—

- (a) a vacancy among its members;
- (b) a defect in the appointment of a member; or
- (c) by failure of a member to disclose his interest in under section 21.

25 Secretary and Deputy Secretary to the Board

(1) The Governor shall appoint a—

- (a) Secretary of the Supervisory Board; and
- (b) Deputy Secretary of the Supervisory Board, who shall undertake the functions of the Secretary under subsection (2), if the Secretary is unable to undertake his functions.

(2) The Secretary shall—

- (a) attend meetings of the Supervisory Board;
- (b) record the minutes of each meeting in proper form; and
- (c) perform any other duty connected with the work of the Supervisory Board.

(3) The Secretary and Deputy Secretary shall take the oath or affirmation in the form set out in Part C of Schedule 1 before assuming duties under this Act.

(4) A Secretary or Deputy Secretary who is not a public officer may be paid such remuneration as may be approved by the Governor acting on the advice of Cabinet.

26 Civil liability

No civil liability shall attach to any member of the Supervisory Board under section 18 in respect of anything done, or omitted, in good faith under this Act.

**PART 6—DISCLOSURE OF INFORMATION BY AND TO
THE FINANCIAL INTELLIGENCE UNIT**

27 Obtaining information

- (1) The Unit may in the course of inquiring into a suspicious transaction relating to money laundering or money laundering offences, terrorist financing or terrorist financing offences, proliferation financing or proliferation financing offences, cybercrime or cybercrime offences or any other financial offence, serve notice in writing on any person, requiring the person to provide the Unit, upon such time as the Unit may require—
 - (a) with such information as is reasonably required for the purposes of the inquiry; or
 - (b) such other financial information as is required or permitted by any enactment for purposes of combating money laundering, terrorist financing, proliferation financing or cybercrime.
- (2) A person who is required to provide information by notice served under subsection (1) shall provide such information to the Unit in the manner and time required by the Unit.
- (3) A person who without reasonable excuse fails to comply with a requirement imposed on him under this section commits an offence and is liable on—
 - (a) summary conviction, to a fine of \$30,000 or to two years' imprisonment or to both; or
 - (b) conviction on indictment, to a fine of \$200,000 or to five years' imprisonment or to both.
- (4) Nothing in this section requires disclosure of any information which is privileged material.

28 Obligation of secrecy and oath

- (1) A member of staff of the Unit or person having an official duty or employed in the administration of this Act shall—
 - (a) regard and deal with as secret and confidential all information relating to the functions of the Unit; and

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- (b)* on assuming official duty or employment, take an oath or affirmation in the form set out in Part A of Schedule 1.
- (2)** A former member of staff of the Unit or person who formerly had an official duty or was formerly employed in the administration of this Act shall regard and deal with as secret and confidential, all information, relating to the functions of the Unit.
- (3)** A person who obtains or receives information in any form as a result of his connection with the Unit or a person to whom information is communicated for the purposes of this Act and in accordance with this Act, shall regard and deal with the information as secret and confidential.
- (4)** Subsection (3) does not apply to information which—
 - (a)* at the time of disclosure is or has already been made available to the public from other sources; or
 - (b)* is in the form of a summary or collection of information framed to enable information relating to any particular person to be ascertained from it.
- (5)** Despite this section, a person may disclose documents or other information where the disclosure is required or permitted—
 - (a)* by this Act or any other enactment;
 - (b)* by an order of the Court; or
 - (c)* in accordance with an agreement or arrangement entered into for the exchange or disclosure of information under this Act.
- (6)** A person who wilfully discloses information to any person in contravention of this subsection is subject to—
 - (a)* in the case of a member of staff of the Unit, dismissal from the Unit; and
 - (b)* in all cases, is liable—
 - (i)* on summary conviction to a fine of \$50,000 or to two years' imprisonment or to both; or

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(ii) on conviction on indictment, to a fine of \$200,000 or to five years' imprisonment or to both.

(7) For the purposes of this section, “**information**” includes information from which a person can be identified and which is acquired by the Unit in the course of carrying out its functions.

29 Unauthorised disclosure

A person who discloses the fact that a suspicious transaction report or any other report has been filed with the Unit or that an investigation has commenced, otherwise than in the proper exercise of his duties, commits an offence and is liable—

(a) on summary conviction to a fine of \$100,000 or to twelve months' imprisonment or to both; or

(b) on conviction on indictment to a fine of \$250,000 or to five years' imprisonment or to both.

30 Permitted disclosure

(1) The Unit shall disclose, spontaneously and upon request, using dedicated, secure and protected channels for the disclosure, the results of its analysis and the information referred to in section 5(1) to—

(a) the Royal Montserrat Police Service;

(b) any law enforcement authority, including a foreign law enforcement authority; and

(c) a foreign financial intelligence authority.

(2) The Unit may disclose, spontaneously and upon request, using dedicated, secure and protected channels for the disclosure, any information obtained by it in connection with the exercise of its functions, if the disclosure is for the purpose of enabling or assisting—

(a) the Unit to discharge its functions under section 5(2)(c);

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- (b)* the Attorney General;
 - (c)* the Director of Public Prosecutions;
 - (d)* the Royal Montserrat Police Service;
 - (e)* the Immigration Department or the Integrated Border Security Unit; or
 - (f)* the Montserrat Customs and Revenue Services.
- (3)** Information disclosed by the Unit to any person or body under subsection (1) or (2) shall not be further disclosed except—
- (a)* for a purpose connected with any function of that person or body for the purposes of which the information was disclosed by the Financial Intelligence Unit; or
 - (b)* with the consent of the Unit.
- (4)** Consent given under subsection (3) may be given—
- (a)* in relation to a particular disclosure; and
 - (b)* in relation to a disclosure made in circumstances specified in the consent.
- (5)** The Unit, having regard to the purpose for which the disclosure is to be made and the interests of third parties, may, subject to such conditions as it may impose, including as to further disclosure, disclose to a foreign financial intelligence unit information disclosed to it, in order to—
- (a)* report the possible commission of an offence;
 - (b)* initiate a criminal investigation respecting the matter disclosed;
 - (c)* assist with any investigation or criminal proceedings respecting the matter disclosed; or
 - (d)* generally, give effect to the purposes of this Act.

31 Unit may refer matter for investigation

- (1) After the Unit has concluded its analysis or evaluation of a suspicious transaction report or any other report and the Director is of the view that the circumstances warrant investigation, the Unit may—
 - (a) proceed to investigate a money laundering offence, terrorist financing offence, proliferation financing offence or cybercrime offence;
 - (b) submit a report to the relevant law enforcement authority for investigation of the possible commission of an offence; or
 - (c) submit a report to a foreign financial intelligence authority to assist the foreign financial intelligence authority with any investigation in respect of the possible commission of a money laundering offence, terrorist financing offence, proliferation financing offence or cybercrime offence.
- (2) A department or agency of government to which a report is submitted under subsection (1) shall take the appropriate action.

32 No criminal or civil liability for reporting information to the Unit

- (1) No proceedings for breach of confidentiality may be instituted against a person who in good faith transmits or submits suspicious transactions reports or other reports to the Unit in accordance with this Act.
- (2) No civil or criminal liability action may be brought nor may any professional sanction be taken against a person for breach of a restriction on disclosure, who in good faith transmits information or submits reports to the Unit.

33 National and international cooperation

The Unit may, in connection with the exercise of its functions, enter into an arrangement for cooperation with bodies or persons in Montserrat, a foreign financial

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intelligence authority or foreign law enforcement authority, which it considers appropriate.

34 Disclosure of information to the Unit

- (1) A person may disclose information to the Unit, if the disclosure is made for the discharge of the Unit's functions under this Act.
- (2) A disclosure made under subsection (1) shall not be considered to breach—
 - (a) any obligation of confidence owed by the person making the disclosure; or
 - (b) any other restriction of disclosure of information, however that restriction has been imposed.
- (3) Nothing in this section shall require disclosure of any information which is privileged material.

35 Offence by body corporate, etc.

- (1) Where an offence under this Act is committed by a limited liability partnership or body corporate and it is proved to have been committed with the consent or connivance of—
 - (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or
 - (b) a person purporting to act in any such capacity,
the person also commits the offence and is liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to acts and defaults of a member in connection with his functions of management as if the member were a director of the body corporate.
- (3) For the purposes of this section, a person is deemed to be a director of a body corporate if he occupies in relation to that body corporate, the position of a manager, by

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whatever name called, or is a person in accordance with whose directions or instructions, not being directions or instructions in a professional capacity only, the directors and the body corporate or any of them, act.

36 Secrecy obligations overridden

- (1) Despite any other law pertaining to any obligation as to secrecy or other restriction on disclosure of information, the power of the Unit to request, collect, disseminate or exchange information under this Act shall prevail.
- (2) It is lawful for any person to make a disclosure in compliance with this Act.

PART 7—MISCELLANEOUS

37 Indemnity

No matter or thing done or omitted to be done by a member, officer or employee of the Unit shall, if the matter or thing is done or omitted to be done in good faith and without negligence, in the course of the operations of the Unit, render a member of staff, officer or employee of the Unit or any person acting by his direction, personally liable to an action, suit, prosecution, claim or demand.

38 Offences and penalties

- (1) A person who, without reasonable excuse, fails to comply with a notice issued by the Unit under section 5(2)(b) commits an offence and is liable—
 - (a) on summary conviction, to a fine of \$10,000; or
 - (b) on conviction on indictment, to two years' imprisonment or a fine of \$50,000 or to both.
- (2) A person commits an offence if that person—
 - (a) wilfully delays, threatens, assaults or obstructs an officer or employee of the Unit acting in the execution

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of his duties or powers under this Act or any other Act;

- (b) without reasonable excuse, refuses or neglects to furnish any information, when required do so by an officer or employee of the Unit acting in the execution of his duties or powers under this Act or any other Act;
 - (c) knowingly makes any false declaration or false statement of a material nature in relation to any information provided under this Act; or
 - (d) in purported compliance with a requirement imposed on him under this Act, provides information which he knows to be false or misleading in a material particular, or recklessly provides information which is false or misleading in a material particular.
- (3) A person who commits an offence under subsection (2) is liable on summary conviction, to a fine of \$50,000 or to one year imprisonment or to both.
- (4) If an offence committed by a body corporate is proved—
- (a) to have been committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in such capacity; or
 - (b) to be attributable to the failure of a person under paragraph (a) to exercise all reasonable diligence as he ought in the circumstances to have exercised to prevent the offence, having regard to the nature of his powers and all the circumstances,
- the director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in such capacity also commits the offence and is liable to the punishment provided for the offence.
- (5) For the purposes of this section, a person shall be deemed to be a director of a body corporate if he—

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- (a) occupies in relation to that body corporate, the position of a manager, by whatever name called; or
- (b) is a person in accordance with whose directions or instructions the directors and the body corporate or any of them act, such directions or instructions not being directions or instructions in a professional capacity only.

39 Regulations

The Governor acting on the advice of Cabinet may make regulations prescribing anything under this Act which is to be prescribed or which is necessary or convenient to be prescribed for the better carrying out of the objects and purposes of this Act.

40 Consequential amendments

The Acts listed in the Column 2 of Schedule 2 are amended to the extent set out in the Column 3.

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SCHEDULE 1

(Sections 24, 26 and 29)

Part A

**OATH OF MEMBER OF STAFF OF THE FINANCIAL
INTELLIGENCE UNIT**

I, *(name of person)*, having been appointed *(title of post)* do swear that—

- (a) I will faithfully, honestly and impartially perform the functions assigned to me under the Financial Intelligence Unit Act;
- (b) I will regard and deal with as secret and confidential all information, relating to the functions of the Unit and I will not at any time divulge in any manner such information save as authorised by the Financial Intelligence Unit Act.

So help me God.

SWORN before the Governor)

at the Governor's Office,) _____

Brades, Montserrat,) *(Name of person)*

this day of 20)

Before me:-

.....

Governor

**AFFIRMATION OF MEMBER OF STAFF OF THE
FINANCIAL INTELLIGENCE UNIT**

I, *(name of person)*, having been appointed *(title of post)* do solemnly and sincerely affirm and declare that—

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- (a) I will faithfully, honestly and impartially perform the functions assigned to me under the Financial Intelligence Unit Act;
- (b) I will regard and deal with as secret and confidential all information, relating to the functions of the Unit and I will not at any time divulge in any manner such information save as authorised by the Financial Intelligence Unit Act.

AFFIRMED before the Governor)
at the Governor's Office,) _____
Brades, Montserrat,) (*Name of person*)
this day of 20)

Before me:-

.....
Governor

Part B

**OATH OF MEMBER OF THE FINANCIAL INTELLIGENCE
SUPERVISORY BOARD**

I (*name of person*) having been appointed Chairman/a member of the Financial Intelligence Supervisory Board do swear that I will faithfully, honestly and impartially execute the functions of that office and that I will not directly or indirectly divulge any information which comes to my knowledge in connection with the work of the Financial Intelligence Supervisory Board, save as authorised by the Financial Intelligence Unit Act.

So help me God.

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Part C

**OATH OF SECRETARY/DEPUTY SECRETARY OF THE
FINANCIAL INTELLIGENCE SUPERVISORY BOARD**

I *name of person*), having been appointed as Secretary/Deputy Secretary of the Financial Intelligence Supervisory Board do swear that I will not directly or indirectly divulge any information which comes to my knowledge in connection with the work of the Financial Intelligence Supervisory Board.

So help me God.

SWORN before the Governor)
at the Governor's Office,) _____
Brades, Montserrat,) (*Name of person*)
this day of 20)

Before me:-

.....
Governor

**AFFIRMATION OF SECRETARY/DEPUTY SECRETARY
OF THE FINANCIAL INTELLIGENCE SUPERVISORY
BOARD**

I *name of person*), having been appointed as Secretary/Deputy Secretary of the Financial Intelligence Supervisory Board do solemnly and sincerely declare and affirm that I will not directly or indirectly divulge any information which comes to my knowledge in connection with the work of the Financial Intelligence Supervisory Board.

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AFFIRMED before the Governor)
 at the Governor’s Office,) _____
 Brades, Montserrat,) *(Name of person)*
 this day of 20)

Before me:-

.....
 Governor

SCHEDULE 2
(Section 41)

CONSEQUENTIAL AMENDMENTS

Column 1	Column 2	Column 3
No.	Act	Amendment
1.	Customs (Management and Control) Act (Cap. 17.04)	Section 2: delete the definition of “Financial Services Commission”
		Section 27(2): delete “Financial Services Commission” and substitute “Financial Intelligence Unit”
2.	Financial Services Commission Act (Cap. 11.02)	Section 48: delete paragraph (f) and substitute the following— “(f) to the Financial Intelligence Unit established under the Financial Intelligence Unit Act; or”

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3.	Proceeds of Crime Act (Cap. 4.04)	Section 2: delete definition of “Reporting Authority”
		Section 2: insert the following definition of “Financial Intelligence Supervisory Board” in the correct alphabetical sequence— “Financial Intelligence Supervisory Board” means the Financial Intelligence Supervisory Board established under section 13 of the Financial Intelligence Unit Act (Cap. ___);”
		Section 2: delete subsection (4) and substitute the following— “(4) The definition of “constable” under section 3(1) of the Anti- Terrorist (Financial and Other Measures) (Overseas Territories) Order 2002 (S.I. 2002/1822) shall be construed under this Act to include the Financial Intelligence Unit.”
		Section 112 – 115: replace “Reporting Authority” with “Financial Intelligence Supervisory Board”
		Section 117: replace “Reporting Authority” with “Financial Intelligence Unit”
		Section 122 to 127: replace “Reporting Authority” with “Financial Intelligence Unit”
		Section 127: delete paragraph (c)
		Delete sections 128, 129, 130, 131, 132 and 133
		Section 171(2): replace “Reporting Authority” with “Financial Intelligence Unit”
		Section 183(2)(d)(ii): replace “Reporting Authority” with “Financial Intelligence Unit”

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		Schedule 4: paragraph 5 is deleted
4.	Anti- Money Laundering and Terrorist Financing Regulations (Cap. 4.04)	Regulation 6(6)(a): replace “Reporting Authority” with “Financial Intelligence Unit”
		Regulation 14(2): replace “Reporting Authority” with “Financial Intelligence Unit”
		Regulation 17(1)(b): replace “Reporting Authority” with “Financial Intelligence Unit”
5.	Anti- Money Laundering and Terrorist Financing Code (Cap. 4.04)	Paragraph 34(1)(f): replace “Reporting Authority” with “Financial Intelligence Unit”
		Paragraph 36(c): replace “Reporting Authority” with “Financial Intelligence Unit”
		Paragraph 37: replace “Reporting Authority” with “Financial Intelligence Unit”
		Paragraph 42: replace “Reporting Authority” with “Financial Intelligence Unit”
		Paragraph 53(5): replace “Reporting Authority” with “Financial Intelligence Unit”

(Sgd.) Charliena White
SPEAKER

Passed by the Legislative Assembly this 24th day of October, 2023.

(Sgd.) Judith Baker
CLERK OF THE LEGISLATIVE ASSEMBLY