

Decree Law No. (4) of 2001 With Respect to the Prevention and Prohibition of the Laundering of Money

We, Hamad bin Isa Al-Khalifa, Amir of the State of Bahrain

Having reviewed the Constitution,

And Amiri Order No. 4 of 1975,

And the Criminal Procedure Code of 1966, as amended,

And the Bahrain Monetary Agency Law promulgated by Decree Law No. 23 of 1973, as amended,

And the Commercial Companies Law promulgated by Decree Law No. 28 of 1975, as amended,

And the Penal Code promulgated by Decree Law No. 15 of 1976, as amended,

And the Bahrain Stock Exchange Law promulgated by Decree Law No. 4 of 1987,

And the Law of Commerce promulgated by Decree Law No. 7 of 1987, as amended,

And the Insurance Companies and Organisations Law promulgated by Decree Law No. 17 of 1987, as amended by Decree Law No. 35 of 1996,

And Decree No. 17 of 1989 on the Ratification of United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988,

And Decree No. 9 of 1995 on the Ratification of the Arab Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,

And upon the submission of the Minister of Justice and Islamic Affairs and the Minister of Finance & National Economy, and

After the approval of the Council of Ministers,

Hereby Decree the following Law:

Article 1

DEFINITIONS

In this Law, unless the context otherwise requires:

“Court” means the High Criminal Court

“criminal activity” means any activity which is a crime whether in the State of Bahrain or in any other State

“Enforcement Unit” means the Unit empowered to implement the provisions of this Law as defined in paragraph 4 of Article 4

“institution” means any natural person, body corporate or other entity constituted or recognised under the laws of Bahrain whose occupation or business includes the carrying out of any of the activities listed in the Schedule to this Law

“relevant entities” means Ministries and Government entities which licence, supervise and regulate institutions

“proceeds of crime” means property which is derived directly or indirectly, in whole or in part, from any criminal activity

“property” means property of every kind, nature and description, whether movable or immovable, tangible or intangible and shall, for instance, include:

(a) any currency, national or foreign, bills, securities, bonds, negotiable instruments or any instrument capable of being negotiable including those payable to bearer or endorsed payable to bearer;

(b) cash or currency deposits or accounts with any bank, credit or other financial institutions;

(c) works of art, jewellery, precious metals and other items of value;

(d) land, property and any rights attached thereto; and

(e) any thing or object, used in money laundering

“transaction” means any disposition of property including but not limited to purchase, sale, loan, pledge, gift, transfer, delivery, deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or use of a safe deposit box

“transaction record” includes:

(a) the identification records of persons who are a party to that transaction;

(b) details of the transaction including institutions which conducted it;

(c) details of any account used for the transaction

Article 2

OFFENCE OF MONEY LAUNDERING

2.1 Any person who commits any of the following acts for the purpose of showing that the source of the property is lawful shall have committed the offence of money laundering:

(a) conducting a transaction with the proceeds of crime knowing or believing

or having reason to know or believe, that such property is derived from criminal activity or from an act of participation in criminal activity;

(b) the concealment or disguise of the nature, source, location, disposition, movement, rights with respect of, in or over, or ownership of the proceeds of crime, knowing or believing, or having reason to know or believe, that such proceeds of crime are derived from criminal activity or from an act of participation in criminal activity;

(c) the acquisition or receipt or transfer of the proceeds of crime, knowing or believing, or having reason to know or believe, that the same was derived from criminal activity or from an act of participation in criminal activity;

(d) the retention or possession of the proceeds of crime knowing or believing, or having reason to know or believe, that the same was derived from criminal activity or from an act of participation in criminal activity.

2.2 Any of the following acts shall be deemed to be an act of participation in the offence of money laundering:

(a) destruction, misappropriation, concealment or forgery of any document which could be used as evidence in the offence or against the accused;

(b) knowledge of the intent of any person who commits the offence, and provision of any facilities or information which may assist such person to conceal the offence or escape from prosecution.

2.3 A person can be punished for the offence of money laundering under this Law even if he is not convicted in the underlying criminal activity. In this context, "underlying criminal activity" refers to criminal activity from which the property which is involved in a money laundering offence has been directly or indirectly derived.

2.4 A person can be separately charged and convicted of both a money laundering offence under this Law and of an offence constituted by an underlying criminal activity from which the property or the proceeds, in respect of which he is charged with money laundering, were derived.

2.5 Where an offence of money laundering is committed by a corporate body, every person who, at the time of the commission of the offence, acted in an official capacity for or on behalf of such body, shall be guilty of that offence if the offence was committed by the intentional conduct or gross negligence of such person.

2.6 OFFENCES RELATED TO THE OFFENCE OF MONEY LAUNDERING

A person who commits any of the following acts shall have committed an offence related to money laundering:

- (a) failure to disclose to the Enforcement Unit any information or suspicion acquired in the course of that person's trade, business, profession, employment or otherwise regarding the offence of money laundering;
- (b) failure or refusal to follow or obstruction or hindering of any order issued by the Enforcement Unit or issued at its request by the Investigation Magistrate pursuant to investigation of the offence of money laundering;
- (c) disclosure of any information or suspicion acquired in the course of that person's, trade, business, profession, employment or otherwise regarding the issue of an investigation order or attachment order in a money laundering offence, where such disclosure is likely to prejudice the investigation.

Article 3

PUNISHMENTS

3.1 Any person committing, attempting or participating in a money laundering offence shall be liable to imprisonment for a period not exceeding seven (7) years and a fine not exceeding Bahrain Dinars One Million (BD 1,000,000/-).

The punishment shall be imprisonment for a period of not less than five (5) years and fine of not less than Bahrain Dinars One Hundred Thousand (BD 100,000/-) in any of the following cases:

- (a) the accused has committed the offence through an organised criminal gang;
- (b) the accused has committed the offence by using his power or influence through an institution;
- (c) the accused has committed the offence for the purpose of disguising the source of the proceeds which are derived from criminal activity to appear as of a lawful source.

3.2 Without prejudice to the rights of bona fide third parties a person convicted of the offence of money laundering shall in addition to the punishment prescribed, be liable to confiscation of property which is the subject matter of the offence, or any other property owned by him or by his spouse or his minor children, equivalent in value to the property which is subject matter of the offence.

The Court shall order the confiscation of such property on the extinction of the criminal proceedings due to the death of the accused provided that his heirs are unable to establish the lawful source thereof.

3.3 In cases where the offence of money laundering is committed by a

corporate body and notwithstanding the liability of any natural person, the corporate body shall be liable to the punishment of a fine prescribed in this Law in addition to confiscation of the property which is the subject matter of the offence.

3.4 Any person who commits any of the offences related to money laundering shall be liable to imprisonment for a period not exceeding two (2) years and/or a fine not exceeding Bahrain Dinars Fifty Thousand (BD 50,000/-) or both.

3.5 Any person who contravenes the provisions of Regulations and Ministerial Regulations issued under this Law shall be liable to imprisonment for a period not exceeding three (3) months or a fine not exceeding Bahrain Dinars Twenty Thousand (BD 20,000/-) or both.

3.6 The provisions relating to extinction of criminal proceedings and prescription and limitation of punishments under the Code of Criminal Procedure or any other Law, shall not affect the punishments prescribed under this Law.

3.7 Any of the accused who reports a money laundering offence to the Enforcement Unit before such offence is known to the Enforcement Unit shall be exempted from the punishment prescribed under this Law.

Where the accused reports the offence after it is known to the Enforcement Unit, his report shall lead to arrest or the other accused persons and attachment of property.

Article 4

THE POLICY COMMITTEE FOR THE PREVENTION AND PROHIBITION OF MONEY LAUNDERING

4.1 The Minister of Finance and National Economy shall in co-ordination with the relevant entities appoint a policy committee for the prevention and prohibition of money laundering.

4.2 The Committee shall in particular exercise the following powers:

(a) formulate policies and procedures to regulate the business of the Committee;

(b) establish general policies with regard to the prevention and prohibition of money laundering;

(c) in co-ordination with the relevant entities, issue guidelines on the reporting of suspicious transactions;

(d) study regional and international developments in the field of money laundering for the purpose of recommending updates to the guidelines and changes to the Law when necessary;

(e) co-ordinate with the relevant entities for the implementation of the United Nations Convention and the Arab Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

4.3 The Committee in discharging its functions, may seek the assistance of such entities as it may determine necessary.

4.4 The Minister of Interior shall appoint the Enforcement Unit, which shall have the following powers:

(a) receipt of reports on money laundering offences and related offences;

(b) conducting investigations and compiling evidence in money laundering offences and related offences;

(c) implementing procedures relating to international co-operation under the provisions of this Law;

(d) execution of decisions, orders and decrees issued by the competent courts in money laundering offences and related offences.

4.5 The relevant entities shall in co-ordination with the Enforcement Unit issue instructions on procedures to prevent and prohibit money laundering including the following:

(a) regular reports from institutions on suspicious transactions;

(b) institutions reporting on suspicious transactions;

(c) institutions establishing the identity of the customers and the beneficiaries of customers and verification of that identity;

(d) internal reporting requirements of institutions.

4.6 Public Prosecution shall be responsible for conducting proceedings relating to money laundering offences and related offences before the Courts.

Article 5

INSTITUTIONS

An institution shall:

(a) keep for a period of five (5) years after the relationship has ended a copy of the evidence of identity of each client as may be provided for in the regulations made pursuant to this Law;

- (b) keep a transaction record of any new or unrelated transaction for a period of five (5) years after the termination of the transaction so recorded;
- (c) report to the Enforcement Unit and the relevant entities any transactions suspected by the relevant officer by reason of the identity of the persons involved, the nature of the transaction or any other circumstances;
- (d) provide the Enforcement Unit with such further information or assistance as the Enforcement Unit may request;
- (e) comply with the instructions of the relevant entities regarding developing and applying internal policies, procedures and controls including the designation of compliance officers at management level to combat money laundering and develop audit functions to evaluate such policies, procedures and controls;
- (f) co-operate with any Government entity including the Enforcement Unit;
- (g) develop and apply a procedure to audit compliance with the provisions of this Article;
- (h) not open or keep any secret, fictitious, or anonymous accounts.

Article 6

INVESTIGATIONS PROCEDURE

6.1 Where the Enforcement Unit has evidence that a person has committed or attempted or participated in committing a money laundering offence, it may obtain an order issued by the Investigation Magistrate authorising any of the following actions:

(a) requiring the accused or any other natural or corporate person to deliver up any documents or records or papers or to provide any information which is requisite for the investigation;

(b) entry into public or private premises for the attachment of any documents, records, papers or objects which are requisite for the investigation;

(c) attachment and freezing of any property which is subject to confiscation in accordance with the provisions of this Law;

(d) prohibition of the transfer of such property.

6.2 The Enforcement Unit may order the attachment of the property related to the offence in order to prevent its disposal, provided that the Investigation Magistrate shall be notified within three (3) days of the issue of the said order.

Any interested party may appeal to the competent Court from any order issued pursuant to the preceding paragraph within fifteen (15) days of the date of issue of the order.

The ruling of the Court in the appeal shall be final until the criminal case is adjudged or disposed of.

Article 7

SECRECY OF ACCOUNTS AND RECORDS

On the coming into force of the provisions of this Law, no institution can plead before the Investigation Magistrate or the competent Court, secrecy or confidentiality in respect of accounts, identification of customers or record keeping provided under the provisions of any Law.

Article 8

REQUEST OF ASSISTANCE FROM FOREIGN STATES

8.1 Where a foreign State makes a request for specific information relating to suspicious transactions, persons and corporations involved in those transactions or the investigation or prosecution of a money laundering offence, the Enforcement Unit shall execute the request or inform the foreign State making the request of any reason for not executing the request forthwith or of any delay in the execution of the request.

8.2 The Enforcement Unit, in response to a request from a foreign State, may obtain from the Investigation Magistrate an order for the following:

- (a) a warrant to search any premises or persons for attachment of any document, material or thing;
- (b) any document or object relevant to identifying, locating or quantifying any property or identifying or locating any document necessary for the transfer of any property in either case belonging to, in the possession of or under the control of any person the subject of the request be delivered to the Enforcement Unit in addition to information relating to any transaction conducted by or for such person during such period as the Investigation Magistrate directs;
- (c) attachment of any property of or in the possession of any person named in the request for the period specified in the order, and the management or disposal of that property for the purpose of determining any dispute as to the ownership of or other interest in the property or any part thereof, and payment of any costs.

8.3 The Enforcement Unit may, upon request from a foreign State accompanied by an order issued by a court of the requesting State directed to any person within the jurisdiction of Bahrain to deliver himself or any

document or material in his possession or under his control to the foreign State, for the purposes of conducting investigations in that State, obtain a Court order directed to that person in the same terms as in the order accompanying the request.

8.4 The Investigation Magistrate shall take the evidence of the person referred to in the foregoing paragraph of this Article, and the Enforcement Unit shall transmit the record of such evidence to the foreign State.

8.5 The Enforcement Unit may, in respect of any proceedings for a money laundering offence, obtain an order from the Investigation Magistrate to any person resident in a foreign State to deliver himself or any document or thing in his possession or control, to the Investigation Magistrate or, subject to the approval of the foreign State, to the competent court in that State.

8.6 The Minister of Justice and Islamic Affairs may order that the whole or any part of any property confiscated under the provisions of this Law, be given to or shared with a foreign State.

Article 9

EXCHANGE OF INFORMATION

9.1 The Enforcement Unit and the relevant entities in the State of Bahrain may exchange information of a general nature regarding the offence of money laundering with competent authorities in foreign States.

9.2 The Enforcement Unit shall in response to a reasonable request from a competent authority in a foreign State provide to that competent authority specific information relating to suspicious transactions or persons and corporations involved in those transactions or the investigation or prosecution of a money laundering offence.

Article 10

MISCELLANEOUS PROVISIONS

10.1 Where an order for attachment of property is issued the Investigation Magistrate may make an order providing for the payment of moneys to the person named in the request for the reasonable subsistence of that person and his family.

10.2 Without prejudice to the rights of bona fide third parties a contract shall be considered illegal and void if either party thereto knew or should have known that as a result of the contract the State of Bahrain would be prejudiced in its ability to recover financial claims pursuant to the provisions of this Law.

10.3 No institution or employee of an institution shall be liable under any criminal or civil proceedings brought against it or him for complying with the obligations on them under this Law or any Regulations or Resolutions issued thereunder.

10.4 Entities which implement the provisions of this Law and their staff shall not be liable under any criminal or civil proceedings brought against them for their compliance with the provisions of this Law and the Regulations and Regulations issued thereunder.

10.5 It shall not be a defence to the offences created under this Law that the accused was prohibited from disclosing any information available to him in respect of the offence or suspicion thereof whether the prohibition is imposed by law or otherwise.

Article 11

The offence of money laundering shall be deemed to be one of the extraditable offences in accordance with the applicable Laws and the international treaties ratified by the State of Bahrain and the principle of reciprocity.

Article 12

REGULATIONS AND RESOLUTIONS

12.1 The Minister of Finance and National Economy in co-ordination with the relevant entities may issue Regulations or Resolutions in relation to the functioning of the Committee provided for in Article 4 of this Law and for any amendments to the Schedule to this Law.

12.2 The Minister of Interior in co-ordination with the relevant entities may issue Regulations or Resolutions in relation to the functioning of the Enforcement Unit.

Article 13

The Ministers shall, where applicable, implement this Law and it shall come into force as of the date of its publication in the Official Gazette.

Hamad bin Isa Al-Khalifa
Amir of the State of Bahrain

Issued at Reffa'a Palace
Dated the 29th day of January 2001
Corresponding to 4 DHU'L QA'DA 1421 H

SCHEDULE

ACTIVITIES OF INSTITUTIONS

1. Lending (including personal credits, mortgage credits, factoring (with or without recourse), financial or commercial transaction including forfeiting)
2. Finance leasing
3. Venture risk capital
4. Money transmissions services
5. Issuing and administering means of payment (including credit cards, travellers' cheques and bankers' drafts)
6. Guarantees and commitments
7. Trading for own account or account of customers in:-
 - (a) money marked instruments (including cheques, bills and certificates of deposit);
 - (b) foreign exchange;
 - (c) financial futures and options;
 - (d) exchange and interest rate instruments and other financial derivatives;and
 - (e) transferable instruments
8. Underwriting share issues and the participation in such issues
9. Money broking
10. Investment business

11. Deposit taking
12. Insurance transactions
13. Real property transactions
14. Bullion dealing
15. Financial intermediaries
16. Legal Practice and Advocacy
17. Audit and Accountancy