

[DRAFT FOR PARLIAMENT – 29 JUNE'09]



**CURRENCY DECLARATION BILL
2009**

(BILL NO. 18 OF 2009)



CURRENCY DECLARATION BILL 2009

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BILL

Entitled

AN ACT TO PROVIDE FOR THE DECLARATION OF CURRENCY AND THE SEIZURE, DETENTION OR FORFEITURE OF CURRENCY WHICH IS DERIVED FROM, OR INTENDED TO BE USED IN CRIMINAL CONDUCT

ENACTED by the National Parliament of Solomon Islands.

ARRANGEMENT OF CLAUSES

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CURRENCY DECLARATION BILL 2009

1. This Act may be cited as the Currency Declaration Act 2009, and commences on a date appointed by the Minister, by notice in the *Gazette*. Short title and commencement

2. In this Act, unless the context otherwise requires – Interpretation

“authorised officer” means any of the following public officers –

- (a) a customs officer;
- (b) an immigration officer;
- (c) a police officer;
- (d) a quarantine officer;

“craft” means any aircraft, vehicle or vessel that is used for land, sea, or air transportation;

“currency” includes the following –

- (a) the coin and paper money of Solomon Islands or of a foreign country that is designated as legal tender and which is customarily used and accepted as a medium of exchange in the country of issue;
- (b) monetary instruments that may be exchanged for money, including cheques, travellers’ cheques, money orders, and negotiable instruments in a form in which title passes on delivery;
- (c) precious metal, precious stone, pearl or jewellery made of precious metal or stone;
- (d) currency in electronic form;
- (e) any other prescribed kind of monetary instrument which is found at any place in Solomon Islands;

“currency obtained through unlawful conduct” means currency obtained by or in return for the unlawful conduct;

“minimum amount” means an amount equal to or more than the minimum amount of Solomon Islands currency or its equivalent in any other currency prescribed under section 18, which must be declared under section 3 for the purpose this Act;

“mixed currency” means recoverable currency which is mixed with the currency of one or more countries;

“recoverable currency” means currency that is obtained through unlawful conduct;

“unlawful conduct” means –

- (a) conduct that is unlawful or an offence under the law of Solomon Islands; or
- (b) conduct that is unlawful or an offence under the law of another country or territory, and if it occurred in Solomon Islands, would be unlawful or an offence under the law of Solomon Islands.

Obligation to
declare currency

3. (1) A person who enters or leaves Solomon Islands with the minimum amount, must make a declaration to an authorised officer in the prescribed form.

(2) Any person who sends out of or receives into Solomon Islands the minimum amount by any means, including but not limited to postal services, courier services or transshipment by any craft must declare the minimum amount to the Customs in the prescribed form.

(3) Any person who fails to declare the minimum amount to an authorised officer commits an offence and is liable on conviction to one or more of the following penalties –

- (a) to a fine not exceeding 500,000 penalty units;
- (b) to imprisonment for a term not exceeding five years;

- (c) an order for forfeiture of the currency under section 10.

4. (1) The powers under this Act are in addition to the powers conferred upon an authorised officer under any other written law, in particular the power to question, search, seize or detain a person or thing.

Power to question

(2) An authorised officer may question a person entering or leaving the Solomon Islands on the source, ownership, acquisition, use, or intended destination of any currency (whether or not declared) in that person's possession or custody.

(3) A person who, without reasonable excuse on being questioned by an authorised officer, fails or refuses to answer any question put to that person by the authorised officer, commits an offence and is liable on conviction to a fine not exceeding 500,000 penalty units or to imprisonment for a term not exceeding five years.

5. (1) Subject to subsection (5), an authorised officer may search any premises, place, or craft for currency, if the authorised officer, has reasonable grounds for suspecting that there is on the premises, place or craft, currency –

Power to search

- (a) which is recoverable currency or is intended by any person for use in unlawful conduct; and
- (b) the amount of which is not less than the minimum amount.

(2) An authorised officer may exercise the powers in subsection (3), if the authorised officer has reasonable grounds for suspecting that a person is carrying currency –

- (a) which is recoverable currency or is intended by any person for use in unlawful conduct and the amount of which is not less than the minimum amount; or
- (b) that such person has failed to declare the minimum amount in the prescribed form.

(3) Subject to subsection (2), the authorised officer may, if it is necessary or expedient, require the person to submit to

–

- (a) a search of anything, including goods, that a person has in his or her possession or control; or
- (b) a search of his or her person.

(4) For the purpose of subsection (3)(b), an authorised officer may detain a person for so long as it is necessary for the officer to conduct the search.

(5) The search of a person under subsection (3)(b) must be carried out by an authorised officer of the same gender as the person to be searched.

Power to seize
currency

6. (1) An authorised officer may seize currency, if the officer has reasonable grounds to suspect that the currency is, in whole or in part –

- (a) recoverable currency;
- (b) intended for use by a person in unlawful conduct; or
- (c) undeclared currency, intended for use in unlawful conduct.

(2) If the currency is found on one person, or more than one person who are together, the total sum of currency found must be more than the minimum amount before a seizure is authorised by this Act.

(3) If the currency found is in a craft or in any place, although in different parts of the location where the currency is found, then the total sum of currency found must be more than the minimum amount before a seizure is authorised by this Act.

(4) If currency is seized under this section, the authorised officer shall issue a written notice to any person who has an interest in the currency, if such person can be identified.

Power to detain
currency

7. (1) An authorised officer who seized a currency under section 6 may detain it for up to seventy-two hours if the authorised officer continues to have reasonable grounds for his or her suspicion, or for the purposes of investigation.

(2) A Judge may, upon application by an authorised officer, order the extension of the period specified in subsection (1) (except that the order shall not authorise the detention of any currency) –

- (a) beyond the end of a period of three months from the date of the order; or
- (b) in the case of any further order under this section, beyond the end of the period of two years from the date of the first order.

(3) A Judge may make an order under subsection (2), if the Judge is satisfied, that one of the following conditions is met –

- (a) that there are reasonable grounds for suspecting that the currency is recoverable currency and that either –
 - (i) its continued detention is justified, while its source, ownership, use or destination is further investigated or consideration is given to bringing proceedings against any person for an offence with which the currency is connected; or
 - (ii) proceedings against a person for an offence with which the currency is connected has been started and has not been concluded;
- (b) that there are reasonable grounds for suspecting that the currency is intended to be used in unlawful conduct and that –
 - (i) its continued detention is justified while its intended use is further investigated or consideration is given to bringing proceedings against any person for an offence with which the currency is connected; or
 - (ii) proceedings against a person for an offence with which the currency is

connected have been started and have not been concluded.

(4) A Judge may, upon application, make an order in respect of any currency seized under section 6, if the Judge is satisfied that –

- (a) the condition in subsection (3)(a) or (b) is met in respect of part of the currency; and
- (b) it is not reasonably practicable to detain only that part.

(5) An order under subsection (2) must provide for notice to be given to any persons affected by it.

Interest on
detained currency

8. Any currency (including any interest accruing to it) detained under section 7 for more than forty-eight hours, shall be paid into and held in the Consolidated Fund.

Release of
detained currency

9. A Judge may order the release of the whole or any part of the currency detained under section 7 if the Judge is satisfied that –

- (a) upon application by the person the currency was seized, the conditions in section 7 for the detention of the currency are no longer met in relation to the currency to be released.
- (b) upon application by an authorised officer, the detention of the currency to be released is no longer justified.

Forfeiture of
currency

10. (1) While currency is detained under section 7, an application for the forfeiture of the whole or any part of it may be made to a Judge by an authorised officer.

(2) The Judge may order the forfeiture of the currency or any part of it if satisfied that the currency or part –

- (a) is recoverable currency; or
- (b) is intended by any person for use in unlawful conduct.

(3) If the recoverable currency is jointly owned and one of whom is an excepted joint owner, the order may not apply

to so much of it as the Judge thinks is attributable to the excepted joint owner's share.

(4) Where an application for the forfeiture of any currency is made under this section, the currency is to be detained (and may not be released under any power conferred by this Act) until any proceeding in pursuance of the application (including any proceedings on appeal) is finally determined.

(5) Any currency seized and detained under sections 6 and 7 shall be automatically forfeited to the Crown if no notice of appeal is lodged under section 15.

(6) Currency forfeited under this Act, and any accrued interest shall not be paid into the Consolidated Fund until—

- (a) the end of the appeal period under section 15, if no appeal is filed; or
- (b) any appeal filed under section 15 is finally determined.

11. (1) A person who is the owner of any currency or any part of it detained under this Act may apply to a Judge for an order for the currency to be released.

Right of innocent owners of currency

(2) An application for an order under subsection (1) may be made in the course of detention or forfeiture proceedings, or at any other time, but no later than sixty days from the date of detention or forfeiture.

(3) The Judge may order the currency to which the application relates to be released to the applicant, if it appears to the Judge that —

- (a) the applicant was deprived of the currency to which the application relates, or of currency which it represents, by unlawful conduct;
- (b) the currency was not, immediately before the owner was deprived of it, recoverable currency; and
- (c) that the currency belongs to the person claiming ownership.

(4) The Judge may order the currency to which the application relates to be released to the applicant or to the person from whom it was seized, if –

- (a) the applicant is not the person from whom the currency to which the application relates was seized;
- (b) the Judge is satisfied that that currency belongs to the applicant;
- (c) the Judge is satisfied that the conditions in section 7 for the detention of that currency are no longer met or, if an application has been made under section 9, the Judge decides not to make an order under section 7 or 9 in relation to that currency; and
- (d) no objection to the making of an order under this subsection has been made by the person from whom that currency was seized.

Compensation

12. (1) If no forfeiture order is made in respect of any currency detained under this Act, the person to whom the currency belongs, or from whom it was seized, may make an application to a Judge for compensation.

(2) The Judge may order compensation if it is satisfied that the applicant has suffered loss as a result of the detention of the currency and that the circumstances are exceptional.

(3) The amount of compensation to be paid under subsection (2) is the amount the Judge determines reasonable, having regard to the loss suffered and any other relevant circumstances.

(4) If a forfeiture order is made in respect only of a part of any currency detained under this Act, this section has effect in relation to the other part.

Determination of unlawful conduct

13. (1) In determining whether or not conduct has been unlawful, the Judge or the court before which the issue is to be determined must decide on a balance of probabilities whether it has been proven –

- (a) that any matters alleged to constitute unlawful conduct have occurred; or

(b) that any person intended to use any currency in unlawful conduct.

(2) In deciding whether any currency was obtained through unlawful conduct –

(a) it is immaterial whether or not any money, goods or services were provided in order to put the person in question in a position to carry out the conduct;

(b) it is not necessary to show that the conduct was of a particular kind if it is shown that the currency was obtained through conduct of one of a number of kinds, each of which would have been unlawful conduct.

(3) The portion of the mixed currency which is attributable to the recoverable currency represents the currency obtained through unlawful conduct.

14. (1) Currency is recoverable currency if it is obtained through unlawful conduct.

Matters relating to
recoverable
currency

(2) Where currency obtained through unlawful conduct ("the original currency") is or has been recoverable, currency which represents the original currency is also recoverable currency.

(3) If a person deals in any manner whatsoever by which –

(a) the person disposes of recoverable currency, whether the original currency or currency which represents the original currency; and

(b) the person obtains other currency in place of it,

the other currency represents the original currency and is recoverable.

(4) If a person disposes of recoverable currency which represents the original currency, the currency may be followed into the hands of the person who obtains it, and it continues to represent the original recoverable currency.

Appeal

15. Any party that is aggrieved by an order of a Judge made under this Act may, within thirty days from the date of the order, appeal to the High Court, sitting in open court.

Exemption of liability

16. Any authorised officer, employer, agent, person authorised to act on behalf of an authorised officer or any other person exercising any power, duty or function under this Act, shall not –

- (a) be subject to any action, liability, claim or demand;
or
- (b) be liable for any matter or thing done or omitted to be done in good faith (whether negligently or not),

in the exercise or for any purported exercise of such power, duty or function.

Regulations

17. (1) The Minister may make regulations to give effect to the provisions or for the purposes of this Act, and in particular to make regulations for matters required to be prescribed in this Act.

(2) The prescribed minimum amount shall be \$50,000 unless another amount is prescribed under subsection (1) as the minimum amount.

CURRENCY DECLARATION BILL 2009

OBJECTS AND REASONS

The objects of this Bill are –

- (a) to provide for obligation for declaration of currency, as part of anti-money laundering measures;
- (b) to provide powers for search, seizure, detention and forfeiture of currency;
- (c) to ensure that any currency used in other unlawful conduct or criminal activities are seized, detained and forfeited to the Crown.

EXPLANATORY MEMORANDUM

- Clause 1 – Provides for the short title and commencement provisions.
- Clause 2 – Provides for the interpretation.
- Clause 3 – Provides for the duty to declare currency at the border for persons leaving or entering the Solomon Islands.
- Clause 4 – Sets out the power of authorised officers to question persons.
- Clause 5 – Empowers authorised officers to search, premises, place, craft or person for currency suspected for being used for unlawful conduct or recoverable currency. Recoverable currency means a currency used or intended to be used in an unlawful conduct or conduct that is a criminal act under the laws of Solomon Islands.
- Clause 6 – Empowers authorised officers to seize any currency found after a search under clause 5.
- Clause 7 – Provides for the power to detain currency for up to 72 hours. An application may be made to a Judge to extend the detention of currency seized under clause 6.
- Clause 8 – Provides that any currency detained under section 7 and paid into the Consolidated Fund shall accrue interest.
- Clause 9 – Empowers a Judge to release currency detained under section 7.
- Clause 10 – empowers an authorised officer to apply to a Judge for an order for forfeiture of currency so detained to the Crown.
- Clause 11 – Provides for the right of innocent owners of currency to apply to a Judge to release currency detained or forfeited.
- Clause 12 – Provides for compensation as a result of forfeiture order.
- Clause 13 – Provides for the determination of unlawful conduct.
- Clause 14 – Provides for matters relating to what is recoverable currency.

Clause 15 – Provides for an appeal mechanism where a forfeiture order is made.

Clause 16 – Provides for exemption of liability for persons discharging functions and powers under the proposed Act.

Clause 18 – Empowers the Minister to make regulations.

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S. RINI

MINISTER FOR FINANCE AND TREASURY