



**CURRENCY DECLARATION
ACT 2009**

(NO. 15 of 2009)



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PASSED by the National Parliament this twenty-seventh day of July 2009.

This printed impression has been carefully compared by me with the Bill passed by Parliament and found by me to be a true copy of the Bill)

[Signature]
 Maeasi Sanga (Mrs)
 Clerk to National Parliament

ASSENTED to in Her Majesty's name and on Her Majesty's behalf this twenty-ninth day of July 2009.

F. O. Kabui
 Frank Utu Ofagioro Kabui (CSI, CMG, OBE)
 Governor General

Date of Commencement: (See section 1)

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 UNLAWFUL CONDUCT

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CURRENCY DECLARATION ACT 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

“application”, in relation to an application to a Judge, means a prescribed application made to a Judge sitting in Chambers, and “apply” has a corresponding meaning;

“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 16, which must be declared under section 3 for the purpose of 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 postal services, courier services, transshipment by any craft or any other prescribed means must declare the minimum amount to the Customs in the prescribed form.

(3) Any person who fails to declare or falsely declares 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 or gives a false answer to 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 (6), 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) whether or not the amount exceeds 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) 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 and complete 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.

(6) No search shall be conducted in any residential premises under this section unless the authorised officer obtains a warrant from a Magistrate authorising the officer to conduct a search of the residential premises pursuant to the powers given under this section.

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.

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.

Power to detain
currency

(2) A Judge may, upon *ex parte* 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) An order under subsection (2) may be made on the whole currency seized and detained under subsection (1) if –

- (a) only part of the whole currency seized may be recoverable currency;
- (b) the condition in subsection (3)(a) or (b) is met; and
- (c) it is not reasonably practicable to detain only the part that may be recoverable.

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

(6) For the purposes of subsection (1), if the period of seventy-two hours expires on a Friday after official working hours, Saturday, Sunday or public holiday, the money may be detained until the end of the next working day.

Interest on detained currency **8.** Any currency (including any interest accruing to it) detained under section 7 shall, as soon as possible, 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 from whom 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.

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.

Forfeiture of
currency

(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 or the appeal is finally determined.

(6) An excepted joint owner is a person who obtained the currency in circumstances in which it would not be recoverable as against the person; and references to the excepted joint owner's share of the recoverable currency are to so much of the recoverable currency as would have been his or her if the joint ownership had been severed.

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;
- (d) an application has been made under section 9 but the Judge decides not to make an order under that section in relation to that currency; and
- (e) no objection to the making of an order under this subsection has been made by the person from whom that currency was seized.

Determination of
unlawful conduct

12. (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.

13. (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

14. Any party that is aggrieved by an order of a Judge made under this Act may, appeal or apply for review of such order pursuant to Solomon Islands Courts (Civil Procedure) Rules 2007.

Exemption of liability

15. 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

16. (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.
