ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER C85

CONFIDENTIAL RELATIONSHIPS ACT

Showing the Law as at 31 December 2022

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition consolidates—
Act 12/2003, in force 1 January 2004
Act 4/2014, in force 2 May 2014

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CONFIDENTIAL RELATIONSHIPS ACT

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CONFIDENTIAL RELATIONSHIPS ACT

Interpretation

1. In this Act—

"bank" means any bank or other financial institution to which the Banking Act[*] applies;

"business of a professional nature" includes the relationship between a professional person and his principal, by whatever term the latter may be described, and also the relationship between a bank and a customer of that bank;

"Commission" means the Financial Services Commission established under the Financial Services Commission Act;

(Act 12/2003, s. 51)

"confidential information" includes information concerning any property, or relating to any business of a professional nature or commercial transaction that has taken place, or that any party concerned contemplates may take place, that the recipient thereof is not, otherwise than in the normal course of business or professional practice, authorised by the principal to divulge;

"entitled to possession of confidential information" means so entitled, in the normal course of business or professional practice or by the specific consent of the party who, but for the giving of such consent, would be entitled to require the preservation of the confidentiality of that information;

"financial services enactment" has the meaning specified in the Financial Services Commission Act;

(Act 12/2003, s. 51)

"Minister" means the person charged for the time being with responsibility for finance;

[*] Banking Act, 2015 (Act 6/2015) *repealed* the Banking Act, R.S.A. c. B11.

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"normal course of business or professional practice" means the ordinary and necessary routine involved in the efficient carrying out of the instructions of a principal including compliance with such laws and legal processes as arises out of or in connection therewith and the routine exchange of information between professional persons;

"principal" means a person who has imparted to another person confidential information in the course of his business or professional relationship with that other person, and includes a customer or a bank in relation to his business transactions with that bank;

"professional person" includes an accountant, an attorney (or other legal practitioner by whatever name called), a broker or other kind of commercial agent or adviser, a bank or other financial institution, any public officer or other government official or employee, and such other persons as may be prescribed as professional persons for the purposes of this Act and whether or not any such person was licenced or authorised, under any law for the time being in force, to act in that capacity, and includes any person subordinate to, or in the employment or under the control of, any such person for the purpose of his professional activities;

"property" includes every present, contingent or future interest or claim, direct or indirect, legal or equitable, positive or negative, in any money or money's worth, real, personal, moveable or immoveable, rights, charges and securities thereover and all documents and things evidencing or relating thereto.

Application of Act

2. (1) Subject to subsection (2), this Act applies to all confidential information with respect to business of a professional nature that arises in or is brought into Anguilla and to all persons who come into possession of that information at any time thereafter, whether within or without Anguilla.

(2) This Act does not apply to confidential information given to or received by—

(a) any professional person acting in the normal course of business or professional prac tice or with the consent, express or implied, of the relevant principal;

(b) any person in the course of the taking or giving of evidence, whether within or with out Anguilla, for the purpose of or in the course of the trial or any person in respect of an alleged criminal offence triable within Anguilla or which would have been triable if it had been committed within Anguilla;

(c) a police officer in the execution of his duties, whether within or without Anguilla, investigating any criminal offence alleged to have been committed within Anguilla or that, if it had been committed within Anguilla, would have been a criminal offence under the law of Anguilla;

(d) the Minister or a person exercising powers of examination or investigation under any of the provisions of the Banking Act[†]; or

(e) the Commission or any other person in accordance with the provisions of the Financial Services Commission Act or a financial services enactment.

(Act 12/2003, s. 51)

[†] Banking Act, 2015 (Act 6/2015) *repealed* the Banking Act, R.S.A. c. B11.

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(f) a competent authority under a—

(i) Tax Information Exchange Arrangement; or

(ii) any other tax agreements entered into by the Government of Anguilla.
(Act 4/2014, s. 2)

Offences and penalties

3. (1) Any person who—

(a) being in possession of confidential information, however obtained—

(i) divulges it to any person not entitled to possession thereof, or

(ii) attempts, offers or threatens to divulge it to any person not entitled to possession thereof; or

(b) obtains or attempts to obtain confidential information to which he is not entitled;

is guilty of an offence.

(2) It is a defence for a person charged with an offence under subsection (1) if he proves to the satisfaction of the court that, at the time when he divulged, attempted, offered or threatened to divulge, or obtained or attempted to obtain the confidential information in question, he did not know, and did not have reasonable grounds to suspect, that doing so would be a breach of an express or implied duty to preserve confidentiality or would be contrary to this Act.

(3) For the avoidance of doubt, it is hereby declared that a bank that gives a credit reference in respect of a customer, without first obtaining the authority of that customer, is guilty of an offence under subsection (1).

(4) Any person who, being in possession of information that he knows or has reason to suppose is confidential information, makes use thereof without the consent of the principal for the benefit of himself or any other person is guilty of an offence.

(5) Any person, other than a professional person, who commits an offence under this section is liable on summary conviction—

(a) in the case of an individual, to a fine of $25,000 or to imprisonment for 12 months or to both; or

(b) in the case of a body corporate, to a fine of $125,000.

(6) Any professional person who commits an offence under this section is liable on summary conviction—

(a) in the case of an individual, to a fine of $50,000 or to imprisonment for 12 months or to both; or

(b) in the case of a body corporate, to a fine of $250,000.

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(7) Any person who is convicted of an offence under subsection (1) and is proved to have solicited, received or offered (as the case may be), on behalf of himself or any other person, any reward for doing the act that constituted the offence is liable, in addition to any penalty imposed under subsection (5) or (6), to a further fine equivalent to the amount or value of the reward solicited, received or offered and to forfeit the amount or value of any reward actually received by him.

(8) Where an offence under this section is committed by a body corporate and is proved to the satisfaction of the court to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or similar officer (by whatever name called) of that body corporate, or by any person purporting to act in such a capacity, he as well as the body corporate is guilty of an offence and is liable to be proceeded against and punished accordingly.

Attorney General's fiat

4. No prosecution shall be instituted under this Act except by or with the written consent or the Attorney General.

Civil liability unaffected

5. Nothing in this Act shall be deemed to affect or derogate from any rule of law or the rights of any person with regard to the civil liability of any person for any breach of any express or implied condition of confidentiality with regard to any business or professional relations or transactions between them.

Regulations

6. The Governor may make regulations for carrying into effect the provision of this Act and for prescribing anything that is required to be prescribed under any such provisions.

Citation

7. This Act may be cited as the Confidential Relationships Act, Revised Statutes of Anguilla, Chapter C85.

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