



MONTSERRAT

## **CHAPTER 11.25**

# **CONFIDENTIAL INFORMATION ACT**

### **Revised Edition**

showing the law as at 1 January 2019

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

### **CONFIDENTIAL INFORMATION ACT**

Act 25 of 1985 .. in force 10 January 1986

Amended by Act 9 of 2011 .. in force 27 September 2011 (S.R.O. 40/2011)

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**CHAPTER 11:25**

**CONFIDENTIAL INFORMATION ACT**

ARRANGEMENT OF SECTIONS

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**CHAPTER 11:25**

**CONFIDENTIAL INFORMATION ACT**

*(Acts 25 of 1985 and 9 of 2011)*

AN ACT TO REGULATE THE DIVULGENCE OF INFORMATION IMPARTED UNDER CONDITIONS OF PROFESSIONAL CONFIDENCE.

**Commencement**

*[10 January 1986]*

**Short title**

1. This Act may be cited as the Confidential Information Act.

**Interpretation**

2. In this Act, unless the context otherwise requires—

“**bank**” means a bank as defined in section 2 of the Banking Act;

“**confidential information**” means information received by a professional person from or in respect of a principal concerning any property in which the principal has an interest and which the recipient of such information is not authorised by the principal to divulge;

“**divulge**” means without the authority of the principal, express or implied, to disclose or communicate to any person not entitled to such

disclosure or communication and includes unauthorised communication to persons at large;

**“financial institution”** means a licensed financial institution as defined in section 2 of the Banking Act;

**“International Business Company”** means an International Business Company within the meaning of section 5 of the International Business Companies Act;

**“normal course of business”** means the ordinary and necessary routine involved in the efficient carrying out of the instructions of a principal, including compliance with all relevant laws and legal procedures and the routine exchange of information between financial institutions and/or International Business Companies;

**“principal”** means a person who employs or instructs a professional person in the normal course of business on matters relating to any property of the principal;

**“professional person”** means a bank or other financial institution, a barrister or solicitor, an accountant and every person subordinate or in the employ or control of such person or institution for the purpose of his or its professional activities;

**“property”** means every present, contingent and future interest or claim, direct or indirect, legal or equitable, positive or negative, in any money’s worth, or any real or personal property, (movable or immovable), and all rights and securities thereover and all documents and things evidencing the same or relating thereto.

### Application and scope

**3. (1)** Subject to subsection (2), this Act shall apply to all confidential information as defined in this Act which originates in or is brought into Montserrat and to all persons coming into possession of such information, whether professional persons or not.

**(2)** This Act shall not apply to the seeking, divulging or obtaining of confidential information—

- (a)* in compliance with directions of the High Court given in accordance with the provisions of section 4;
- (b)* by or to a professional person acting in the normal course of business or with the consent, express or implied of the relevant principal;
- (c)* by or to a police officer of the rank of Inspector or above investigating an offence committed or alleged to have been committed within Montserrat;

- (d) by or to the Minister responsible for finance, the Financial Secretary or the Attorney General;
- (e) generally, in accordance with the provisions of this or any other Act.

### Directions by High Court

4. (1) Whenever a person intends or is required to give in evidence in, or in connection with any proceeding being tried, inquired into or determined by any court, tribunal or other authority, any confidential information within the meaning of this Act, he shall before doing so apply for directions and any adjournment necessary for that purpose shall be granted.

(2) An application for directions under subsection (1) shall be made to and heard and determined by, a Judge of the High Court sitting alone and *in camera*. At least seven days' notice of such application shall be given to the Attorney General and, if the Judge so orders, to any person within Montserrat who is a party to the proceedings in question. The Attorney General may appear as *amicus curiae* at the hearing of the application and any party on whom notice has been served as aforesaid shall be entitled to be heard thereon, either in person or by counsel.

(3) Upon hearing an application under subsections (1) and (2) the Judge shall direct—

- (a) that the evidence be given; or
- (b) that the evidence be not given; or
- (c) that the evidence be given subject to conditions to be specified by him whereby the confidentiality of the information will be safeguarded.

(4) In order to safeguard the confidentiality of evidence ordered to be given under subsection (3)(a) a Judge may order one or more of the following—

- (a) that divulgence of the evidence be restricted to certain named persons;
- (b) that the evidence be taken *in camera*;
- (c) that reference to names, addresses and descriptions of particular persons be by alphabetical letters, numbers or symbols representing such persons, the key to which shall be restricted to persons named by the Judge.

## Offences and penalties

5. (1) Subject to the provisions of section 3(2), any person who—
- (a) being in possession of confidential information however obtained—
    - (i) divulges it; or
    - (ii) attempts, offers or threatens to divulge it;
  - (b) wilfully obtains or seeks to obtain confidential information to which he is not entitled,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding \$50,000 or to imprisonment of two years or to both such fine and such imprisonment.

(2) Any person who commits an offence under subsection (1) and receives or solicits on behalf of himself or another person in the course of such offence any reward from any person shall be liable to a further fine not exceeding \$50,000 or to imprisonment for a term not exceeding two years or to both such fine and such imprisonment and also to forfeiture of the reward if it was received by him.

(3) Any person in possession of confidential information who without the consent of the principal makes use thereof for the benefit of himself or another shall be guilty of an offence and liable on summary conviction to the penalty prescribed in subsection (2) and for that purpose any profit accruing to such person out of such transaction shall be deemed to be a reward.

(4) Any professional person, entrusted as such with confidential information, who commits an offence under subsection (1), (2) or (3) in respect of such information shall be liable to double the penalty prescribed in each of those subsections respectively.

(5) Subject to the provisions of section 3(2), any bank which gives a credit reference in respect of a customer without the express authority of such customer shall be guilty of an offence under subsections (1) and (4) hereof.

(6) Every person who receives confidential information by virtue of the provisions of section 4(2) shall be as fully bound by the other provisions of this Act as if such information were entrusted to him in confidence by a principal.

## Regulations

6. The Governor acting on the advice of Cabinet may make regulations for the administration of this Act. (*Amended by Act 9 of 2011*)



**Director of Public Prosecutions consent**

7. No prosecution may be instituted under this Act without the express consent in writing of the Director of Public Prosecutions.

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