SAINT VINCENT AND THE GRENADINES

ACT NO. 29 2002

MONICA DACON
Governor- General's Deputy
30th May, 2002

A BILL FOR

AN ACT to make provision for assisting overseas regulatory authorities to obtain information from within Saint Vincent and the Grenadines and other related matters.

[30th May, 2002]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines, and by the authority of the same as follows:

Short title and commencement

1. This Act may be cited as the Exchange of Information Act 2002 and shall come into force on such date as the Minister may appoint by Order published in the *Gazette*.

Interpretation

2. In this Act

"foreign regulatory authority" means an authority which, in a country or territory outside Saint Vincent and the Grenadines, exercises functions corresponding to any function of a regulatory authority under any enactment, or exercises functions which relate to companies or financial services;

" Minister" means the Minister responsible for finance;

"offshore entity" means any legal entity established pursuant to offshore legislation;

"offshore legislation" includes the Offshore Finance Authority Act, the Registered Agent and Trustee Licensing Act, the International Trusts Act, the International Banks Act, the International Business Companies Act, the Mutual Funds Act, Regulations made under any of those Acts, and any future laws and regulations of the State relating to the provision of offshore financial services or relating to the regulation of entities

formed in the State to render these services;

Schedule

"regulatory authority" means any authority specified in the Schedule to this Act;

"regulatory functions" means functions corresponding to any functions of a regulatory authority under any enactment, and any other functions relating to companies or financial services.

Application

3. A regulatory authority may disclose information received in the exercise of its functions under any Act for the purpose of enabling or assisting a foreign regulatory authority to exercise regulatory functions.

Matters to be considered in relation to request for assistance

4. (1) Subject to subsection (2), the powers conferred by section 5 are exercisable by the Offshore Finance Inspector for the purpose of assisting a foreign regulatory authority which has requested assistance in connection with inquiries being carried out by it or on its behalf in respect of any regulatory functions.

(2) The Offshore Finance Inspector shall not exercise the powers conferred by section 5 unless he is satisfied that

(a) the assistance is necessary for the purpose of enabling or assisting a foreign regulatory authority in the exercise of its regulatory functions;

(b) the assistance requested by the foreign regulatory authority may be granted under any agreement to which Saint Vincent and the Grenadines and the foreign state requesting authority are parties;

(c) the foreign regulatory authority requesting the assistance has given a written undertaking to provide corresponding assistance to an authority exercising regulatory functions in Saint Vincent and the Grenadines;

(d) the nature and seriousness of the matter to which the inquiries relate and the importance to the inquiries of the information sought in Saint Vincent and

the Grenadines warrant disclosure of the information;

(e) the assistance cannot be obtained by other means;

(f) it is appropriate in the public interest to give the assistance sought; and

(g) the relevant country or territory has enacted similar laws.

(3) Where the Offshore Finance Inspector requires a written undertaking from a foreign regulatory authority under subsection (2), the undertaking shall be in a form as the Offshore Finance Inspector may determine.

(4) Where a foreign regulatory authority fails to comply with a requirement made under subsection (2), the Offshore Finance Inspector shall refuse to provide the assistance sought.

(5) The Offshore Finance Inspector may decline to exercise the powers conferred under section 5 unless the foreign regulatory authority undertakes in writing to make such contributions towards the cost of the exercise of those powers as the Offshore Finance Inspector considers appropriate.

(6) In subsection (2) (g), "relevant country or territory" means the country or territory from which the request for assistance is received by the Offshore Finance Inspector.

Powers of Offshore Finance Inspector to require information to be furnished

5. (1) Where in accordance with the requirements of section 4 the Offshore Finance Inspector is satisfied that assistance should be provided with respect to a request by a foreign regulatory authority, he may direct in writing any person

(a) to furnish him with information with respect to any matter relevant to the inquiries to which the request relates;

(b) to produce any documents relevant to the inquiries to which the request relates;

(c) to provide him with such assistance in relation to the inquiries to which the request relates as the Offshore Finance Inspector may specify.

(2) Where a person fails to comply with a direction issued under subsection (1) within three days from the date of the direction or such longer period as the Offshore Finance Inspector may permit, the Offshore Finance Inspector may apply to a Judge in Chambers for an order requiring the person to comply with the direction.

(3) Notice of an application made pursuant to subsection (2) shall be served on the person against whom an order is sought and he shall be given an opportunity to be heard.

(4) Where documents are produced pursuant to this section, the Offshore Finance Inspector may take copies or extracts from them.

(5) A person shall not under this section be required to disclose information or produce a document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings, except that a barrister or solicitor may be required to furnish the name and address of his client.

(6) Where a person claims a lien on a document, its production under this section is without prejudice to his lien.

(7) In this section, "document" includes information recorded in any form, and, in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of its legible form.

Powers of Offshore Finance Inspector to seek assistance

6. (1) In the exercise of his powers under this Act, the Offshore Finance Inspector may seek the assistance of any regulatory authority specified in the Schedule or the Director of the Financial Intelligence Unit.

(2) Any assistance sought under subsection (1) shall be for the purpose of investigating

(a) whether an offshore entity

(i) is adequately organized,

(ii) has adequate risk management systems and appropriately identifies, limits and monitors risks inherent in its business activities,

(iii) is owned and managed by persons who are fit and proper for the conduct of business activities,

(iv) complies with capital-adequacy and risk-diversification requirements on a consolidated basis; or

(b) any other matter relating to the proper regulation and the business activities of a company or trust licensed to carry on business.

(3) Where the Offshore Finance Inspector seeks assistance under subsection (1), the assistance of the authority shall be provided or executed in a manner as the Offshore Finance Inspector may determine.

Restriction on the disclosure of information

7. (1) Subject to subsection (2) information which

(a) is supplied by a foreign regulatory authority in connection with a request for assistance; or

(b) is obtained by virtue of the exercise of powers under this Act;

shall not be disclosed by the primary recipient in Saint Vincent and the Grenadines or by any person who obtains the information directly or indirectly from him, without the consent of the person from whom the primary recipient obtained the information and, if different, the person to whom it relates.

(2) Information obtained in accordance with this Act may be disclosed

(a) pursuant to an order of a court of competent jurisdiction in Saint Vincent

and the Grenadines;

(b) to the Offshore Finance Inspector;

(c) to any person for the purpose of discharging any duty or exercising any power under this Act;

(d) if the information disclosed is in a summary or in statistics expressed in a manner that does not enable the identity of the person to whom the information relates to be determined.

(3) In subsection (1), "the primary recipient" means, as the case may be, the Offshore Finance Inspector, a person authorised under section 6 or the Director of the Financial Intelligence Unit.

Immunity from suit

8. (1) No suit shall lie against the Offshore Finance Inspector or any person acting under his authority for any thing done by him, in good faith, in the exercise of any power or the performance of any function under this Act.

(2) A person shall not be required to disclose any information or produce any document under this Act if to do so would expose him to prosecution for an offence.

Offences and penalties

9. (1) A person who

(a) fails to comply with an order of the court made pursuant to section 5 (2); or

(b) intentionally furnishes false information in purported compliance with any such direction or order;

commits an offence.

(2) A person commits an offence where the person mutilates, obliterates or in any way destroys or does any thing to prevent the production of a document, or does any thing to impede the provision of information in relation to any matter relevant to any inquiry being a matter relevant to any request for assistance made by any foreign

regulatory authority.

(3) A person who contravenes section 7 commits an offence.

(4) A person who commits an offence under this section is liable on summary conviction to a fine of fifty thousand dollars or imprisonment for a term of two years.

SCHEDULE

[Section 2]

REGULATORY AUTHORITIES

1. The Attorney General
2. The Registrar of Companies
3. The Registrar of International Business Companies
4. The Offshore Finance Authority
5. The Commissioner of Insurance
6. The Commissioner of International Insurance
7. The Registrar of Insurance
8. The Registrar of International Trust
9. The Registra of Mutural Funds

Passed in the House of Assembly this 29th day of May, 2002.

NICHOLE HERBERT
Clerk of the House of Assembly

SAINT VINCENT AND THE GRENADINES

EXCHANGE OF INFORMATION ACT, 2002

ARRANGEMENT OF SECTIONS

SECTION

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Schedule

OBJECTS AND REASONS

The object of this Bill is to make provision for assisting overseas regulatory authorities to obtain information from within Saint Vincent and the Grenadines and other related matters.

Clause 3 permits a regulatory authority to disclose information in assisting a foreign regulatory authority to exercise regulatory functions.

Clause 2 defines "regulatory authority" to mean the Attorney General, the Registrar of Companies, the Offshore Finance Authority, the Commissioner of Insurance, the Registrar of Trusts and the Registrar of Mutual Funds. A "foreign regulatory authority" means an authority which, in a country or territory outside Saint Vincent and the Grenadines, exercises functions corresponding to any function of a regulatory authority under an enactment, or exercises functions which relate to companies or financial services.

Clause 4 lists the matters that should be considered by the Offshore Finance Inspector in relation to requests for assistance.

Clause 5 provides for the powers of the Offshore Finance Inspector to require information to be furnished to him.

Clause 6 authorises the Offshore Finance Inspector to seek assistance in his investigations.

Clause 7 restricts the disclosure of information received under the Bill.

Clause 8 confers immunity from suit to certain persons in the performance of their functions under the Bill.

Clause 9 imposes offences and penalties.

Dr. the Hon. Ralph Gonsalves
Prime Minister, Minister of Finance, Planning, Economic Development, Labour, Information, Grenadines and Legal Affairs