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GRENADA

ACT NO. 14 OF 2013

I assent,



CECILE E. F. LA GRENADE

*Governor-General.**1st August, 2013.*

AN ACT to provide the regulation of the transfer of money through electronic means and for related matters.

[By Order].

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Grenada, and by the authority of the same as follows—

1. This Act may be cited as the

Short title and
commencement.

ELECTRONIC TRANSFER OF FUNDS CRIMES
ACT, 2013.

(2) This Act shall come into force on a day to be fixed by the Minister by Order published in the *Gazette*.

Interpretation.

2. In this Act—

“authorised manufacturer” means a financial institution or any other person who is authorised under any written law to produce a card;

“bank card” means any instrument, token, device, or card, whether known as a bank service card, banking card, cheque guarantee card, credit card, debit card or token or by any other similar name, issued with or without a fee by an issuer for the use of the cardholder in obtaining goods, services, or anything else of value or for use in an automated banking device or online to obtain money or any of the services offered through the device or online;

“card” means a bank card, credit card, smart card, electronic wallet, token or device or the number or data associated with a bank card, credit card, smart card, electronic wallet, token or device;

“cardholder” means the person named on the face of a card to whom or for whose benefit such a card is issued by an issuer;

“card-making equipment” means any equipment, machine, plate, mechanism, impression, or any other device designed, used, or capable of being used to produce a card, a counterfeit card, or any aspect or component of a card;

“counterfeit card” means a card which is fictitious, altered, or forged and includes any facsimile or false representation, depiction, or component of

such a card, or any such card which is stolen, obtained as part of a scheme to defraud, or otherwise unlawfully obtained, and which may or may not be embossed with account information or an issuer's information;

“credit” includes a cash loan, or any other financial accommodation;

“credit card” means any instrument, token, device, or card, whether known as a charge card or by any other similar name, issued with or without a fee by an issuer for the use of the cardholder in obtaining goods, services, or anything else of value on credit from a creditor or for use in an automated banking device to obtain money or any of the services offered through the device;

“creditor” means a person or company that agrees or is authorised by an issuer to supply goods, services, or anything else of value and to accept payment by use of a bank card, credit card, or smart card for the supply of such goods, services or anything else of value to the cardholder;

“electronic fund transfer” means any transfer of funds that is initiated through an electronic terminal, telephone, electronic system, magnetic tape, the Internet, or through online services for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account;

“electronic wallet” means an encrypted storage medium holding financial information that can be used to

complete electronic transactions without re-entering the stored data at the time of the transaction;

“electronic system” means any electronic device or a group of interconnected or related devices, one or more of which, pursuant to a program, performs automatic processing of data and includes an electronic storage medium;

“expired card” means a card which is no longer valid because the term shown on it has expired;

“financial institution” has the meaning assigned to it under the Proceeds of Crime Act;

“issuer” includes a financial institution or any other person who issues a card;

“Minister” means the Minister with responsibility for Information Communication Technology;

“receives” or “receiving” means acquiring possession, title or control of accepting a card as security for credit;

“revoked card” means a card which is no longer valid because permission to use it has been suspended or terminated by the issuer, whether on its own or on the request of the cardholder;

“smart card” means any instrument, token, device, or card, or whether known by any other similar

name, and encoded with a stated money value and issued with or without a fee by an issuer for use by the cardholder in obtaining goods, services, or anything else of value, except money;

“trafficking” means to sell, transfer, distribute, dispense, or otherwise dispose of property or to buy, receive, possess, obtain control of, or use property with the intent to sell, transfer, distribute, dispense, or otherwise dispose of such property.

3. A person who makes or causes to be made, either False statement. directly or indirectly, a false statement as to a material fact in writing, knowing it to be false respecting his identity or that of any other person or his or her financial condition or that of any other person for the purpose of procuring the issuance of a card to himself or herself or another person commits an offence and is liable on summary conviction to a fine not exceeding thirty thousand dollars or to a term of imprisonment not exceeding five years or both.

4.—(1) A person who:

- (i) takes a card from the possession, custody or control of—
 - (a) the cardholder; or
 - (b) a person holding or having possession of the card with the consent of the cardholder without the knowledge and consent of the persons in (a) or (b) above; or

Theft by taking or retaining possession of card or data stored or recorded on a card.

- (ii) with knowledge that has been so taken receives the card with intent to use, sell, or to transfer it to a person other than the issuer or the cardholder,

commits an offence and is liable on summary conviction to a fine not exceeding fifteen thousand dollars or a term of imprisonment not exceeding two years; or to both.

(2) For the purpose of this section, taking a card without consent includes obtaining it by any conduct defined or known as larceny or fraud, or by obtaining property by false pretence, or by extortion.

Card theft.

5. A person who receives a card that he knows or ought to reasonably know to have been lost, mislaid, or delivered under a mistake as to the identity or address of the cardholder and who retains possession with intent to use, sell, or to traffic it to a person other than the issuer or the cardholder commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars or to a term of imprisonment not exceeding two years or to both.

Dealing in card of another.

6. A person, other than the issuer, who receives and retains possession of two or more cards issued in the name or names of different cardholders, which cards he has knowledge were taken or retained under circumstances which constitute a card theft commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars or to a term of imprisonment not exceeding two years or to both.

Purchase or sale of card of another.

7. A person other than an issuer who sells a card or a person who buys a card from a person other than an issuer

commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars or to a term of imprisonment not exceeding two years or to both.

8. A person who, knowingly and without lawful justification with intent to defraud the issuer, a creditor, or any other person, obtains control over a card as security for a debt commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars or to a term of imprisonment not exceeding two years or to both.

Obtaining
control of card
as security.

9.—(1) A person who, knowingly and without lawful justification, defrauds an issuer, a creditor, or any other person, falsely makes, embosses, or alters in any manner a card or utters such a card or who, knowingly and without lawful justification to defraud, has a counterfeit card or any invoice, voucher, sales draft, or other representation or manifestation of a counterfeit card in his possession, custody, or control commits an offence and is liable on summary conviction to a fine of thirty thousand dollars or to a term of imprisonment not exceeding two years or to both or on conviction on indictment liable to a fine of fifty thousand dollars or to a term of imprisonment not exceeding five years.

Card forgery.

(2) A person, other than an authorized manufacturer or issuer, who possesses a counterfeit card is presumed to have defrauded as required under subsection (1).

(3) A person falsely makes a card when he or she makes or draws in whole or in part a device or instrument which purports to be the card of a named issuer but which is not such a card because the issuer did not authorise the making or drawing, or when he alters a card which was validly issued.

(4) A person falsely embosses a card when, without the authorisation of the named issuer, he or she completes a card by adding any of the information, including the signature of the cardholder, which an issuer requires to appear on the card before it can be used by a cardholder.

Signing a card of another.

10. A person, other than the cardholder or a person authorised by him or her, who, knowingly and without lawful justification defrauds the issuer or a creditor, signs a bank card, credit card or debit card commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars or to a term of imprisonment not exceeding three years or to both.

Fraudulent use of card.

11. A person who, knowingly and without lawful justification defrauds an issuer or a creditor, uses, for the purpose of obtaining money, goods, services, or anything else of value, a card obtained or retained fraudulently or a card which he or she knows is forged, or who obtains money, goods, services, or anything else of value by representing, without the consent or authorisation of the cardholder, that he or she is the holder of a specified card, or by representing that he or she is the holder of a card and such card has not in fact been validly issued, commits an offence and is liable on summary conviction to a fine not exceeding thirty thousand dollars or to a term of imprisonment of two years or to both or on conviction on indictment liable to a fine of fifty thousand dollars or to a term of imprisonment not exceeding five years.

Fraud by person authorised to provide goods, services, etc.

12.—(1) A creditor who, knowingly and without lawful justification defrauds the issuer or the cardholder, furnishes goods, services, or anything else of value upon presentation

of a card which he or she knows is obtained or retained fraudulently or illegally or a card which he knows is forged, expired, or revoked commits an offence and is liable on summary conviction to a fine not exceeding thirty thousand dollars or to a term of imprisonment not exceeding two years or to both or on conviction on indictment liable to a fine of fifty thousand dollars or to a term of imprisonment not exceeding five years.

(2) A creditor who, knowingly and without lawful justification defrauds the issuer, or the cardholder, fails to furnish goods, services, or anything else of value which he or she represents in writing to the issuer or the cardholder that he or she has furnished commits an offence and is liable on summary conviction to a fine not exceeding thirty thousand dollars or to a term of imprisonment not exceeding five years or to both.

(3) A person who is authorised by a creditor to furnish goods, services, or anything else of value upon presentation of a card or a card account number by a cardholder, or any agent or employee of such person, who defrauds the issuer, or the cardholder, presents to the issuer or the cardholder, for payment, a card transaction record of sale, which sale was not made by such person or his or her agent or employee, commits an offence and is liable on summary conviction to a fine not exceeding thirty thousand dollars or to a term of imprisonment not exceeding five years or to both.

(4) A person who, without the creditor's authorisation, employs, solicits or otherwise causes a person who is authorised by the creditor to furnish goods, services or anything else of value upon presentation of a card account number by a cardholder, or employs, solicits or otherwise

causes an agent or employee of such authorised person, to remit to the creditor a card transaction record of a sale that was not made by such authorised person, or his or her agent or employee commits an offence and is liable on summary conviction to a fine not exceeding thirty thousand dollars or to a term of imprisonment not exceeding five years or to both.

Receipt of money, etc., obtained by fraudulent use of card.

13. A person who receives money, goods, services or anything else of value obtained in breach of section 15, knowing or believing that it was so obtained commits an offence and is liable on summary conviction to a fine not exceeding thirty thousand dollars or to a term of imprisonment not exceeding five years or to both.

Defences not available.

14. It shall not be a defence to a prosecution for an offence under this Act that a card that is not a counterfeit card is offered for use or sale as a counterfeit card, and a person, other than the defendant, who has breached this Act, has not been convicted, arrested, or identified.

Obtaining goods, etc., by use of false, expired or revoked card.

15.—(1) A person who, knowingly and without lawful justification, unlawfully obtains credit or purchases any goods, services or anything else of value by the use of any false, fictitious, counterfeit or expired card, card number or other credit device, or by the use of any card, card number, or other credit device of another person without the authority of that other person to whom such card, number or device was issued, or by the use of any card, card number, or other credit device in any case where such card, number or device has been revoked and notice of the revocation has been given to the person to whom it was issued commits an offence and is liable on summary conviction to a fine not exceeding thirty thousand dollars or to a term of imprisonment not exceeding

two years or to both or on conviction on indictment liable to a fine of fifty thousand dollars or to a term of imprisonment not exceeding five years.

(2) For the purpose of this section, knowledge of revocation shall be presumed to have been received by a cardholder seven clear days after such notice has been sent to him or her by post at his or her last known address.

16.—(1) A person who is found in possession of three or more counterfeit cards, invoices, vouchers, sales drafts, or other representations or manifestations of counterfeit cards, or card account numbers of another person is deemed to have the same for the purpose of trafficking, unless the contrary is proved, the burden of proof being on the accused. Trafficking in counterfeit card.

(2) A person who commits the offence of trafficking under subsection (1) is liable on summary conviction to a fine not exceeding fifty thousand dollars or to a term of imprisonment not exceeding five years or to both.

17. A person who receives, possesses, transfers, buys, sells, controls, or has custody of any card-making equipment knowing that such equipment can be used in the manufacture of counterfeit cards commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars or to a term of imprisonment not exceeding five years or to both. Possession of card-making equipment.

18. A person who, knowingly and without lawful justification defrauds another person, falsely alters any invoice for money, goods, services, or anything else of value obtained by use of a card after that invoice has been signed by the cardholder or a person authorised by him or her commits Alteration of card invoice.

an offence and is liable on summary conviction to a fine not exceeding thirty thousand dollars or to a term of imprisonment not exceeding two years or to both.

General offence
for fraudulent
electronic fund
transfer.

19. A person who, in the course of an electronic fund transfer, uses, knowingly and without lawful justification defrauds an issuer or a creditor, the personal or financial data or credit account numbers or card of another, or who obtains money, goods, services, or anything else of value by using without authorisation the personal or financial data or credit account numbers or card of another or by representing that he or she is another, where such an offence is not otherwise provided for under this Act, commits an offence and is liable on summary conviction to a fine not exceeding thirty thousand dollars or to a term of imprisonment not exceeding two years or to both or on conviction on indictment liable to a fine of fifty thousand dollars or to a term of imprisonment not exceeding five years.

Territorial scope
of offences under
this Act.

20.—(1) Subject to subsection (2), this Act shall have effect in relation to any person, whatever his or her nationality or citizenship, outside as well as within Grenada; and where an offence under this Act is committed by a person in any place outside of Grenada, he or she may be dealt with as if the offence had been committed within Grenada.

(2) For the purposes of subsection (1), this Act shall apply if, for the offence in question—

- (a) the accused was in Grenada at the material time;
- (b) the card, electronic system or data was in Grenada at the material time;

- (c) the card was issued by a financial institution in Grenada; or
- (d) the damage occurred within Grenada, whether or not (a), (b) or (c) applies.

21.—(1) A cardholder shall not unless he or she acts in collusion with another person be liable to the issuer for any loss arising from use of the card by any person not acting, or to be treated as acting, as the cardholder’s agent. Liability for misuse of card.

(2) Subsection (1) does not prevent the cardholder from being made liable to the extent of one hundred dollars for loss to the issuer arising from use of the card by another person during a period beginning when the card ceases to be in the possession of any authorised person and ending when the card is once more in the possession of an authorised person.

(3) Subsection (1) does not prevent the cardholder from being made liable to any extent for loss to the issuer from use of the card by a person who acquired possession of it with the cardholder’s consent.

(4) Subsections (2) shall not apply to any use of the card after the issuer has been given notice within two days of discovering that the card is lost, stolen, or is for any other reason liable to misuse.

(5) Subsections (2) and (3) shall not apply unless the issuer provides the cardholder with particulars of the name, address and telephone number of a person stated to be the person to whom notice is to be given under subsection (4).

(6) Notice under subsection (4) takes effect when received, but where it is given orally, it shall be confirmed in writing within fourteen clear days by the cardholder.

(7) Any sum paid by the cardholder for the issue of the card, to the extent, if any, that it has not been previously offset by use made of the card, shall be treated as paid towards satisfaction of any liability under subsection (2) or (3).

(8) The cardholder, issuer or any person authorised by the cardholder to use the card shall be authorised persons for the purpose of subsection (2).

Card lists
prohibited.

22.—(1) Subject to subsection (2), a financial institution shall not make available, lend, donate, or sell any list or portion of a list of any cardholders and their addresses and account numbers to any person without the prior written permission of the cardholder.

(2) A financial institution may make available to another financial institution, which seeks to determine only the cardholder's credit rating, any list or portion of a list of any cardholders and their addresses without the permission of the cardholder but must, within seven working days, give written notice of the disclosure to the cardholder.

(3) A financial institution which breaches subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars.

Regulations.

23. The Minister may make Regulations for giving effect to the provisions of this Act.

Passed in the House of Representatives this 28th day of June, 2013.

RAPHAEL DONALD
Acting Clerk to the House of Representatives.

Passed in the Senate this 10th day of July, 2013.

RAPHAEL DONALD
Acting Clerk to the Senate.

GRENADA
