



PENAL CODE (AMENDMENT) (NO. 2) ACT, 2016

(Act 12 of 2016)

I assent



A handwritten signature in cursive script, appearing to read "Michel".

J. A. Michel
President

17th June, 2016

AN ACT to amend the Penal Code (Cap 158).

ENACTED by the President and the National Assembly.

1. This Act may be cited as the Penal Code (Amendment)(No.2)Act, 2016. Short title

2. The Penal Code is hereby amended by inserting after section 363, the following sections —

“Unlawful Interference with Identity Information

Interpretation

363A. For the purposes of sections 363A to 363G —

“automated teller machine” means a terminal device and includes a point of sale device whether installed by a financial institution or other person which is linked directly or indirectly to a computer system used by a financial institution and which provides facilities to the customers of the financial institution;

“card” means credit card, debit card or any other card issued by banks or other financial institutions for the purpose of accessing money or credit;

“*computer data*” means representations, including signs, signals or symbols, that are in a form suitable for processing in a computer;

“*computer password*” means any computer data by which a computer service or computer is capable of being obtained or used;

“*computer program*” means computer data representing instructions or statements that, when executed in a computer, causes the computer to perform a function;

“*computer*” means any device including an automated teller machine, or a group of interconnected or related devices one or more of which —

- (a) contains computer programs or other computer data; and

- (b) by means of computer programs;
 - (i) performs logic and control; and
 - (ii) may perform any other function;

“electro-magnetic, acoustic, mechanical or other device” means any device or apparatus that is used or is capable of being used to intercept any function of a computer;

“function” includes logic, control, arithmetic, deletion, storage and retrieval and communication or telecommunication to, from or within a computer;

“identity information” means any information including biological or physiological information of a type that is commonly used alone or in combination with other information to identify or purport to identify an individual, including a fingerprint, voice print, retina image, iris image, DNA profile, name, address, date of birth, written signature, electronic signature, digital signature, user name, card number, card personal identification number, financial institution account number, passport number, National Identification Number or computer password;

“intercept” includes listen to or record a function of a computer system, or acquire the substance, meaning or purport thereof;

“point of sale device” means any electronic device used to process payments; and

“traffic” means, in respect of identity information, to sell, export from or import into Seychelles, distribute, transmit or deal with in any other way.

exports from Seychelles, imports into Seychelles or possesses any instrument, device, apparatus, material which is capable of being used, adapted or intended for the use—

- (a) in copying and extracting of identity information for use in the commission of an offence under section 363D; or
- (b) in the forging or falsifying of identity information.

commits an offence and shall on conviction be liable to a fine not exceeding SCR500, 000 or to imprisonment for a term not exceeding twenty years or to both such fine and imprisonment.

(2) A person shall be deemed to have done an act referred to in subsection (1) or section 363C or 363D without lawful authority if that person—

- (a) is not entitled to determine where and when the act should be done; and
- (b) the person does not have consent to do the act from the person who is entitled to grant consent for that act.

Interfering
with a
computer
system

363C. A person who intentionally and without authority inserts any device to a computer or interfere with a computer by changing, adding or removing any parts to or of the computer with the intention to cause the copying or photographing of identity information from a computer commits an offence and shall on conviction be liable to a fine not exceeding SCR 500, 000 or to imprisonment for a

term not exceeding twenty years or to both such fine and imprisonment.

Use of
computer
system to
commit
offence

363D.(1) A person who intentionally and without authority —

- (a) obtains, directly or indirectly, any computer service; or
- (b) by means of an electromagnetic, acoustic, mechanical or other device, intercepts or causes to be intercepted, directly or indirectly, any function of a computer; or
- (c) uses or causes to be used, directly or indirectly, a computer with intent to commit an offence under section 363E in relation to computer data or a computer; or
- (d) uses, possesses, traffic in or permit another person to have access to a computer or password that would enable a person to commit an offence under paragraph (a), (b) or (c),

with the intention of copying, deleting or modifying of identity information or in the forging or falsifying of cards commits an offence and shall on conviction be liable to a fine not exceeding SCR500, 000 or to imprisonment for a term not exceeding twenty years or to both such fine and imprisonment.

(2) Where a person is convicted of an offence under subsection (1), any device, apparatus, material or thing in relation to which the offence was committed or the possession of which constituted the offence may be forfeited to the custody of the police whereupon it shall be disposed of as the Court may direct.

Possession of
identity
information

363E. A person who intentionally and without authority obtains or possesses another person's identity information in circumstances giving rise to a reasonable inference that the information is intended to be used to commit an offence under section 363D, commits an offence and shall on conviction be liable to a fine not exceeding SCR 500, 000 or to imprisonment for a term not exceeding twenty years or to both such fine and imprisonment.

Trafficking
in identify
information

363F.(1) A person who illegally traffic, makes available, distributes, sells or offers for sale another person's identity information, or has it in their possession for any of those purposes, knowing or being reckless as to whether the information will be used to commit an offence under section 363D commits an offence and shall on conviction be liable to a fine not exceeding SCR 500, 000 or to imprisonment for a term not exceeding twenty years or to both such fine and imprisonment.

(2) An offence under subsection (1) or sections 363B, 363C, 363D, or 363E shall be treated as having been committed in Seychelles as long as the circumstances of the offence show at least one significant link with Seychelles and it is immaterial whether an act or other event proof of which is required for conviction for the offence occurred in Seychelles or whether the accused was in Seychelles at the time of the act or other event.

(3) For the purposes of subsection (2), “significant link” means—

- (a) in relation to any offence referred to under subsection 2—
 - (i) that the accused was in Seychelles at the time when the accused did the act which caused the computer to perform the function; or
 - (ii) that the computer or any computer containing any programme or data to which the accused secured or intended to secure unauthorised access by doing the act which caused the computer to perform the function was in Seychelles at that time; or
 - (iii) that the accused was in Seychelles at the time when the accused did the unauthorised act; or
 - (iv) that the unauthorised act took place in Seychelles.

Attempt,
conspiracy
etc

363G.(1) On a charge of attempting to commit an offence under sections 363B, 363C, 363D, or 363E it is immaterial to the accused's guilt—

- (a) whether the attempt was actually made; and
- (b) whether the attempt had an effect in Seychelles.

(2) A person shall be guilty of an offence by attempting to commit an offence referred to in subsection (1), if what the person was attempting in a foreign country would involve the commission of an offence under this code where the whole or any part of it was intended to take place and conduct which is punishable by or under the law in force in a foreign country is an offence under that law for the purposes of this subsection, however the offence is described in that law.

(3) On a charge of incitement, soliciting or attempting to procure the commission of an offence referred to under subsection (1), to the question whether the incitement, soliciting or attempt to procure took place is immaterial to the accused's guilt.

(4) On a charge of conspiracy to commit an offence referred to under subsection (1), it is immaterial to the accused's guilt —

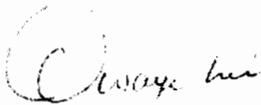
- (a) whether any person became a party to the conspiracy; and
- (b) whether any act, omission or other event occurred in Seychelles.

(5) A person shall be guilty of conspiracy to commit an offence referred to under subsection (1), if what the person was conspiring to

do in a foreign country would involve the commission of an offence under this code where the whole or any part of it was intended to take place and—

- (a) the conduct which is punishable by or under the law in force in a foreign country is an offence under that law for the purposes of this subsection, however the offence is described in that law; and
- (b) no provision in any law providing that it is a defence to prove that acts are not an offence under a foreign law shall apply.”.

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 31st May, 2016.



Ms. Luisa Waye-Hive
Assistant Clerk to the National Assembly