



[L.S.]

I Assent,

James B. Carlisle,
Governor-General.

12th September, 2005.

ANTIGUA AND BARBUDA

No. 12 of 2005

AN ACT to make provision for the implementation of the Counter Terrorism Conventions of the United Nations Security Council.

*[Published in the Official Gazette Vol. XXV
No. 57 dated 15th September, 2005]*

ENACTED by the Parliament of Antigua and Barbuda as follows –

PART I

1. This Act may be cited as the Prevention of Terrorism Act 2005. Short title.

2. (1) In this Act, unless the context otherwise requires — Interpretation.

“aircraft” includes an aeroplane, glider, helicopter and spacecraft;

“communication” means a communication received or transmitted by post or a telegraphic, telephonic or other communication received or transmitted by electricity, magnetism, or other means;

“communications service provider” means a person who provides services for the transmission or reception of communications;

“counter terrorism convention” means any of the following United Nations Conventions —

- (a) Convention on Offences and certain Other Acts committed on Board Aircraft signed at Tokyo on 14 September 1963;
- (b) Convention for the Suppression of Unlawful Seizure of Aircraft done at The Hague on 16 December 1970;
- (c) Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on 23 September 1971;
- (d) Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973;
- (e) International Convention against the taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979;
- (f) Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980;
- (g) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988;
- (h) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988;
- (i) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988;

- (j) Convention on the Marking of Plastic Explosives for the Purposes of Detection, signed at Montreal, on 1 March 1991;
- (k) International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997;
- (l) International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999;

“entity” means a person, group, trust, partnership, fund or an unincorporated association or organization;

“financial institution” means a commercial bank, or any other institution which makes loans advances or investments or accepts deposits of money from the public;

“financial intelligence unit” means the financial intelligence unit of the ONDCP.

“master” in relation to a vessel, means the owner or person (except a harbour master or pilot) having for the time being command or charge of the vessel;

“Minister” means the Minister responsible for National Security;

“ONDCP” means the Office of National Drug and Money Laundering Control Policy established under section 3 of the Office of National Drug and Money Laundering Control Policy Act, 2003, No. 11 of 2003;

“Officer of the ONDCP” has the same meaning as is assigned to it in section 2 of the Office of National Drug and Money Laundering Control Policy Act 2003, No. 11 of 2003;

“operator” in relation to an aircraft, means the owner or person for the time being in charge or command or control of the aircraft;

“property” includes money, securities and any movable or immovable property wherever located;

“specified entity” means an entity in respect of which an order under section 3(2) has been made, or is deemed by reason of the operation of section 4(2) to have been made, and is for the time being in force;

“Supervisory Authority” has the same meaning as the meaning assigned to it by the Money Laundering Prevention Act, No. 9 of 1996;

“terrorist act” means an act or threat of action which —

- (a) involves serious bodily harm to a person;
- (b) involves serious damage to property;
- (c) endangers a person’s life;
- (d) creates a serious risk to the health or safety of the public or a section of the public;
- (e) involves the use of firearms or explosives;
- (f) involves releasing into the environment or any part thereof or distributing or exposing the public or any part thereof to —
 - (i) any dangerous, hazardous, radioactive or harmful substance;
 - (ii) any toxic chemical;
 - (iii) any microbial or other biological agent or toxin;
- (g) is designed or intended to disrupt any computer system or the provision of services directly related to communications infrastructure, banking or financial services, utilities, transportation or other essential infrastructure;
- (h) is designed or intended to disrupt the provision of essential emergency services such as police, civil defence or medical services;

(i) involves prejudice to national security or public safety;

and is intended, or by its nature and context, may reasonably be regarded as being intended to —

(i) intimidate the public or a section of the public; or

(ii) compel a government or an international organization to do, or refrain from doing, any act;

(iii) is made for the purpose of advancing a political, ideological or a religious cause;

(iv) but an act which —

(a) disrupts any services; and

(b) is committed in pursuance of a protest, industrial action, demonstration or stoppage of work,

shall be deemed not to be a terrorist act within the meaning of this definition, so long and so long only as the act is not intended to result in any harm referred to in paragraphs, (a), (b), (c) or (d) of the definition of terrorist act under this section;

“terrorist group means —

(a) an entity that has as one of its activities and purposes, the committing of, or the facilitation of the commission of, a terrorist act; or

(b) a specified entity;

“terrorist property” means —

(a) proceeds from the commission of a terrorist act;

(b) property which has been, is being, or is likely to be used to commit a terrorist act; or

- (c) property which has been, is being, or is likely to be used by a terrorist group;
- (d) property owned or controlled by or on behalf of a terrorist group; or
- (e) property which has been collected for the purpose of providing support to a terrorist group or funding a terrorist act.

“vessel” means any thing made or adapted for the conveyance by water, of people or property;

“weapon” includes a firearm, explosive, chemical, biological or nuclear weapon.

PART II

SPECIFIED ENTITIES

Orders declaring certain entities to be specified entities.

3. (1) Where the Commissioner of Police or the Director of ONDCP has reasonable grounds to suspect that —

- (a) an entity has knowingly —
 - (i) committed;
 - (ii) attempted to commit;
 - (iii) participated in committing; or
 - (iv) facilitated the commission,

of a terrorist act, or

- (b) an entity is knowingly acting —
 - (i) on behalf of;
 - (ii) at the direction of;
 - (iii) in association with,

an entity referred to in paragraph (a), he may recommend to the Attorney General that an Order be made under subsection (2) in respect of that entity.

(2) If the Attorney General is satisfied that there is material to support a recommendation made under subsection (1), he may, by order—

- (a) declare the entity in respect of which the recommendation has been made, to be a specified entity; and
- (b) direct any financial institution in Antigua and Barbuda to restrain or freeze any account or other property held by the financial institution on behalf of the specified entity.

(3) The Attorney General shall not later than seven days after making the order publish it in the *Gazette*.

(4) A specified entity may apply to the Commissioner of Police or the Director of the ONDCP, as the case may be, within ninety days requesting the Commissioner of Police or the Director of the ONDCP to recommend to the Attorney General the revocation of an Order made under subsection (2), or deemed under subsection 4(2) to have been made, in respect of that entity.

(5) If, on an application made under subsection (4), the Commissioner of Police or the Director of the ONDCP—

- (a) decides that there are reasonable grounds for making the recommendation requested in the application, he shall make the requested recommendation to the Attorney General;
- (b) decides that there are no reasonable grounds for making the recommendation requested in the application, he shall refuse the application and shall, within 60 days of receiving the application, inform the applicant of his decision.

(6) Within 60 days of receiving information of the decision referred to in subsection (5), the applicant may apply to a Judge of the High Court for a review of that decision.

(7) Upon an application being made under subsection (6), the judge shall —

- (a) examine in chambers, any security or intelligence reports considered in recommending or making an

order under subsection (2) in respect of the applicant and hear any other evidence or information that may be presented by or on behalf of the Commissioner of Police or the Director of the ONDCP, and may, at the request of the Commissioner of Police or the Director of the ONDCP, hear all or part of that evidence or information in the absence of the applicant or any counsel representing the applicant, if the judge is of the opinion that the disclosure of the information would be prejudicial to national security or endanger the safety of any person;

- (b) provide the applicant with a statement summarizing the information available to the judge, so as to enable the applicant to be reasonably informed of the reasons for the decision, without disclosing any information the disclosure of which would, in the judge's opinion, be prejudicial to national security or endanger the safety of any person;
- (c) provide the applicant with a reasonable opportunity to be heard; and
- (d) determine whether the decision is reasonable on the basis of the information available to the judge and, if found not to be reasonable, make an order compelling the Commissioner of Police or the Director of the ONDCP to recommend to the Attorney General, the revocation of the Order made, or deemed to have been made, under subsection 4(2) in respect of the applicant.

(8) The Judge may receive in evidence, anything (including information obtained from the government or institution or agency of a foreign state or an international organization), that, in the opinion of the judge, is reliable and relevant, even if the thing would not otherwise be admissible in law, and may base his or her decision on that evidence.

(9) The Director of the ONDCP may, from time to time, review all the Orders made under subsection (2) to determine whether there are still reasonable grounds, as set out in subsection (1), for any such Order to continue to apply to a specified entity, and if he or she determines that there are not such reasonable

grounds, shall recommend to the Attorney General, the revocation of the Order made under subsection (2) in respect of that specified entity.

4. (1) Where the Security Council of the United Nations decides, in pursuance of Article 41 of the Charter of the United Nations, on the measures to be employed to give effect to any of its decisions and calls upon the Government of Antigua and Barbuda to apply those measures, the Minister of Foreign Affairs may, by Order published in the Gazette, make such provision as may appear to him or her to be necessary or expedient to enable those measures to be effectively applied.

Order for the implementation of measures to give effect to resolutions of the Security Council.

(2) Where an Order under subsection (1), makes provision to the effect that there are reasonable grounds to suspect that an entity specified in the Order is engaged in terrorist activity, that entity shall be deemed, with effect from the date of the Order, to have been declared a specified entity under section 3 and the provisions of subsections (3) to (8) shall apply to the specified entity from the date of the Order.

PART III OFFENCES

5. Any person, who —

Prohibition of terrorist act.

- (a) does, or threatens to do, or does an act preparatory to or infurtherence of, a terrorist act; or
- (b) omits to do anything that is reasonably necessary to prevent a terrorist act,

commits an offence and is liable on indictment to imprisonment for a term not exceeding twenty-five years.

6. Every person who —

Provision or collection of funds to commit terrorist acts.

- (a) provides; or
- (b) collects,

by any means, directly or indirectly, any funds, intending, knowing or having reasonable grounds to believe that the funds will be used in full or in part to carry out a terrorist act commits

an offence and shall on conviction on indictment be liable to a term of imprisonment not exceeding twenty-five years.

Collection of property and services, for commission of terrorist acts.

7. Every person who, directly or indirectly, provides or makes available, financial or other related services —

- (a) intending that they be used, in whole or in part, for the purpose of committing or facilitating the commission of, a terrorist act or for the purpose of benefiting any person who is committing or facilitating the commission of, a terrorist act; or
- (b) knowing that in whole or in part, they will be used by, or will benefit, a terrorist group, commits an offence and on conviction on indictment, is liable to imprisonment for a term not exceeding twenty-five years.

Use of property for commission of terrorist acts.

8. Every person who —

- (a) uses property, directly or indirectly, in whole or in part, for the purpose of committing or facilitating the commission of a terrorist act; or
- (b) possesses property intending that it be used or knowing that it will be used, directly or indirectly, in whole or in part, for the purpose of committing or facilitating the commission of a terrorist act,

commits an offence and on conviction on indictment, is liable to imprisonment for a term not exceeding twenty-five years.

Money laundering.

9.(1) Every person who knowingly enters into, or becomes concerned in, an arrangement which facilitates the acquisition, retention or control by or on behalf of another person of terrorist property —

- (a) by concealment;
- (b) by a removal out of jurisdiction;
- (c) by transfer to a nominee; or

(d) in any other way,

commits an offence and shall on conviction be liable on indictment to imprisonment for a term not exceeding fifteen (15) years.

(2) Every person who knowingly —

- (a) deals, directly or indirectly, in any terrorist property;
- (b) acquires or possesses terrorist property;
- (c) enters into, or facilitates, directly or indirectly, any transaction in respect of terrorist property;
- (d) converts, conceals or disguises terrorist property;
- (e) provides financial or other services in respect of terrorist property at the direction of a terrorist group, commits an offence and on conviction, on indictment, is liable to imprisonment for a term not exceeding fifteen years.

(3) The offences referred to in subsections (1) and (2) shall be deemed to be money laundering offences and the provisions of sections 19A and 19B of the Money Laundering Prevention Act shall apply to the property and other assets used in connection with the commission of terrorist acts.

No. 9 of 1996.

10. (1) Every person who knowingly, and in any manner —

- (a) solicits support for, or gives support to, any terrorist group; or
- (b) solicits support for, or gives support to, the commission of a terrorist act,

Soliciting and giving of support to terrorist groups or for the commission of terrorist acts.

commits an offence and on conviction, on indictment, is liable to imprisonment for a term not exceeding twenty-five years.

(2) For the purposes of paragraph (a) of subsection (1), an offer to provide, or the provision of, forged or falsified travel documents to a member of a terrorist group constitutes giving of support to a terrorist group.

ANTIGUA AND BARBUDA 12 *The Prevention of Terrorism Act, 2005.* No. 12 of 2005.

Harbouring of persons committing terrorist acts.

11. Every person who harbours or conceals, or prevents, hinders or interferes with the apprehension of, any other person knowing, or having reason to suspect that such other person —

- (a) has committed a terrorist act; or
- (b) is a member of a terrorist group;

commits an offence and on conviction, on indictment, is liable to imprisonment for a term not exceeding twenty-five years.

Provision of weapons to terrorist group.

12. Every person who knowingly offers to provide, or provides any weapon to —

- (a) a terrorist group;
- (b) a member of a terrorist group;
- (c) any other person for use by, or for the benefit of, a terrorist group or a member of a terrorist group,

commits an offence and on conviction, on indictment, is liable to imprisonment for twenty-five years.

Recruitment of persons to be members of terrorist groups or to participate in terrorist acts.

13. Every person who knowingly agrees to recruit, or recruits, another person —

- (a) to be a member of a terrorist group; or
- (b) to participate in the commission of a terrorist act,

commits an offence and on conviction, on indictment, is liable to imprisonment for a term not exceeding fifteen years.

Provision of training and instruction to terrorist groups and persons committing terrorist acts.

14. Every person who, knowingly agrees to provide training or instruction, or provides training or instruction —

- (a) in the making or use of any weapon,
- (b) in carrying out a terrorist act,
- (c) in the practice of military exercises or movements,

to a member of a terrorist group or a person engaging in, or preparing to engage in, the commission or a terrorist act commits an offence and on conviction, on indictment, is liable to imprisonment for fifteen years.

15. Every person who, in Antigua and Barbuda —

Promotion or facilitation of the commission of terrorist acts in foreign states.

- (a) knowingly promotes or facilitates the doing of any act in a foreign state for the purpose of achieving any of the following objectives (whether or not the objective is achieved) —
 - (i) the overthrow, by force or violence, of the government of that foreign state;
 - (ii) causing by force or violence, the public in that foreign state to be in fear of death or bodily injury;
 - (iii) causing death of, or bodily injury to a person who —
 - (a) is the Head of State of that foreign state; or
 - (b) holds or performs any of the duties of, a public office of that foreign state;
 - (iv) unlawfully, destroying or damaging any property belonging to the government of that foreign state.
- (b) recruits another person to become a member of, or to serve in any capacity with, a body or association of persons the objectives of which are, or include, the objectives referred to in paragraph (a);
- (c) accumulates, stockpiles or otherwise keeps, any weapons for the purposes of doing any act referred to in paragraph (a);
- (d) trains or drills, or participates in the training or drilling, of any other person in use of weapons or in the practice of military exercises or movements to

prepare that person to do any act referred to in paragraph (a);

- (e) allows himself or herself to be trained or drilled, in the use of weapons or in the practice of military exercises or movements for the purpose of doing any act referred to in paragraph (a); or
- (f) gives any money or goods to, or performs services for, any other person or body or association of persons for the purpose of promoting or supporting the doing of an act referred to in the paragraph (a);
- (g) receives or solicits money or goods or the performance of services for the purposes of promoting or supporting the doing of an act referred to in paragraph (a),

commits an offence and on conviction, on indictment, is liable to imprisonment for a term not exceeding fifteen years.

Promotion of offences under section 15.

16. Every person who being —

- (a) the owner, occupier, lessee or person in charge of any building, premises, room, or place knowingly permits a meeting of persons to be held in that building, premises, room or place;
- (b) the owner, charterer, lessee, operator, agent, or master of a vessel or the owner, charterer, lessee, operator, agent or pilot in charge of an aircraft knowingly permits that vessel or aircraft to be used;
- (c) the owner, lessee or person in charge of any equipment or facility that allows for recording or conferencing or meeting via technology knowingly permits that equipment or facility to be used;

for the purposes of committing an act which contributes an offence under section 15 of this Act, or promoting or supporting the commission of an offence under this Act commits an offence and is liable on conviction, on indictment, to imprisonment for a term not exceeding fifteen years.

17. (1) Every person who conspires with another person in Antigua and Barbuda to do any act in any place outside Antigua and Barbuda, being an act, which if done in Antigua and Barbuda would have constituted an offence under this Act shall be deemed to have conspired to do that act in Antigua and Barbuda.

Conspiracy to
commit offences
under this Act.

(2) Every person who conspires with another person in a place outside Antigua and Barbuda to do any act in Antigua and Barbuda which constitutes an offence under this Act shall be deemed to have conspired in Antigua and Barbuda to do that act.

18. (1) Every person who —

Membership of
terrorist groups.

- (a) is a member of;
- (b) professes to be a member of,

a terrorist group commits an offence and on conviction, on indictment, is liable to imprisonment for term not exceeding fifteen years.

(2) It shall be a defence for a person charged with an offence under this section to prove that the entity in respect of which the charge is brought was not a terrorist group at or on the date that he or she —

- (a) became a member of,
- (b) professed to be a member of,

that entity, or that he or she has not taken part in the activities of that entity, after it became a terrorist group.

19. (1) Every person who arranges, manages or assists in arranging or managing a meeting which he or she knows is —

Arrangements
of meetings in
support of
terrorist groups.

- (a) to support a terrorist group;
- (b) to further the activities of a terrorist group;
- (c) to be addressed by a person who belongs or professes to belong to a terrorist group,

commits and offence and on conviction, on indictment, he is liable to imprisonment for a term not exceeding fifteen years.

(2) In this section “meeting” means a meeting of two or more persons, whether or not the public are admitted.

Participation in the commission of offences under this Act.

20. Every person who —

- (a) aids and abets the commission;
- (b) attempts to commit;
- (c) conspires to commit;
- (d) counsels or procures the commission of,

an offence under this Act, commits an offence and on conviction, on indictment, is liable to imprisonment for a term not exceeding fifteen years.

PART IV

INVESTIGATION OF OFFENCES

Powers of arrest.

21. Any police officer or an officer of the ONDCP may arrest without warrant any person who has committed or is committing or whom he has reasonable grounds for suspecting to have committed or to be committing an offence under this Act.

Detention Order.

22. (1) Subject to subsection (2), a police officer or an officer of the ONDCP may, for the purpose of preventing the commission of an offence under this Act or preventing interference in the investigation of an offence under this Act, apply *ex parte*, to a Judge of the High Court for a detention order.

(2) A police officer or an officer of the ONDCP may make an application under subsection (1) only with the prior written consent of the Attorney-General.

(3) A Judge to whom an application is made under subsection (1) may make an order for the detention of the person named in the application if the judge is satisfied that the written consent of the Attorney General has been obtained as required by

subsection (2) and that there are reasonable grounds for suspecting that —

- (a) the person is preparing to commit an offence under this Act; or
- (b) is interfering, or likely to interfere with, an investigation into an offence under this Act.

(4) An order under subsection (3) shall be for a period not exceeding 48 hours in the first instance and may, on application made by a police officer or an officer of the ONDCP, be extended for a further period, provided that the maximum period of detention under the order does not exceed 5 days.

(5) An order under subsection (3) shall specify the place at which the person named in the order is to be detained and the conditions subject to which he or she is to be detained (including conditions relating to access to a government medical officer and the video recording of the person in detention so as to constitute an accurate, continuous and uninterrupted record of his or her detention for the whole period of his or her detention).

23. (1) Subject to subsection (2), a police officer or an officer of the ONDCP may, for the purpose of an investigation of an offence under this Act, apply *ex parte* to a Judge of the High Court for an order for the gathering of information.

Power to gather information.

(2) A police officer or an officer of the ONDCP may make an application under subsection (1) only with the prior written consent of the Attorney General.

(3) A Judge to whom an application is made under subsection (1), may make an order for the gathering of information if the Judge is satisfied that the written consent of the Attorney General has been obtained as required by subsection (2) and —

- (a) that there are reasonable grounds to suspect that —
 - (i) an offence under this Act has been committed, and
 - (ii) information concerning the offence, or information that may reveal the whereabouts

of a person suspected by the police officer of having committed the offence, is likely to be obtained as a result of the order; or

(b) that —

- (i) there are reasonable grounds to suspect that an offence under this Act will be committed;
- (ii) there are reasonable grounds to suspect that a person has direct and material information that relates to an offence referred to in subparagraph (i), or that may reveal the whereabouts of a person who the police officer suspects may commit the offence referred to in this paragraph; and
- (iii) reasonable attempts have been made to obtain the information referred to in subparagraph (ii) from the person referred to in that subparagraph.

(4) An order made under subsection (3) may —

- (a) order the examination, on oath or not, of a person named in the order;
- (b) order the person to attend at the place appointed by the Judge, or by the Judge designated under paragraph (d), as the case may be, for the examination and to remain in attendance until excused by the presiding Judge;
- (c) order the person to bring to the examination any document or thing in his or her possession or control, and produce it to the presiding Judge;
- (d) designate another Judge as the Judge before whom the examination is to take place; and
- (e) include any other terms or conditions that the Judge considers desirable, including terms or conditions for the protection of the interests of the person named in the order and of third parties or for the protection of any on going investigation.

(5) An order made under subsection (3) may be executed anywhere in Antigua and Barbuda.

(6) The Judge who made the order under subsection (3), or another Judge of the same court, may vary its terms and conditions.

(7) A person named in an order made under subsection (3) shall answer questions put to the person by the Attorney General or the Attorney General's representative, and shall produce to the presiding Judge documents or things that the person was ordered to bring, but may refuse to do so if answering a question or producing a document or thing would disclose information that is protected by the law relating to non disclosure of information or privilege.

(8) The presiding Judge shall rule on an objection or other issue relating to a refusal to answer a question or to produce a document or thing.

(9) No person shall be excused from answering a question or producing a document or thing under subsection (7) on the ground that the answer or document or thing may tend to incriminate the person or subject the person to any proceedings or penalty, but —

- (a) no answer given or document or thing produced under subsection (7) shall be used or received against the person in any criminal proceedings against that person, other than in a prosecution for perjury or giving false evidence; and
- (b) no evidence derived from the evidence obtained from the person shall be used or received against the person in any criminal proceedings against that person, other than in a prosecution for perjury or giving false evidence.

(10) A person has the right to retain and instruct counsel at any stage of the proceedings under this section.

(11) The presiding Judge, if satisfied that any document or thing produced during the course of the examination is likely to be relevant to the investigation of any offence under this Act,

shall order that document or thing be given into the custody of the police officer or an officer of the ONDCP, someone acting on behalf of the police officer or an officer of the ONDCP.

Power to intercept communications and the admissibility of intercepted communications.

24. (1) Subject to subsection (2), a police officer or an officer of the ONDCP may, for the purpose of obtaining evidence of the commission of an offence under this Act, apply, *ex parte*, to a Judge of the High Court, for an interception of communications order.

(2) A police officer or an officer of the ONDCP may make an application under subsection (1) only with the prior written consent of the Attorney-General.

(3) A Judge to whom an application is made under subsection (1) may make an order —

- (a) requiring a communications service provider to intercept and retain a specified communication or communications of a specified description received or transmitted, or about to be received or transmitted by that communications service provider;
- (b) authorizing the police officer or the officer of the ONDCP, as the case may be, to enter any premises and to install on such premises, any device for the interception and retention of a specified communication or communications of a specified description and to remove and retain such device, if the Judge is satisfied that the written consent of the Attorney General has been obtained as required by subsection (2) and that there are reasonable grounds to believe that material information relating to —
 - (i) the commission of an offence under this Act; or
 - (ii) the whereabouts of the person suspected by the police officer or an officer of the ONDCP to have committed the offence, is contained in that communication or communications of that description.

(4) Any information contained in a communication —

- (a) intercepted and retained pursuant to an order under subsection (3);
- (b) intercepted and retained in a foreign state in accordance with the law of the foreign state and certified by a Judge of that foreign state to have been so intercepted and retained,

shall be admissible in proceedings for an offence under this Act, as evidence of the truth of its contents notwithstanding the fact that it contains hearsay.

25. (1) Where the Commissioner of Police or the Director of the ONDCP, has reasonable grounds of suspecting that any property has been, or is being, used to commit an offence under this Act, he may seize the property.

Power to seize property used in commission of terrorist acts.

(2) The Commissioner of Police or the Director of ONDCP, may exercise his powers under subsection (1), whether or not any proceedings have been instituted for an offence under this Act in respect of that property.

(3) The Commissioner of Police or the Director of the ONDCP, shall as soon as practicable after seizing any property under subsection (1), make an application, *ex-parte*, to a Judge of the High Court for a detention order in respect of that property.

(4) A Judge to whom an application is made under subsection (3), shall not make a detention order in respect of the property referred to in the application unless he —

- (a) has given every person appearing to have an interest in the property, a reasonable opportunity of being heard;
- (b) has reasonable grounds to believe that the property has been, or is being, used to commit an offence under this Act.

(5) Subject to subsection (6), every detention order made under subsection (4), shall be valid for a period of 60 days, and may, on application, be renewed by a Judge of the High Court,

for a further period of 60 days until such time as the property referred to in the order is produced in court in proceedings for an offence under this Act in respect of that property.

(6) A Judge of the High Court may release any property referred to in a detention order made under subsection (4) if —

- (a) he no longer has reasonable grounds to suspect that the property has been or is being used to commit an offence under this Act; or
- (b) no proceedings are instituted in the High Court for an offence under this Act in respect of that property within 6 months of the date of the detention order.

(7) A seizure of any property by the Commissioner of Police or the Director of the ONDCP under subsection (1) shall be deemed not to be a contravention of section 8.

(8) No civil or criminal proceedings shall lie against the Commissioner of Police or the Director of the ONDCP for a seizure of property, made in good faith, under subsection (1).

PART V

TRIAL OF OFFENCES

Jurisdiction to try offences under this Act.

26. (1) The High Court shall have jurisdiction to try offences under this Act.

(2) The High Court shall have jurisdiction to try an offence under this Act if the act or omission constituting the offence is committed in Antigua and Barbuda.

(3) For the purposes of subsection (2), an act or omission committed outside Antigua and Barbuda and which would if committed in Antigua and Barbuda constitute an offence under this Act shall be deemed to have been committed in Antigua and Barbuda if —

- (a) the person committing the act or omission is —
 - (i) a citizen of Antigua and Barbuda;

- (ii) not a citizen of any country but is ordinarily resident in Antigua and Barbuda.
- (b) the act or omission is committed to compel the Government of Antigua and Barbuda to do or refrain from doing any act;
- (c) the act or omission is committed against a citizen of Antigua and Barbuda;
- (d) the act or omission is committed against property belonging to the Government of Antigua and Barbuda outside Antigua and Barbuda; or
- (e) the person who commits the act or omission is after its commission, present in Antigua and Barbuda.

27. Where in any proceedings for an offence under this Act, a question arises as to whether any thing or a substance is a weapon, a hazardous, radioactive or a harmful substance, a toxic chemical or microbial or other biological agent or toxin, a certificate purporting to be signed by an appropriate authority to the effect that the thing or substance described in the certificate is a weapon, hazardous, radioactive or harmful substance, a toxic chemical or microbial or other biological agent or toxin, shall be admissible in evidence without proof of the signature or authority of the person appearing to have signed it and shall, in the absence of evidence to the contrary, be proof of the facts stated therein.

Evidence by certificate.

28. (1) Where any person is convicted of an offence under this Act, the High Court may order that any property —

- (a) used for, or in connection with; or
- (b) received as payment or reward for,

Orders for forfeiture of property on conviction for offences under this Act.

the commission of that offence, be forfeited to the State.

(2) Before making an order under subsection (1), the court shall give every person appearing to have an interest in the property in respect of which the order is proposed to be made, an opportunity of being heard.

(3) Property forfeited to the State under subsection (1) shall vest in the State —

- (a) if no appeal has been made against the order, at the end of the period within which an appeal may be made against the order; and
- (b) if an appeal has been made against the order, on the final determination of the appeal.

PART VI

INFORMATION SHARING, EXTRADITION AND MUTUAL ASSISTANCE IN CRIMINAL MATTERS

Exchange of information relating to terrorist groups and terrorist acts.

29. The Commissioner of Police or the Director of the ONDCP may, on a request made by the appropriate authority of a foreign state, disclose to that authority, any information in his possession or in the possession of any other government department or agency, relating to any of the following —

- (a) the actions or movements of terrorist groups or persons suspected of involvement in the commission of terrorist acts;
- (b) the use of forged or falsified travel papers by persons suspected of involvement in the commission of terrorist acts;
- (c) traffic in weapons and sensitive materials by terrorist groups or persons suspected of involvement in the commission of terrorist acts;
- (d) the use of communications technologies by terrorist groups;

if the disclosure is not prohibited by any provision of law and will not, in the Commissioner's view be prejudicial to national security or public safety.

Counter terrorism conventions to be used as basis for extradition.

30. (1) Where Antigua and Barbuda becomes a party to a counter terrorism convention and there is in force, an extradition arrangement between the Government of Antigua and Barbuda and another state which is a party to that counter terrorism

convention, the extradition arrangement shall be deemed, for the purposes of the Extradition Act, to include provision for extradition in respect of offences falling within the scope of that counter terrorism convention.

(2) Where Antigua and Barbuda becomes a party to a counter terrorism convention and there is no extradition arrangement between the Government of Antigua and Barbuda and another state which is a party to that counter terrorism convention, the Minister may, by Order published in the Gazette, treat the counter terrorism convention, for the purposes of the Extradition Act as an extradition arrangement between the Government of Antigua and Barbuda and that state, providing for extradition in respect of offences falling within the scope of that counter-terrorism convention.

No. 12 of 1993.

31. (1) Where Antigua and Barbuda becomes a party to a counter terrorism convention and there is in force, an arrangement between the Government of Antigua and Barbuda and another state which is a party to that counter terrorism convention, for mutual assistance in criminal matters, the arrangement shall be deemed, for the purposes of the Mutual Assistance in Criminal Matters Act, to include provision for mutual assistance in criminal matters in respect of offences falling within the scope of that counter terrorism convention.

Counter terrorism convention to be used as basis for mutual assistance in criminal matters.

(2) Where Antigua and Barbuda becomes a party to a counter terrorism convention and there is no arrangement between the Government of Antigua and Barbuda and another state which is a party to that counter terrorism convention for mutual assistance in criminal matters, the Minister may, by Order published in the Gazette, treat the counter terrorism convention as an arrangement between the Government of Antigua and Barbuda and that state providing for mutual assistance in criminal matters in respect of offences falling within the scope of that counter terrorism convention.

32. (1) Notwithstanding anything in the Extradition Act or Mutual Legal Assistance in Criminal Matters Act an offence under this Act or an offence under any other Act, where the Act or omission constituting the offence also constitutes a terrorist act, shall, for the purposes of extradition or mutual assistance, be deemed not to be —

No. 12 of 1993.
No. 2 of 1993.
Offences under this Act deemed not to be offences of a political character for the purposes of extradition

- (a) an offence of a political character or an offence connected with a political offence or an offence inspired by political motives; or

ANTIGUA 26 *The Prevention of Terrorism Act, 2005.* No. 12 of 2005.
AND
BARBUDA

(b) a fiscal offence.

No. 2 of 1993. (2) Notwithstanding anything in the Mutual Legal Assistance in Criminal Matters Act, no request for mutual assistance in relation to an offence under this Act or an offence under any other Act where the act or omission also constitutes a terrorist act may be declined solely on the basis of secrecy.

PART VII

MISCELLANEOUS

Duty to disclose information relating to offences and terrorist acts.

33. (1) Every person who has any information which will be of assistance in —

- (a) preventing the commission by another person, of a terrorist act;
- (b) securing the arrest or prosecution of another person for an offence under this Act, or an offence under any other Act where the act or omission also constitutes a terrorist act,

shall forthwith disclose the information to a police officer or an officer of the ONDCP who shall immediately take appropriate action and inform his superior officer of the action taken.

(2) Nothing in subsection (1) requires the disclosure of any information which is protected by privilege.

(3) No civil or criminal proceedings shall lie against any person for disclosing any information, in good faith, under subsection (1).

(4) Any person who without reasonable cause fails to comply with subsection (1) commits an offence and on conviction, is liable to imprisonment for a term not exceeding five years.

(5) Any police officer or an officer of the ONDCP specified in subsection (1) who without reasonable cause fails to take immediate action in respect of any information disclosed in accordance with subsection (1) commits an offence and on conviction is liable to imprisonment for a term not exceeding five years.

34. (1) Every person shall forthwith disclose to the Commissioner of Police or the Director of the ONDCP or an officer designated by the Commissioner of Police or the Director of the ONDCP for that purpose —

Duty to disclose information relating to property of terrorist groups or property used for commission of offences under this Act.

- (a) the existence of any property in his or her possession or control, which is to his or her knowledge, owned or controlled by or on behalf of a terrorist group;
- (b) any information regarding a transaction or proposed transaction in respect of any property referred to in paragraph (a).

(2) The Commissioner of Police or the Director of the ONDCP shall disclose to the Financial Intelligence Unit of a foreign state or the appropriate authority of a foreign state, as the case may be, any information in its possession relating to any property owned or controlled by or on behalf of a terrorist group if such information is requested or if the Commissioner of Police or the Director of the ONDCP is of the view that the information would be relevant to a foreign state.

(3) Every financial institution shall report, every three months, to the Director of the ONDCP and any person authorized by law to supervise and regulate that Financial Institution —

- (a) that it is not in possession or control of any property, owned or controlled by or on behalf of a terrorist group;
- (b) that it is in possession or control of such property, and the particulars relating to the persons, accounts, and transactions involved and the total value of the property.

(4) In addition to the requirements of subsection (2), every financial institution shall report, to the Director of the ONDCP, every transaction which occurs within the course of its activities, and in respect of which there are reasonable grounds to suspect that the transaction is related to the commission of a terrorist act.

(5) No civil or criminal proceedings shall lie against any person for making a disclosure or report, in good faith, under subsection (1) or (2), or (3) or (4).

(6) Every person who fails to comply with subsection (1) or (2) or (3) commits an offence and shall on conviction, be liable to imprisonment for a term not exceeding five years.

Order for seizure
and restraint of
property.

35. (1) Where the Commissioner of Police or the Director of the ONDCP has reasonable grounds to suspect that any property has been, is being, or may be used to commit an offence under this Act, he shall seize that property.

(2) The Commissioner of Police or the Director of the ONDCP may exercise his powers under subsection (1) whether or not any proceedings have been instituted for an offence under this Act in respect of that property.

(3) The Commissioner of Police or the Director of ONDCP, shall as soon as practicable, after seizing any property under subsection (1) and in any event within ten days, make an application *ex parte*, to a Judge of the High Court for a detention order in respect of that property.

(4) Where a Judge of the High Court is satisfied, on an *ex parte* application made to the Judge in chambers by the Commissioner of Police or the Director of the ONDCP, that there are reasonable grounds to suspect that there is in any building, place or vessel, any property in respect of which an order of forfeiture may be made under section 37, the Judge may issue —

(a) a warrant authorizing a police officer or an officer of the ONDCP, as the case may be, to search the building, place or vessel for that property and to seize that property if found, and any other property in respect of which the police officer or the officer of the ONDCP suspects, on reasonable grounds, that an order of forfeiture may be made under section 37;

(b) a restraint order prohibiting any person from disposing of, or otherwise dealing with any interest in, that property, other than as may be specified in the order.

(5) On an application made under subsection (1), the Judge may, at the request of the Attorney General or if the Judge is of the opinion that the circumstances so require —

(a) appoint a person to take control of, and manage or otherwise deal with, the whole or a part of the property, in accordance with the directions of the Judge;

(b) require any person having possession of the property to give possession thereof to the person appointed under paragraph (a).

(6) The power to manage or otherwise deal with property under subsection (2) includes —

(a) in the case of perishable or rapidly depreciating property, the power to sell that property; and

(b) in the case of property that has little or no value, the power to destroy that property.

(7) Before a person appointed under subsection (2) destroys any property referred to in subsection 3 (b), he shall apply to a Judge of the High Court for a destruction order.

(8) Before making a destruction Order in relation to any property, the Judge shall require notice to be given, in such manner as the Judge may direct, to any person who, in the opinion of the Judge, appears to have an interest in the property and may provide that person with a reasonable opportunity to be heard.

(9) A Judge may order that any property in respect of which an application is made under subsection (4), be destroyed if he or she is satisfied that the property has little or no financial or other value.

(10) A management order under subsection (2) shall cease to have effect when the property which is the subject of the management order is returned to an applicant in accordance with the law or forfeited to the Crown.

(11) The Attorney General may at any time apply to a Judge of the High Court to cancel or vary a warrant or order issued under this section.

Power to prohibit making funds available to persons in foreign states to commit terrorist acts.

36. (1) Where the Minister has reasonable grounds to believe that a person outside Antigua and Barbuda is committing, or is likely to commit, a terrorist act in Antigua and Barbuda, the Minister may, by order, published in the Gazette, prohibit —

- (a) all persons in Antigua and Barbuda;
- (b) all citizens of Antigua and Barbuda resident outside Antigua and Barbuda,

from making funds available to, or for the use or benefit, of the first mentioned person, who shall be named in the Order or be identified by reference to a description of persons set out in the Order.

- (2)(a) Every Order made under subsection (1) shall be brought before the House of Representatives immediately after its publication in the Gazette for affirmative resolution.
- (b) Every such Order shall cease to have effect at the end of a period of 30 days from the date of its publication in the Gazette, unless it is approved by a resolution of the House of Representatives before the end of that period.
- (c) Any Order which is not so approved by the House of Representatives shall be deemed to be rescinded with effect from the date on which the period of 30 days referred to in this section ends.
- (d) Where an Order is deemed to be rescinded by reason of the operation of paragraph (c), the Minister shall cause notice of such rescission to be published in the Gazette.
- (e) In calculating the period of 30 days referred to in paragraph (b), no account shall be taken of any days on which the House of Representatives stands dissolved, prorogued or adjourned.

(3) Every person who does any act in contravention of an order made under this section commits an offence and on conviction, is liable to imprisonment for a term not exceeding fifteen years.

37. (1) The Attorney General may make an application to a Judge of the High Court for an order of forfeiture in respect of — Orders for forfeiture of property.

- (a) property owned or controlled by, or on behalf of, a terrorist group; or
- (b) property that has been, is being or will be used, in whole or part, to commit, or facilitate the commission of, a terrorist act.

(2) The Attorney General shall be required to name as respondents to an application under subsection (1) only those persons who are known to own or control the property that is the subject of the application.

(3) The Attorney General shall give notice of an application under subsection (1) to the respondents named in the application in such manner as the Judge may direct.

(4) If a Judge is satisfied, on a balance of probabilities, that the property which is the subject of the application, is property referred to in subsection (1) (a) or (b), the Judge shall order that the property be forfeited to the State to be disposed of as directed by the Judge.

(5) Where a Judge refuses an application under subsection (1), the Judge shall make an order that described the property and declare that it is not property referred to in that subsection.

(6) On an application under subsection (1), a Judge may require notice to be given to any person, who in the opinion of the Judge, appears to have an interest in the property, and any such person shall be entitled to be added as a respondent to the application.

(7) If a Judge is satisfied that a person referred to in subsection (6)—

- (a) has an interest in the property which is the subject of the application;
- (b) has exercised reasonable care to ensure that the property would not be used to commit or facilitate the commission of a terrorist act; and

(c) is not a member of a terrorist group,

the Judge shall order that the nature and extent of the interest in question, be declared and that the interest so declared shall not be affected by the Order.

(8) A person who claims an interest in property that has been forfeited and who has not been given notice under subsection (6) may make an application to the Court of Appeal of the Eastern Caribbean Supreme Court to vary or set aside an order made under subsection (4) not later than 60 days after the day on which the forfeiture order was made.

(9) Pending the determination of an appeal against an order of forfeiture made under this section, property restrained under section 35 shall continue to be restrained, property seized under a warrant issued under that section shall continue to be detained, and any person appointed to manage, control or otherwise deal with the property under that section shall continue in that capacity.

(10) The provisions of this section shall not affect the operation of any other provision of this Act respecting forfeiture.

Refusal of applications for registration, and the revocation of the registration, of charities linked to terrorist groups.

38. (1) The Attorney General may sign a certificate stating that it is his opinion, based on information received, including any security or criminal intelligence reports, that there are reasonable grounds to suspect that an applicant for registration as a registered charity or for incorporation as a non-profit company (in this section referred to as “the applicant”) or a registered charity or a non profit company has made, is making, or is likely to be made available, any resources, directly or indirectly, to a terrorist group.

(2) A copy of the signed certificate shall be served on the applicant personally or by registered letter sent to its last known address with a copy of the certificate.

(3) The certificate or any matter arising out of it shall not be subject to review or be restrained, prohibited, removed, set aside or otherwise dealt with, except in accordance with this section.

(4) Within fourteen days of receipt of the signed copy of the

certificate under subsection (2) the applicant or the registered charity or the non-profit company may make application to the High Court to review the decision of the Attorney General.

(5) Upon the filing of a certificate in the High Court under subsection (4), a Judge of that court shall —

- (a) examine in chambers, the information, including any security or criminal or intelligence reports, considered by the Attorney General before signing the certificate and hear any evidence or information that may be presented by or on behalf of the Attorney General (whether or not such information is admissible in a court of law), and may, on the request of the Attorney General, hear all or part of that evidence or information in the absence of the applicant, or any counsel representing the applicant, or if the Judge is of the opinion that the disclosure of the information would be prejudicial to national security or endanger the safety of any person;
- (b) provide the applicant with a statement summarizing the information available to the Judge so as to enable the applicant to be reasonably informed of the circumstances giving rise to the certificate, without disclosing any information the disclosure of which would, in the Judge's opinion, be prejudicial to national security or endanger the safety of any person;
- (c) provide the applicant with a reasonable opportunity to be heard; and
- (d) determine whether the certificate is reasonable on the basis of all the information available to the Judge or if found not reasonable, quash it.

(6) A determination under subsection (5) shall not be subject to appeal or review by any court.

(7) Where the Judge determines, under subsection (5), that a certificate is reasonable, the Attorney General shall cause the certificate to be published in the Gazette.

(8) A certificate determined to be reasonable under subsection (5), shall be deemed for all purposes to be sufficient grounds for the refusal of the application for registration of the charity or the incorporation of non-profit company referred to in the certificate or the revocation of the registration of the charity or the cancellation of the non-profit company referred to in the certificate.

(9) Where the Judge determines the certificate to be reasonable, he shall order —

- (a) the registration or the continued registration of the charity; or
- (b) the incorporation or the continuation of the non-profit company.

Provision of information relating to passengers of vessels and aircraft and persons entering and leaving the country.

39. (1) The operator of —

- (a) an aircraft or master of a vessel, departing from Antigua and Barbuda; or
- (b) an aircraft registered in Antigua and Barbuda or master of a vessel registered in Antigua and Barbuda, departing from any place outside Antigua and Barbuda,

may subject to regulations made under subsection (6), provide —

- (i) to the Chief Immigration Officer any information in his or her possession, relating to persons on board, or expected to be on board, the aircraft or vessel, as the case may be;
- (ii) to the competent authority in a foreign state, any information in his or here possession, relating to persons on board, or expected to be on board, the aircraft or vessel, as the case may be, and required by the laws of that foreign state.

(2) Notwithstanding subsection (4) the Chief Immigration Officer shall, on request, provide to the Commissioner of Police

or the Director of the ONDCP any information received pursuant to subsection (1)(b)(i).

(3) No information received by the Commissioner of Police or the Director of the ONDCP under subsection (2) shall be used or disclosed for any purpose except for the purpose of protecting national security or public safety.

(4) The provision of any information under subsection (1) or (2) shall, subject to regulations made under subsection (6), be deemed not to be a contravention of any provision of law prohibiting the disclosure of the information.

(5) No information provided to the Chief Immigration Officer under subsection (1) shall be used or disclosed by the Chief Immigration Officer except for the purpose of protecting national security or public safety.

(6) The Minister may make regulations generally to give effect to the purposes of this section, including regulations —

- (a) respecting the types or classes of information that may be provided under this section;
- (b) specifying the foreign states to which the information may be provided.

40. (1) The Chief Immigration Officer or other authorized officer under the laws relating to immigration shall not grant an endorsement or other authority permitting a person to enter Antigua and Barbuda if he or she has reasonable grounds to suspect that that person has been, is, or will be, involved in the commission of a terrorist act.

Power to prevent entry and order the removal of persons.

(2) Where the Minister in charge of Immigration has reasonable grounds to suspect that a person in Antigua and Barbuda has been, is or will be, involved in the commission of a terrorist act, he or she may make an order requiring that person to leave Antigua and Barbuda and remain thereafter out of Antigua and Barbuda.

(3) A person with respect to whom an order under subsection (2) is made shall leave Antigua and Barbuda and shall, so long as the order is in force, remain out of Antigua and Barbuda.

(4) A person with respect to whom an order under subsection (2) is made may be detained in such manner as may be directed by the Minister in charge of Immigration and may be placed on a vessel or aircraft leaving Antigua and Barbuda.

Power to refuse
refugee applica-
tion.

41. The Minister responsible for Immigration may, having regard to the interests of national security and public safety, refuse the application of any person applying for status as a refugee, if he or she has reasonable grounds to believe that the applicant has committed a terrorist act or is or is likely to be, involved in the commission of a terrorist act.

Power to make
Regulations.

42. (1) The Minister may make regulations in respect of all matters in respect of which regulations are required or authorized to be made by this Act.

(2) Every regulation made under subsection (1), shall, as soon as convenient after its publication in the Gazette, be brought before Parliament for approval by affirmative resolution.

(3) Any regulation which is not so approved by Parliament shall be deemed to be rescinded as from the date of disapproval, but without prejudice to anything previously done thereunder.

(4) Where an Order is deemed to be rescinded by reason of the operation of subsection (3), the Minister shall cause notice of such rescission to be published in the Gazette.

Repeal.

43. (1) The Prevention of Terrorism Act, 2001, No. 15 of 2001 is repealed

(2) Notwithstanding subsection (1), regulations, orders or directions made or issued under the repealed Act shall remain in force until they are revoked.

No. 12 of 2005. *The Prevention of Terrorism Act, 2005.* 37 ANTIGUA
AND
BARBUDA

Passed by the House of Representatives
this 15th day of July, 2005.

Passed by the Senate this
12th day of August, 2005.

D. Giselle Isaac-Arrindell,
Speaker.

Hazlyn M. Francis,
President.

Yvonne Henry,
*Acting Clerk to the House of
Representatives.*

Yvonne Henry,
Acting Clerk to the Senate.

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- (d) co-operation with foreign jurisdictions in the matter of terrorism generally; and
- (e) implementing the international commitments of Antigua and Barbuda in respect of terrorism.

Clause 1 retains the short title to the existing Act.

4. For the avoidance of doubt and for purposes of ensuring certainty, Clause 2, defines words and phrases used in the several clauses of the Bill. Clause 2 also provides a list of all the counter terrorism conventions adopted by the United Nations and other Multilateral Agreements. Particular care is taken under this clause to describe all acts which the law would recognize as “terrorist acts”. The description excludes disruption of services and acts committed in pursuance of lawful industrial and political protest, demonstrations or stoppages of work so long as these acts do not involve serious bodily harm to persons, damage to property or danger to a person’s life. In order to reach terrorist property wherever located the definition is deliberately broadened to achieve its intended objective.

5. Part II of the Bill makes provision to authorize the Commissioner of Police or the Director of the ONDCP to identify entities in respect of which there are reasonable grounds to suspect that such entities have committed, promoted, participated in or facilitated the commission of certain acts with the knowledge that such acts are acts which the law has declared to be terrorist acts.

6. Certain consequences follow the identification of an entity as a specified entity. These are: the declaration and publication of the identified entity as a specified entity, the freezing and restraining of the accounts and other properties of the specified entity. It would be proposed in clause 3, that the Attorney General shall, on the recommendation of the Commissioner of Police or the Director of the ONDCP, publish in the Gazette the name of any person in respect of whom there exist reasonable grounds to suspect that it has committed or is likely to commit a terrorist act as specified entity. Furthermore, the accounts and other properties held in a financial institution on behalf of a specified entity and believed on reasonable grounds to have been used in, or likely to be used in, the commission of terrorist act would be instantly frozen by the Order to the Supervisory Authority.

7. Provision is also made under clause 3 to give a specified entity the right to make representation for the order made against it to be revoked by the Attorney General or, in the event of his refusal to revoke, to apply to a judge of the High Court to determine whether there is justification for the declaration and publication of the name of the entity as a specified entity.

8. Under Article 41 of the United Nations Charter, Governments of countries which are members of the United Nations have an obligation to give effect to decisions of the Security Council. In pursuance of this Article, clause 4 authorises the Minister of Foreign Affairs to give effect to decisions of the Security Council by making an order to that effect. To this end, decisions of the United Nations Security Council, which provides the names of entities as entities which have been engaged in terrorist acts may, in accordance with clause 3, be deemed, from the date of the Order, to be a specified entity and there upon all the consequences prescribed under clause 3 would be applicable to them.

9. The United Nations Security Council Resolution 1373 (2001) provides in paragraph 1(a) that all states shall, among other obligations, prevent and suppress the financing of terrorist acts and criminalize the willful provision, or collection by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used or in the knowledge that they are to be used, in order to carry out terrorist acts.

10. In compliance with the above resolution, clauses 6 and 7 create the offence of collection of funds for or making available financial or other services to terrorists with the intended purpose of committing or facilitating the commission of terrorist acts. This offence is considered to be as serious as the Commission of the terrorist act itself. Hence, the maximum penalty is the same as the commission of a terrorist offence.

11. Clause 5 of the Bill would, also implement the obligation to criminalize acts described in the interpretation section as terrorist acts. Clause 5 would criminalize certain acts, threats or acts which are preparatory to or in furtherance of terrorist acts or omissions, as serious offences, and prescribe a maximum penalty of twenty-five years imprisonment for a violation of this offence.

12. Money Laundering has been identified as one of the sources from which terrorists obtain their finance. Accordingly, clause 9 has created, as an offence, certain terrorist related acts, as acts which would also constitute money laundering offences.

13. The first part of clause 9 makes it an offence to enter into any arrangement which would facilitate the acquisition, retention or control of terrorist property on behalf of another person either by way of concealment, removal from jurisdiction or transfer to a nominee. The second part criminalizes dealing in, acquisition or possession of terrorist property. Transactions by way of conversion, concealment or disguising of terrorist property are also criminalized. Finally, the provision of financial and other services to money launderers engaged in terrorist financing are prohibited.

14. The Money Laundering Prevention Act, deals with funds and properties derived from money laundering activities in a special manner. Clause 9(3) would apply the freezing and forfeiture provisions of the Money Laundering Prevention Act to property and other assets used in connection with the commission of, or obtained as reward for facilitating or participating in, terrorist acts.

15. The Security Council Resolutions 1269 and 1373 call upon all states to deny safe haven within their states to persons who plan and carry out terrorist acts. Clauses 10 and 11 would give effect to this resolution by criminalizing, the soliciting of support to any terrorist group, or the provision of support to persons who commit terrorist acts or the giving of support to those who harbour or provide safe haven to terrorist, or interference with the apprehension of persons suspected of terrorist acts or belonging to terrorist organizations.

16. Clauses 12 to 20 would make it unlawful to offer weapons to terrorist or terrorists groups or to recruit persons to be members of terrorist groups or to participate in terrorist acts or to arrange meetings in support of terrorist groups. The offences created under these clauses would implement paragraph 2(a) of the Security Council Resolution 1373 which decides that all states shall refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists.

17. Part IV of the Bill makes provision for the arrest, detention and information gathering as part of the investigative tools designed to implement paragraph 2(e) of the UN Security Council Resolution 1373. This resolution requires all states to ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts is brought to justice. The resolution calls upon all states to ensure that such terrorist acts are established as serious criminal offences in the domestic laws and punished appropriately. In compliance with this Resolution, clause 21 authorises a police officer or an officer of the ONDCP to arrest instantly and without warrant, any person who has committed or who is committing, or who is suspected of having committed a terrorist offence.

18. This Bill recognizes that information gathering for purposes of obtaining evidence in judicial proceedings must be conducted in accordance with the law. Consequently, the Bill makes provision to authorize a police officer or an officer of the ONDCP to apply to a Judge of the High Court to order the detention of persons suspected of committing an offence under this Act for a period not exceeding five days, if there are reasonable grounds to suspect that the person against whom the order is made has interfered with, or is interfering with, investigations relating to the commission of a terrorist act.

19. The application would also request a Judge of the High Court to order the attendance of a named person at a place designated by the Judge for examination and, if in possession or in control of relevant documents, to produce those documents.

20. No order may be made under clause 23 unless the prior consent of the Attorney General has been obtained and the Judge is satisfied that an offence under the Act has been committed and the information concerns the offence or may reveal the whereabouts of the suspected person or that the suspected person has material information that relates to the offence.

21. Part V which consists of clauses 26 to 28 addresses the issue of jurisdiction. Under Security Council Resolution 1373 states are required, in relation to the obligation under paragraph 1(b) and 1(d) to extend the states jurisdiction to nationals committing offences outside the state. There is no obligation to provide extra territorial jurisdiction over terrorist offences. However, the global dimensions of terrorist financing and targets of terrorist acts call for a universalist approach to the adoption of extra territorial measures for the prevention of terrorist acts.

22. In pursuance of paragraph 1(b) and 1(d) of UN Security Council Resolution 1373 referred to above, clause 26 gives the High Court jurisdiction over acts or omissions which would occur in Antigua and Barbuda and which would constitute offences under this Act. The High Court jurisdiction includes terrorist offences committed by citizens of Antigua and Barbuda or persons belonging to no particular state, but are ordinarily resident in Antigua and Barbuda, acts or omissions committed to compel the Government of Antigua and Barbuda to do or refrain from doing an act, or acts committed against citizens of or property of the Government of Antigua and Barbuda. Subclause (3) of clause 26 would extend the jurisdiction of the High Court to acts or omissions which occur outside Antigua and Barbuda, which if committed in Antigua and Barbuda, would constitute an offence in Antigua and Barbuda.

23. Clause 26 would also give jurisdiction to the High Court to order the forfeiture of property of any person convicted of an offence under this legislation, if the property is used for, or in connection with or received as payment of reward for, the commission of an offence under this Act. Interested parties of properties that would be forfeited under this Legislation would be given the opportunity to intervene and state their claim.

24. The global reach of terrorism requires an effective information sharing mechanism. The Mutual Assistance in Criminal Matters Act is recognized as an effective mechanism designed to enable information sharing internationally. Thus, the provisions of clauses 29 to 32 would implement paragraph 2(f) of the UN Security Council Resolution 1373. Under this resolution states have obligation to

afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence that would be used in the prosecution of offenders.

25. The provisions of Part IV of the Bill would give effect to these resolutions. Clause 29 would authorise the Commissioner of Police or the Director of the ONDCP to disclose, on request to an appropriate authority of a foreign state, information relating to actions or movements of terrorist groups, or involvement in the commission of terrorist acts, or the use of forged or falsified travel papers or traffic in weapons and sensitive material or the use of communication technologies of terrorists or suspected terrorists.

26. The provisions in relation to providing assistance to foreign governments would include request for assistance under the Extradition Act 1993 in relation to terrorist offences. Where it is not permissible to provide assistance under the Extradition Act, clause 30 would make provision empowering the Minister to provide assistance for extradition request under any of the counter terrorism conventions to which Antigua and Barbuda is a party.

27. Clauses 33 and 34 would impose upon every person the obligation to disclose information that might lead to the prevention of terrorist acts or the arrest or prosecution of any person for an offence under the Bill. The obligation to disclose information under this Bill would be extended to cover disclosure of information in relation to property belonging to a terrorist or a terrorist organization or to transactions involving terrorist property.

28. The obligation to disclose information under clauses 33 and 34, require disclosure that might lead to the prevention of a terrorist act or secure the arrest or prosecution of another person for an offence under this Bill. Clause 34 would also require the Commissioner of Police or the Director of the ONDCP to disclose to the Financial Intelligence Unit of a foreign country of any information in its possession relating to property owned or controlled by or on behalf of a terrorist group if such information is requested.

29. Offences described as offences inspired by political motives are excluded from extradition arrangements between states as non-extraditable crimes. Similarly, assistance relating to offences inspired by political motive is not provided under bilateral or multilateral mutual assistance in criminal matters. With the advent of terrorism, there is now a consensus among states that terrorism as a means of achieving political ends is not justified under any circumstance. Consequently, international law now recognizes that terrorist offences inspired by political motives would no longer be excluded from any arrangement for extradition or agreement for assistance in criminal matters.

30. Clause 32 would therefore provide that an offence under any act which also constitutes an offence under this Act would no longer be considered as offences of a political nature or inspired by political motive.

31. Paragraph 2(g) of the UN Security Council Resolution 1373 decides that all states prevent the movement of terrorist or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents.

32. Clauses 39 to 41 would make provision to implement paragraph 2(g) of this resolution. Clause 39 would, in particular, require the operator of an aircraft or vessel registered in Antigua and Barbuda to provide to the Chief Immigration Officer information within his knowledge of persons on board the aircraft or vessel when that aircraft or vessel is leaving Antigua and Barbuda.

33. Authority would be given under this clause to enable the Chief Immigration Officer to share the information received with any foreign authority. The Chief Immigration Officer would also be empowered to refuse entry into Antigua and Barbuda of any person suspected, on reasonable grounds, to have committed an offence or is involved in the commission of an offence under this legislation.

34. The Minister would be authorised under clause 41 to refuse to grant refugee status to any person suspected of having committed or involved in the commission of terrorist offence.

DATED this 26th day of May, 2005.

Hon. Justin L. Simon Q.C.,
Attorney General and
Minister of Legal Affairs.

ANTIGUA AND BARBUDA

THE PREVENTION OF TERRORISM ACT, 2005

ARRANGEMENT OF SECTIONS

SECTION

PART I

1. Short title.
2. Interpretation.

PART II

SPECIFIED ENTITIES

3. Orders declaring certain entities to be specified entities.
4. Orders for the implementation of measures to give effect to resolutions of the Security Council.

PART III

OFFENCES

5. Prohibition of terrorist act.
6. Provision or collection of funds to commit terrorist acts.
7. Collection of property or provision of property and services, for commission of terrorist acts.
8. Use of property for commission of terrorist acts.
9. Money laundering.
10. Soliciting and giving of support to terrorist groups or for the commission of terrorist acts.
11. Harboring of persons committing terrorist acts.
12. Provision of weapons to terrorist group.
13. Recruitment of persons to be members of terrorist groups or to participate in terrorist acts.
14. Provision of training and instruction to terrorist groups and persons committing terrorist acts.
15. Promotion or facilitation of the commission of terrorist acts in foreign states.

16. Promotion of offences under section 15.
17. Conspiracy to commit offences under this Act.
18. Membership of terrorist groups.
19. Arrangements of meetings in support of terrorist groups.
20. Participation in the commission of offences under this Act.

**PART IV
INVESTIGATION OF OFFENCES**

21. Powers of arrest.
22. Detention Order.
23. Power to gather Information.
24. Power to intercept communications and the admissibility of intercepted communications.
25. Power to seize property used in commission of terrorist acts.

**PART V
TRIAL OF OFFENCES**

26. Jurisdiction to try offences under this Act.
27. Evidence by certificate.
28. Orders for forfeiture of property on conviction for offences under this Act.

**PART VI
INFORMATION SHARING, EXTRADITION AND
MUTUAL ASSISTANCE IN
CRIMINAL MATTERS**

29. Exchange of information relating to terrorist groups and terrorist acts.
30. Counter terrorism conventions to be used as basis for extradition.
31. Counter terrorism convention to be used as basis for mutual assistance in criminal matters.
32. Offences under this Act deemed not to be offences of a political character for the purposes of extradition.

PART VII
MISCELLANEOUS

33. Duty to disclose information relating to offences and terrorist acts.
34. Duty to disclose information relating to property of terrorist groups or property used for commission of offences under this Act.
35. Order for seizure and restraint of property.
36. Power to prohibit making funds available to persons in foreign states to commit terrorist acts.
37. Orders for forfeiture of property.
38. Refusal of applications for registration, and the revocation of the registration, of charities linked to terrorist groups.
39. Provision of information relating to passengers of vessels and aircraft and persons entering and leaving the country.
40. Power to prevent entry and order the removal of persons.
41. Power to refuse refugee application.
42. Power to make Regulations.
43. Repeal.