

ANTIGUA AND BARBUDA



THE PREVENTION OF TERRORISM (AMENDMENT) ACT, 2008

No. 16 of 2008

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THE PREVENTION OF TERRORISM (AMENDMENT) ACT, 2008

ARRANGEMENT

Sections

1. Short title.
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3. Amendment of section 28-Order for forfeiture of property on conviction of an offence under this Act
4. Amendment of section 9-Money laundering
5. Amendment of section 33-Duty to disclose information relating to offences and terrorist acts
6. Amendment of section 34-Duty to disclose information relating to property of terrorist groups or property used for commission of offences under this Act
7. Insertion of section 35A-Review of orders for seizure and restraint of property
8. Miscellaneous Amendments



I Assent,

[L.S.]

Sir. Eustace B. Francis,
Deputy Governor-General.

31st December, 2008

ANTIGUA AND BARBUDA

THE PREVENTION OF TERRORISM (AMENDMENT) ACT, 2008

No. 16 of 2008

AN ACT to amend the Prevention of Terrorism Act.

ENACTED by the Parliament of Antigua and Barbuda as follows:

1. Short title

This Act may be cited as the Prevention of Terrorism (Amendment) Act, 2008.

2. Amendment of section 2-Interpretation

(1) Section 2 of the Prevention of Terrorism Act 2005 No. 12 of 2005, hereafter referred to as the principal Act is amended as follows—

(a) by repealing the definition of “property” and substituting the following—

“property” means assets of every kind, whether corporeal or incorporeal, moveable or immoveable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;”

(b) by inserting in the correct alphabetical order the following:

““financing of terrorism” includes, without limiting the generality, such conduct as is prohibited by section 6, 7, 8, 9 and 10 of this Act;

“funds” means assets of every kind, whether tangible or intangible, moveable or immoveable however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such funds or other assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, or letters of credit, and any interest, dividends or other income on or value accruing from or generated by such funds or other assets;

“person” means any entity, natural or juridical, a corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture, or other unincorporated organisation or group, capable of acquiring rights or entering into obligations;

“proceeds” means any funds derived from or obtained, directly or indirectly, through the commission of any offence set forth in this Act;”

(2) Section 2 of the principal Act is amended by inserting after subsection (1) the following subsections

“2(2) Knowledge, intent or purpose required as an element of any offence under this Act, as well as the relationship of any proceeds or instrumentalities to a terrorist activity, may be inferred from objective or factual circumstances.”

(3) Property collected, offered, made available, provided or delivered in the commission of an offence under this Act shall be considered as proceeds of the offence, and property used in the commission of that offence shall be considered instrumentalities thereof.”

3. Amendment of section 9-Money laundering

Section 9 of the principal Act is amended as follows—

(a) by repealing section 9 (3) and substituting the following

“(3) The offences referred to in subsections (1) and (2) are money laundering offences. Application for freezing of related property and the making of ancillary order relating thereto shall be done in accordance with sections 9(4) below.”

(b) by inserting the following subsection after subsection (3)

“(4) The Supervisory Authority may direct a financial institution in writing to freeze property for a period of up to fourteen days while the Supervisory Authority seeks a freeze order from the court, if satisfied that such property is derived from or connected to a money laundering offence.”

4. Amendment of section 28-Orders for forfeiture of property on conviction for offences under this Act

Section 28 of the principal Act is amended by inserting after subsection (3) the following—

“(4) The court may, on the application of the Attorney General, make an order for the payment, out of property forfeited, of such sums as the court considers reasonable, of compensation for the benefit of persons that have suffered loss as a result of any direct or indirect consequence of the offence.”

5. Amendment of section 33-Duty to disclose information relating to offences and terrorist acts

Section 33(1) (a) of the principal Act is repealed and substituted by the following—

“33(1) (a) preventing the commission or attempted commission by another person, of a terrorist act;”

6. Amendment of section 34-Duty to disclose information relating to property of terrorist groups or property used for commission of offences under this Act

Section 34 of the principal Act is amended as follows:

(a) by repealing subsection (3) (a) and substituting the following—

“(3)(a) that it is not in possession or control of any property, owned or controlled by or on behalf of a terrorist group or persons suspected of being terrorist organizations, members of terrorist organizations or financiers of terrorism.”.

(b) by repealing subsection (4) and substituting the following—

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

7. Insertion of section 35A-Review of orders for seizure and restraint of property

The principal Act is amended by inserting after section 35 the following—

“35A Review of orders for seizure and restraint of property

(1) A person who has an interest in property that was seized under a warrant issued pursuant to section 35 or in respect of which a restraining order was made may, at any time, apply to the Court—

- (a) for an order under subsection (4); or
- (b) for permission to examine the property.

(2) An application made under subsection (1) shall not be heard by the Court unless the applicant has given to the Director of Public Prosecutions at least three days clear notice in writing of the application.

(3) The Court may require notice of the application to be given to, and may hear, any person who, in the opinion of the Court appears to have an interest in the property.

(4) On an application made under subsection (1)(a) in respect of any property, the Court may, after hearing the applicant, the Director of Public Prosecutions and any other person to whom notice was given pursuant to subsection (3), order that the property or any part thereof be returned to the applicant or, in the case of a restraining order, revoke the order or vary the order to exclude the property or any interest in the property or any part of it from the application of the order, or make the order subject to such conditions as the Court thinks fit,

- (a) if the applicant enters into recognizance before the Court with or without sureties, in such amount and with such conditions, as the Court directs and where the Court considers it appropriate, deposits with the Court such money or other valuable security as the Court directs;
- (b) if the conditions referred to in subsection (5) are satisfied; or
- (c) for the purpose of—
 - (i) meeting the reasonable living expenses of the person who was in possession of the property at the time the warrant was executed or the order was made or any person who, in the opinion of the Court has an interest in the property and of dependants of that person,
 - (ii) meeting the reasonable business or legal expenses of the person referred to in subparagraph (i).

(5) An order under subsection (4)(b) in respect of property may be made by the Court if the Court is satisfied—

- (a) that a warrant should not have been issued pursuant to section 35 or a restraining order should not have been made in respect of that property; or
- (b) that the applicant is the lawful owner of, or lawfully entitled to possession of, the property and appears innocent of any complicity in the commission of an offence under this Act or of any collusion in relation to such an offence; and

(c) that the property will no longer be required for the purpose of any investigation or as evidence in any proceedings.

(6) On an application to the Court under subsection (1)(b), the Court may order that the applicant be permitted to examine property subject to such terms as appear to the Court to be necessary or desirable to ensure that the property is safeguarded and preserved for the purpose for which it may subsequently be required.”.

8. Miscellaneous Amendments

The principal Act is amended as follows—

- (a) in section 5, by inserting after the word “liable” the words “on conviction” and after the words “indictment” of the words “to a fine of five hundred thousand dollars or;”
- (b) in sections 6, 7, 8, 10(1), 11, 12, 13, 14, 15, 16, 18(1), 19(1), 20 by inserting after the word “liable” the words “to a fine of five hundred thousand dollars or”.

Passed by the House of Representatives on this 10th day of November, 2008.

Passed by the Senate on this 13th day of November, 2008.

D. Giselle Isaac-Arrindell,
Speaker.

Hazlyn M. Francis,
President.

Yvonne Henry,
Clerk to the House of Representatives.

Yvonne Henry,
Clerk to the Senate.