

ANTIGUA AND BARBUDA



THE PREVENTION OF TERRORISM (AMENDMENT) ACT, 2010

No. 2 of 2010

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THE PREVENTION OF TERRORISM (AMENDMENT) ACT, 2010**ARRANGEMENT****Sections**

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[L.S.]



I Assent,

Louise Lake-Tack,
Governor-General.

12th April, 2010

ANTIGUA AND BARBUDA

THE PREVENTION OF TERRORISM (AMENDMENT) ACT, 2010

No. 2 of 2010

AN ACT to amend the Prevention of Terrorism Act 2005, No. 12 of 2005 and for incidental and connected purposes.

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, 2010 and shall come into operation on a date that the Minister may appoint, by Notice published in the *Gazette*.

2. Interpretation

In this Act “the principal Act” means the Prevention of Terrorism Act 2005, No. 12 of 2005.

3. Amendment of section 2 Interpretation

Section 2 of the principal Act is amended by repealing subsection (3).

4. Amendment of section 3 — Orders declaring certain entities to be specified entities.

Section 3 of the principal Act is amended—

(a) by inserting after subsection (2), the following:—

“(2A) For the purposes of subsection (2)(b), the Order by the Attorney General directing a financial institution to restrain or freeze any account or other property held by the financial institution on behalf of the specified entity shall be immediately binding and effective on the financial institution notwithstanding that the Order has not yet been published in the *Gazette*.

(2B) An Order to a financial institution under subsection (2)(b) may be communicated by the Attorney General using such methods as may be appropriate in the circumstances or as may be prescribed by Regulations.

(2C) Without limiting the generality of subsection (2B) the Order may be communicated by the Attorney General through the Director of the ONDCP.”;

(b) in subsection (3), by repealing the word “seven” and substituting the word “fourteen”;

(c) by inserting after subsection (4), the following—

“(4A) On receipt of an application under subsection (4), the Commissioner of Police or the Director of the ONDCP, as the case may be, shall forthwith notify the Attorney General of that fact.”;

(d) in subsection (5)(b), by inserting after “applicant”, “and the Attorney General”;

(e) by inserting after subsection (5), the following—

“(5A) Where on consideration of a recommendation made under subsection (5)(a), the Attorney General—

(a) is satisfied that there are no reasonable grounds to refuse the request for revocation of the order, he shall—

(i) forthwith revoke the Order;

(ii) forthwith notify, in writing, the applicant, every financial institution which had received a direction under subsection (2)(b) in respect of the entity and, as applicable, the Commissioner of Police or the Director of the ONDCP, of the revocation; and

- (iii) within seven days publish a notice of revocation in the *Gazette*;
- (b) is satisfied that there are reasonable grounds to refuse the request for revocation of the order he shall—
 - (i) refuse the application; and
 - (ii) within 7 days of the decision, notify, as applicable, the Commissioner of Police or the Director of the ONDCP, in writing of that decision.
 - (5B) The Commissioner of Police or the Director of the ONDCP, as the case may be, shall, upon receipt of the notification under subsection (5A)(b), notify the applicant in writing of the decision not to revoke the Order;
 - (5C) If within 60 days of making an application under subsection (4) the specified entity—
 - (a) has not been notified of a decision to refuse the application; or
 - (b) has not been notified in writing of the revocation of the order,

the specified entity may apply to a Judge of the High Court for a revocation of the Order made under subsection (2).”;

- (f) in subsection (6), by inserting after “(5)”, “or (5B)”;
- (g) in subsection (7), by repealing—
 - (i) the words “subsection (6)” and substituting, the words “subsection (5C) or (6)”;
 - (ii) paragraph (d) and substituting the following—

“(d) determine whether or not the Order should be revoked on the basis of the information available to the Judge and, if he determines that the Order should be revoked, make an Order for such revocation.”;
- (h) by inserting after subsection (7), the following—

“(7A) Nothing in subsection (7)(d) prohibits the Attorney General, on the basis of a subsequent recommendation under subsection (1), from exercising his powers under this section in relation to an entity to which an order under subsection (7)(d) was made.”; and

(i) by inserting after subsection (9), the following—

“(10) Where on consideration of a recommendation made under subsection (9), the Attorney General—

(a) is satisfied that there are no reasonable grounds to refuse the request for revocation of the Order, he shall forthwith—

(i) revoke the order;

(ii) publish a notice of revocation in the *Gazette*; and

(iii) notify, in writing, the applicant, every financial institution which had received a direction under subsection (2) (b) in respect of the entity and, as applicable, the Commissioner of Police or the Director of the ONDCP, of the revocation;

(b) is satisfied that there are reasonable grounds to refuse the request for revocation of the order he shall—

(i) refuse the application; and

(ii) within 7 days of the decision, notify, as applicable, the Commissioner of Police or the Director of the ONDCP, in writing of that decision.”.

5. Insertion of new section 4A

The principal Act is amended by inserting after section 4, the following section—

“4A. Certain transfers null and void.

(1) Where, after the making of an order under section 3(3) or the deeming of an order under section 4 (2) any property referred to in, or within the scope of, the order is transferred, by any mode whatsoever—

(a) the transfer shall, for the purposes of proceedings under this Act, be ignored;

(b) if the property is subsequently forfeited, the transfer of such property shall be deemed to be null and void unless the transfer was made for valuable consideration to a person acting in good faith and without notice; and

(c) the financial institution which was directed under section 3(2) to restrain or freeze the property in question shall be civilly liable to the Crown for the recovery of the property.

(2) The value of the property referred to in subsection (1) shall be a debt due to the Crown by the financial institution and proceedings for the recovery of amount due may be brought at any time within six years from the date that the property is forfeited.”.

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—

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

“(4) In addition to the requirements of subsection (3), every financial institution shall report, to the Director of the ONDCP, every transaction, attempted 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, attempted transaction or proposed transaction is—

- (a) related to terrorism or the commission of a terrorist act;
- (b) conducted by or on behalf of a terrorist group or a member of a terrorist group;
- (c) conducted by or on behalf of a person who finances terrorism or the commission of a terrorist act.”; and

(b) by repealing subsection (6) and substituting the following—

“(6) A person who fails to comply with subsection (1), (3) or (4) commits an offence and is liable on conviction to a fine of five hundred thousand dollars or to imprisonment for a term not exceeding five years.”.

7. Insertion of new section 37A

The principal Act is amended by inserting after section 37, the following section—

“(37A) Disposing of or dealing with property forfeited

(1) Where a Judge makes a forfeiture order under section 37(4) against any property, the property vests absolutely in the Crown by virtue of the order.

(2) Subject to subsection (3), a person shall not, except with leave of the Court and in accordance with any directions of the Court, dispose of or otherwise deal with property in relation to which an order under section 28(1) or 37(4) relates.

(3) Where an order has been made under section 37(4), nothing in subsection (2) affects the right to dispose of the property in the manner directed by the Judge.

(4) A person who contravenes subsection (2) commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine of five hundred thousand dollars or to imprisonment for a term not exceeding three years; or
- (b) in the case of a body corporate, to a fine not exceeding one million dollars.

(5) It is a defence to a charge under subsection (2) if the defendant can prove that he had no notice and no reason to suspect that the property was forfeited to the Crown.

(6) Where, after the making of an order under section 28(1) or 37(4), property to which the order relates is disposed of or dealt with, by any mode whatsoever, and the disposition or dealing shall be deemed to be null and void unless the disposal or dealing was made for valuable consideration to a person acting in good faith and without notice.”.

8. Insertion of new sections 41A and 41B

The principal Act is amended by inserting after section 41, the following sections—

“41A. Certain agreements null and void.

Any agreement to—

- (a) finance terrorism or the commission of a terrorist act; or
- (a) facilitate terrorism or the commission of a terrorist act shall be null and void.

“41B Liability of Directors, etc. where offence committed by body corporate.

Where a body corporate commits an offence under this Act, every director or other officer concerned in the management of the body corporate commits that offence unless he proves that—

- (a) the offence was committed without his consent or connivance; and
- (b) he exercised reasonable diligence to prevent the commission of the offence.”.

9. Insertion of new section 43

The principal Act is amended by inserting after section 42, the following section—

“43 **Guidelines**

The Director of the ONDCP may issue guidelines to financial institutions for the effective implementation of the provisions of this Act or Regulations.”.

10. Miscellaneous amendments

The principal Act is amended in sections 5, 6, 7, 8, 10(1), 11, 12, 13, 14, 15, 16, 18(1), 19(1) and 20, by repealing the words “five hundred thousand dollars” and substituting the words “one million dollars”.

Passed by the House of Representatives on the 11th day of February, 2010.

Passed by the Senate on the 1st day of March, 2010.

D. Gisele Isaac-Arrindell,
Speaker.

Hazlyn M. Francis,
President.

T. Thomas,
Clerk to the House of Representatives.

T. Thomas,
Clerk to the Senate.