

ANTIGUA AND BARBUDA

No. 9 of 1996

MONEY LAUNDERING (PREVENTION) ACT, 1996

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No. 9 of 1996.

*Money Laundering (Prevention)
Act. 1996*

1 ANTIGUA
AND
BARBUDA

[L.S.]



I Assent,

James B. Carlisle,
Governor-General.

20th February, 1997

ANTIGUA AND BARBUDA

No. 9 of 1996

AN ACT to make provisions for the prevention of money laundering and to provide for matters connected therewith or incidental thereto.

[6th March, 1997.]

ENACTED, by the Parliament of Antigua and Barbuda as follows —

**PART I
PRELIMINARY**

1. This Act may be cited as the Money Laundering (Prevention) Act. 1996. Short title

2. (1) In this Act — Interpretation

"business transaction" includes any arrangement, opening an account, between two or more persons where the purpose of the arrangement is to facilitate a transaction between the persons concerned and any related transaction between any of the persons concerned and another person.

“business transaction record” includes where relevant to a business transaction —

- (a) the identification of all the persons party to that transaction;
- (b) a description of that transaction sufficient to identify its purpose and method of execution;
- (c) the details of any account used for that transaction, including bank, branch and sort code; and
- (d) the total value of that transaction;

“competent authority” means a person or persons appointed by the Minister to carry out the functions of the competent authority as provided in this Act, and includes any person exercising such functions on behalf of the competent authority;

“financial institution” means any person whose regular occupation or business is, for the account of that person, the carrying on of —

First Schedule

- (a) any activity listed in the First Schedule to this Act;
- (b) any other activity defined by the Minister of Finance by an order published in the *Gazette* amending the First Schedule;

“freezing” means temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order by a court or other competent authority;

“forfeiture” means the permanent deprivation of property by order of a court or other competent authority;

“identification record” means —

(a) where the person is a corporate body, the details —

(i) of the certificate of incorporation, such certificate to be notarized where the corporate body is incorporated outside Antigua & Barbuda;

(ii) of the most recent annual return of the corporate body filed at the General Registry, such return to be notarized where the corporate body is incorporated outside of Antigua & Barbuda;

(iii) of any officer of the corporation as required in sub-paragraph (b) of this definition; and

(b) in any other case, sufficient documentary evidence to prove to the satisfaction of a financial institution that the person is who that person claims to be;

and for these purposes “person” includes any person who is a nominee, agent, beneficiary or principal in relation to a business transaction;

“instrumentality” means something that is used in or intended for use in any manner in the commission of a money laundering offence;

“Minister” means the Minister responsible for legal affairs, unless specifically provided otherwise;

“money laundering” means —

(a) engaging, directly or indirectly, in a transaction that involves property that is the proceeds of crime, knowing or believing the same to be the proceeds of crime; or

(b) receiving, possessing, managing, investing, concealing, disguising, disposing of or bringing into

Antigua & Barbuda any property that is the proceeds of crime, knowing or believing the same to be the proceeds of crime;

"person" includes 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;

Second Schedule

"prescribed offence" means an offence for the time being listed in the Second Schedule to this Act;

"proceeds of crime" means any property derived or obtained, directly or indirectly, through the commission of a prescribed offence, whether committed in Antigua & Barbuda or else-where;

"property" includes money, investments, holdings possessions, assets and all other property real or personal, heritable or moveable including things in action and other intangible or incorporeal property wherever situate (whether in Antigua & Barbuda or elsewhere) and includes any interest in such property;

"Supervisory Authority" means Supervisory Authority appointed under section 10.

Second Schedule

(2) The Minister may from time to time by order published in the *Gazette* amend the Second Schedule to this Act

(3) Knowledge, intent, purpose, belief or suspicion required as an element of any offence under this Act may be inferred from objective, factual circumstances.

PART II

MONEY LAUNDERING PROHIBITED

Offences of money
laundering

3. A person who, after the commencement of this Act, engages in money laundering is guilty of an offence.

4. Where an offence under the provisions of section 3 is committed by a body of persons, whether corporate or unincorporated, every person who, at the time of the commission of the offence, acted in an official capacity for or on behalf of such body of persons, whether as director, manager, secretary or other similar officer, or was purporting to act in such capacity, is guilty of that offence, unless he adduces evidence to show that the offence was committed without his knowledge, consent or connivance.

Offence committed by a body of persons.

5. Any person who attempts or aids, abets, counsels or procures the commission of, or conspires to commit, the offence of money laundering is guilty of an offence.

Attempts; aiding and abetting; conspiracy.

6. A person guilty of an offence under section 3 or 4 or 5 of this Act is liable on conviction to a fine of two hundred thousand dollars but which may extend to one million dollars, and to imprisonment a term of seven years.

Penalty for money Laundering.

7. (1) It is an offence for a person who knows or suspects that an investigation into money laundering has been, is being or is about to be, made to divulge that fact or other information to another whereby the investigation is likely to be prejudiced.

Tipping off.

(2) A person guilty of an offence under subsection (1) is liable on conviction to a fine of one hundred thousand dollars, and to imprisonment for three years.

8. (1) It is an offence for a person to falsify conceal, destroy or otherwise dispose of or cause or permit the falsification concealment, destruction or disposal of any document or material which is or likely to be relevant to an investigation into money laundering or to any order made in accordance with the provisions of this Act.

Falsification concealment etc., of Document.

(2) A person guilty of an offence under subsection (1) is liable on conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for five years.

9. Notwithstanding anything to the contrary contained in any other law, the offences created by this Act shall be investigated,

Jurisdiction.

tried, judged and sentenced by a court in Antigua and Barbuda regardless of whether or not the prescribed offence occurred in Antigua & Barbuda or in another territorial jurisdiction, but without prejudice to extradition when applicable in accordance with the law.

**PART III
ANTI-MONEY LAUNDERING SUPERVISION**

Appointment of
supervisory
authority

10. The Minister of Finance shall appoint a person or persons to be known as the Supervisory Authority to supervise financial institutions in accordance with this Act.

Powers of the
Supervisory
Authority

11. The Supervisory Authority —

- (i) shall receive the reports issued by the financial institutions pursuant to the provisions of section 13 (2);
- (ii) shall send any such report to the law enforcement authority if, having considered the report, the Supervisory authority also has reasonable grounds to believe that a money laundering offence is being, has been or is about to be committed;
- (iii) or a person authorised by the Supervisory Authority for such a purpose, may enter into the premises of any financial institution during normal working hours to inspect any business transaction record kept by that financial institution pursuant to section 12(i) and ask any questions relevant to such record and to make any notes or take any copies of the whole or any part of any such record;
- (iv) shall send to the law enforcement authorities any information derived from an inspection carried out pursuant to paragraph (iii) of this section if it gives the supervisory Authority reasonable grounds to believe that a money laundering offence is being, has been, or is about to be committed;

- (v) shall destroy any note or copy thereof made or taken pursuant to paragraph (iii) of this section within three years of the inspection save where any such note or copy has been sent to a law enforcement authority;
- (vi) may instruct any financial institution to take such steps as may be appropriate to facilitate any investigation anticipated by the Supervisory Authority following a report or investigation made under this section;
- (vii) may compile statistics and records, disseminate information within or without Antigua & Barbuda, make recommendation arising out of any information received, issue guide-lines to financial institutions and advise the Minister of Finance and the Attorney General with regard to any matter relating to money laundering;
- (viii) shall create training requirements and provide such training for any financial institution in respect of the business transaction record-keeping and reporting obligations as provided under sections 12(i), and 13(ii), respectively.

12. A financial institution shall —

- (i) keep a business transaction record of any business transaction for a period of six years after the termination of the business transaction so recorded;
- (ii) comply with any instruction issued to it by the Supervisory Authority pursuant to section 11(vi);
- (iii) permit any member of the Supervisory Authority upon request to enter into any premises of the financial institution during normal working hours and inspect the records kept pursuant to paragraph (i) of this section and to make any notes or take any copies of the whole or any part of any such record

Obligations of
financial
institutions.

and shall answer any questions of the Supervisory Authority in relation to such records;

- (iv) comply with the guidelines and training requirements issued by the Supervisory Authority respectively in accordance with paragraph (vii) or (viii) of section 11.

Reporting of
suspicious
Business
transactions by
financial
institutions

13. (1) Financial institutions shall pay special attention to all complex, unusual or large business transactions, whether completed or not, and to all unusual patterns of transactions and to insignificant but periodic transactions, which have no apparent economic or lawful purpose.

(2) Upon reasonable suspicion that the transactions described in subsection (1) could constitute or be related to money laundering, a financial institution shall promptly report the suspicious transactions to the Supervisory Authority.

(3) Financial institutions shall not notify any person, other than a court, competent authority or other person authorized by law, that information has been requested by or furnished to a court or the Supervisory Authority.

(4) When the report referred to in subsection (2) is made in good faith, the financial institutions and their employees, staff, directors, owners or other representatives as authorised by law shall be exempted from criminal, civil or administrative liability, as the case may be, for complying with this section or for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, regardless of the result of the communication

(5) Criminal offence is committed by a financial institution or its employees, staff, directors, owners or other authorised representatives who, acting as such, wilfully fail to comply with the obligations in this section, or who wilfully make a false or falsified report referred to above.

(6) Without prejudice to criminal or civil liabilities for offences connected to money laundering, a financial institution and its employees that fail to comply with the requirement of this

section shall be liable on conviction to a fine of fifty thousand dollars and in addition the licence of such financial institution to operate as such may be suspended or revoked by the competent authority.

(7) The question whether a reasonable suspicion for the purpose of subsection (2) has been formed shall be determined objectively having regard to all the facts and surrounding circumstances.

14. The Supervisory Authority or a law enforcement agency may, apply to a Judge of the High Court and upon satisfying him that there are reasonable grounds for believing that —

Supervisory
authority's power
to obtain search
warrant.

- (i) a financial institution has failed to keep a business transaction record as provided by the provisions of section 12 (1); or
- (ii) a financial institution has failed to report any business transaction as provided by the provisions of section 13 (2); or
- (iii) an officer or employee of a financial institution is committing, has committed or is about to commit a money laundering offence;

he may make an order authorising the Supervisory Authority to enter any premises belonging to, or in the possession or under the control of the financial institution or any officer or employee of such institution and to search the premises and remove any document, material or other thing therein for the purposes of the Supervisory Authority or law enforcement agency as ordered by the Judge and specified in the warrant.

15. The Supervisory Authority or law enforcement agency may upon application to a Judge of the High Court and upon satisfying him that there are reasonable grounds for believing that a person is committing, has committed or is about to commit a money laundering offence or for the purpose of determining whether any property belongs to, is in the possession or under the control of any person, he may make an order —

Property tracking
and monitoring
orders.

(i) that any document relevant to —

(a) identifying, locating or quantifying any property; or

(b) identifying or locating any document necessary for the transfer of any property;

belonging to, or in the possession or under the control of that person be delivered forthwith to the Supervisory Authority or law enforcement agency;

(ii) that a financial institution forthwith produce to the Supervisory Authority or law enforcement agency all information obtained by the institution about any business transaction conducted by or for that person with the institution during such period before or after the date of the Order as the Judge directs.

Mandatory
injunction to
enforce compliance

16. (1) The Supervisory Authority may upon application to a Judge of the High Court and upon satisfying him that a financial institution has failed without reasonable excuse to comply in whole or in part with any obligation as provided under paragraphs (i), (ii), (iii) and (iv) of section 12, section 13(2) he may grant a mandatory injunction against any or all of the officers or employees of that financial institution in such terms as the Court deems necessary to enforce compliance with such obligation.

(2) In granting an injunction pursuant to subsection (1) the Court may order that should the financial institution or any officer or employee of that institution fail without reasonable excuse to comply with all or any of the provisions of that injunction such financial institution, officer or employee shall pay a financial penalty in the sum and in such manner directed by the Court.

Other measures to
avoid money
laundering

17. A person who has been convicted of a prescribed offence whether in Antigua & Barbuda or elsewhere or of an offence under this Act may not be eligible or licensed to carry on the business of a financial institution.

18. A person who leaves Antigua & Barbuda with more than fifty thousand dollars in cash or negotiable bearer instruments (in Eastern Caribbean Currency or equivalent foreign currency) without first having reported the fact to the Supervisory Authority commits an offence under this Act and is liable on conviction to a fine of ten thousand dollars.

Currency reporting
when leaving
Antigua &
Barbuda

PART IV

FREEZING AND FORFEITURE OF ASSETS IN RELATION TO MONEY LAUNDERING

19. (1) A judge of the High Court may, upon application by the competent authority, by order, freeze the property of, or in possession or under the control of that person wherever it may be, if the judge is satisfied that a person has been charged or about to be charged with money laundering offence.

Freezing of
Property

(2) The Court in making any order freezing the property of that person may give directions to the disposal of that property for the purpose of —

- (i) determining any dispute as to the ownership of the property or any part thereof;
- (ii) its proper administration during the period of freezing;
- (iii) the payment of debts due to creditors prior to the order; and
- (iv) the payment of moneys to that person for the reasonable subsistence of that person and his family.

(3) An order made under this section shall cease to have effect at the end of the period of forty-eight hours following the hour the order was made if the person against whom such order was made has not been charged with a money laundering offence within that time.

Forfeiture of
property proceeds
or Instrumental-
alities

20. (1) When a person is convicted of a money laundering offence, the court shall order that the property, proceeds or instrumentalities derived from or connected or related to such an offence be forfeited and disposed of in such manner as the Minister may direct.

(2) When, as a result of any act or omission of the person convicted, any of the property, proceeds or instrumentalities described in subsection (1) above cannot be forfeited, the court shall order the forfeiture of any other property of the person convicted, for an equivalent value, or shall order the person convicted to pay a fine of such value.

(3) In determining whether or not any property is derived from or connected or related to a money laundering offence the court shall apply the standard of proof required in civil proceedings.

(4) In making a forfeiture order the Court may give directions for the purpose of determining any dispute as to the ownership of the property or any part thereof.

Rights of bona fide
third parties

21. (1) The measures and sanctions referred to in sections 19 and 20 shall apply without prejudice to the rights of *bona fide* third parties.

(2) Proper notifications shall be made so that all those claiming legitimate legal interest in property proceeds or instrumentalities may appear in support of their claims.

(3) A third party's lack of good faith may be inferred, at the discretion of the court or the competent authority, from the objective circumstances of the case.

(4) The court or the competent authority shall return the property, proceeds or instrumentalities to the claimant, when it has been demonstrated to its satisfaction that —

(a) the claimant has a legitimate legal interest in the property, proceeds or instrumentalities;

- (b) no participation, collusion or involvement with respect to money laundering offence which is the subject of the proceedings can be imputed to the claimant;
- (c) the claimant lacked knowledge and was not intentionally ignorant of the illegal use of the property, proceeds or instrumentalities;
- (d) the claimant did not acquire any right in the property, proceeds or instrumentalities from a person proceeded against under circumstances that give rise to a reasonable inference that any right was transferred for the purpose of avoiding the eventual subsequent forfeiture of the property, proceeds or instrumentalities, and;
- (e) the claimant did all that could reasonably be expected to prevent the illegal use of the property, proceeds or instrumentalities.

22. The provisions of sections 19 and 20 shall only apply to property coming into the possession or under the control of a person after the coming into force of this Act.

Limitations on
freezing or
forfeiture of
property

PART V INTERNATIONAL COOPERATION

23. (1) The court or the competent authority shall cooperate with the court or other competent authority of another State, taking the appropriate measures to provide assistance in matters concerning money laundering offences, in accordance with this Act, and within the limits of their respective legal systems.

Assistance to
foreign countries

(2) The court or the competent authority may receive a request from the court or other competent authority of another State to identify, trace, freeze, seize or forfeit the property proceeds, or instrumentalities connected to money laundering offences, and may take appropriate actions, including those contained in sections 19 and 20 of this Act.

(3) A final judicial order of judgment that provides for the forfeiture of property, proceeds or instrumentalities connected

to money laundering offences, issued by a court or other competent authority of another State, may be recognised as evidence that the property, proceeds or instrumentalities referred to by such order or judgment may be subject to forfeiture in accordance with the law.

(4) The court or the competent authority may receive and take appropriate measures with respect to a request from a court or other competent authority from another State, for assistance related to a civil, criminal, or administrative investigation prosecution or proceedings, as the case may be, involving money laundering offences, or violations of any provision of this Act.

(5) Assistance referred to in this section may include providing original or certified copies of relevant documents and records, including those of financial institutions and government agencies, obtaining testimony in the requested States, facilitating the voluntary presence or availability in the requesting state of persons, including those in custody, to give testimony locating or identifying persons, service of documents, examining objects and places, executing searches and seizures, providing information and evidentiary items, and provisional measures.

(6) Any provisions referring to secrecy or confidentiality shall not be an impediment to compliance with this section, when the information is requested by or shared with the court or other competent authority.

(7) Assistance referred to in this section shall be provided only to those countries with whom Antigua and Barbuda has entered into mutual assistance treaties or a bilateral or multilateral basis, and all such assistance shall be subject to the terms of such treaties.

PART VI MISCELLANEOUS

Money laundering
an offence for ex-
tradition purposes

24. Money laundering is an offence for the purpose of any law relating to extradition or the rendition of fugitive offenders.

25. Subject to the provisions of the Constitution, the provisions of this Act shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any law or otherwise.

Secrecy obligations
overridden

26. It shall not be unlawful for any person to make any disclosure in compliance with this Act.

Disclosure
protected

27. (1) No prosecution in respect of any offence committed under this Act or the regulations made thereunder shall be instituted except by, or with the consent in writing of the competent authority or the Director of Public Prosecutions.

Prosecution of
offences

(2) All offences under this Act shall be tried summarily without the consent of the accused unless otherwise directed by the Director of Public Prosecutions.

28. All prosecutions, actions, suits or other proceedings brought for any offence, or for the recovery of any fines, penalties or forfeitures, under this Act or the regulations made thereunder, shall be brought within six years next after the date of the offence committed or the cause of action accrued.

Limitations of
proceedings

29. (1) The Minister may make regulations for the better carrying out of the provisions of this Act and for prescribing anything that needs to be prescribed.

Regulations

(2) All regulations made under subsection (1) shall be subject to negative resolution.

30. This Act shall come into force on a day to be appointed by the Minister by order published in the *Gazette*.

Commencement

FIRST SCHEDULE (section 2)

ACTIVITIES OF FINANCIAL INSTITUTIONS

1. "Banking business" and "financial business" as defined in the Banking Act and the Financial Institutions (Non-Banking) Act;

2. "International offshore banking business" as defined in the International Business Corporation Act;
3. Venture risk capital;
4. Money transmission services;
5. Issuing and administering means of payments (e.g. credit cards, travelers' cheques and bankers' drafts);
6. Guarantees and commitments;
7. Trading for own account or for account of customers in:—
 - (a) money market instruments (e.g., cheques, bills, certificates of deposits, commercial paper, etc.);
 - (b) foreign exchange;
 - (c) financial and commodity-based derivative instruments (e.g., futures, options, interest rate and foreign exchange instruments etc.);
 - (d) transferable or negotiable instruments;
8. Money broking;
9. Money lending and pawning;
10. Money exchange (e.g., *casa de cambio*);
12. Real property business;
13. Credit unions;
14. Building societies;
15. Trust business.

**SECOND SCHEDULE
PRESCRIBED OFFENCES**

Section 2

Blackmail
Counterfeiting

Drug Trafficking and related offences
Extortion
False accounting
Forgery
Fraud
Illegal deposit-taking
Robbery involving more than \$20,000
Terrorism
Thefts involving more than \$20,000
Insider Trading

Passed the House of Representatives
this 5th day of December, 1996.

B. Harris,
Speaker.

S. Walker,
Clerk to the House of Representatives.

Passed the Senate this 19th
day of December, 1996.

M Percival,
President.

S. Walker,
Clerk to the Senate.

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