

No. 18 of 1998.

*The Money Laundering (Prevention) 1
(Amendment) Act, 1998.*

ANTIGUA
AND
BARBUDA



[L.S.]

I Assent,

Dr. R.A. Walwyn, OBE,
Governor-General's Deputy.

28th October, 1998.

ANTIGUA AND BARBUDA

No. 18 of 1998

AN ACT to amend the Money Laundering (Prevention) Act,
1996 (No. 9 of 1996).

[12th November, 1998]

ENACTED by Parliament of Antigua and Barbuda as follows:

1. This Act may be cited as the Money Laundering (Prevention) Short title.
(Amendment) Act, 1998.

2. Section 2, of the Money Laundering (Prevention) Act 1996 (in Amendment of
section 2 of Act
No. 9 of 1996.
this Act referred to as the "principal Act") is amended in subsection
(1) as follows:

(a) in the paragraph defining "forfeiture" by repealing the
following:

"or other competent authority";

(b) in the paragraph defining "identification record" by
inserting in paragraph (a) (i) after "incorporation" the
following:

"or equivalent"; and

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(c) after the paragraph defining "instrumentality" by inserting the following paragraph:

"international financial institution" means an international trade or business licensed by the International Financial Sector Authority".

Amendment of section 4 of Act No. 9 of 1996.

3. Section 4 of the principal Act, is amended by repealing "unless he adduces evidence to show that the offence was committed without his knowledge, consent or connivance", and substituting:

"if it is established that the offence was committed with his knowledge, consent or connivance."

Amendment of section 7 of Act No. 9 of 1996.

4. Section 7 of the principal Act is amended in subsection (1) by repealing "is likely to be prejudiced", and substituting:

"may be prejudiced, unless such disclosure is made in good faith in the performance of his duties under this Act or any other Act in force in Antigua and Barbuda".

Amendment of section 8 of Act No. 9 of 1996.

5. Section 8 of the principal Act is amended in subsection (1) by repealing "is or likely" and substituting:

"he knows or ought reasonably to know".

Amendment of section 9 of Act No. 9 of 1996.

6. Section 9 of the principal Act is amended by repealing "investigated,".

Amendment of section 11 of Act No. 9 of 1996.

7. Section 11 of the principal Act is amended by repealing subsection (iii) and substituting the following:

"(iii) or a person authorised by the Supervisory Authority:

(a) in response to a suspicious activity report filed by a financial institution pursuant to section 13(2), may enter into the premises of such institution during normal working hours to inspect the specific account containing any business transaction record identified in the suspicious activity report; or

(b) on reasonable grounds that a business transaction record kept by a financial institution pursuant to section 12 (i)

is involved in or relates to a money laundering offence, may, on presentation of a notice in writing to the financial institution of the reasonable grounds for the inspection and the identity of the account to be inspected, enter into the premises of such financial institution during normal working hours to inspect such record and the specific account containing such record;

and ask any questions relevant to such records and accounts and if the inspection confirms his belief that a money laundering offence is being, has been or is about to be committed he may make any notes or make any copies of the whole or any part of any such records; and

- (c) the Supervisory Authority shall send a copy of the written notice required under (b) to the Executive Director of the International Financial Sector Authority established under the International Business Corporations Act.

8. Section 12 of the principal Act is amended as follows:

Amendment of
section 12 of Act
No. 9 of 1996.

- (a) by inserting after (i) the following paragraph:

“(ia) comply with any request of, and respond to any question by, the Supervisory Authority or a person authorised by the Supervisory Authority as authorised under section 11 (iii);”
and

- (b) by repealing paragraph (iii).

9. Section 13 of the principal Act is amended as follows:

Amendment of
section 13 of Act
No. 9 of 1996.

- (a) in subsection (1), by inserting after “purpose” the following:

“and to relations and transactions with persons, including business and other financial institutions, from countries that have not adopted comprehensive anti-money laundering programmes”;
and

- (b) in subsection (2) by inserting after “Authority” the following:

“with a copy of the report to the Executive Director of the International Financial Sector Authority established under the International Business Corporations Act.”;

- (c) in subsection (3), by inserting after “Authority” in the second place it occurs, the following:

“if such notification may prejudice any ongoing or anticipated investigation.”; and

- (d) by inserting after subsection (3) a new subsection as follows:

“(3a) Notwithstanding subsection (3), dissemination of information within the financial institution on a need to know basis that is not likely to prejudice any ongoing or anticipated investigation shall not be prohibited.”.

Amendment of
section 16 of Act
No. 9 of 1996.

10. Section 16 of the principal Act is amended by repealing subsection (1) and substituting the following subsection:

“(1) A Judge of the High Court may grant a mandatory injunction against an officer or employee of a financial institution in such terms as the court deems necessary to enforce compliance with the above action on being satisfied that a financial institution has failed without reasonable excuse to comply in whole or in part with any obligation as provided under section 12(i), (ii) and (iv) and section 13 (2).”.

Amendment of
section 18 of Act
No. 9 of 1996.

11. Section 18 of the principal Act is repealed and the following section is substituted:

“18. (1) A person, other than a banking institution licensed under the laws of Antigua and Barbuda, who transports or causes the transportation in cash or bearer negotiable instruments into or out of Antigua and Barbuda in US currency or equivalent Eastern Caribbean or foreign currency in an amount exceeding that prescribed under the Regulations issued under this Act, must report that fact to the Minister of Finance in the prescribed manner.

(2) A person who fails to report the transportation of currency or bearer negotiable instruments as required in

subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

(3) Where a person fails to report the transportation of currency or bearer negotiable instruments as required in subsection (1), the Comptroller of Customs may with the consent of the person so accused compound and assess a penalty not exceeding 20% of the amount of currency or bearer negotiable instruments so transported."

12. Section 19 of the principal Act is amended as follows:

Amendment of
section 19 of Act
No. 9 of 1996.

- (a) in subsection (1), by repealing "charged with money laundering offence" and substituting the following:

"criminally charged in any jurisdiction with a money laundering offence as defined in this Act";

- (b) by repealing subsection (3) and substituting the following subsection:

"(3) The person charged or about to be charged shall be notified in writing of an order made under this section within four days of the issuance of such order."; and

- (c) by inserting after subsection (3) the following subsections:

"(4) An order made under this section shall cease to have effect at the end of the period of thirty days following the day 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.

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

13. Section 20 of the principal Act is repealed and the following section is substituted:

Amendment of
section 20 of Act
No. 9 of 1996.

"20. (1) When a person is convicted of a money laundering offence under the laws of Antigua and Barbuda, the court shall order any property, proceeds or instrumentalities derived from, connected with or related to the offence, wherever they may be, forfeited to the Government of Antigua and Barbuda.

(2) When a person who is charged with a money laundering offence under the laws of Antigua and Barbuda has been notified of the charge by

- (a) two consecutive publications of a local newspaper circulated in Antigua and Barbuda;
- (b) publication in the *Gazette*; and
- (c) service at his last known address,

and the preliminary inquiry or the trial for such offence has not been conducted one hundred and eighty days after the notification because of his failure to appear at the preliminary inquiry or trial in Antigua and Barbuda, the court shall order any property, proceeds or instrumentalities derived from, connected with or related to the offence, wherever they may be, forfeited to the Government of Antigua and Barbuda.

(3) When, as a result of any act or omission of the person convicted or who has failed to appear for trial any of the property, proceeds or instrumentalities described in the preceding subsections cannot be forfeited, the court shall order the forfeiture of any other property of equivalent value of the person convicted or who has failed to appear for trial, or shall order the person convicted or who has failed to appear for trial to pay a fine of such value.

(4) When a person is charged in any jurisdiction other than Antigua and Barbuda with a money laundering offence as defined in this Act, upon application of the Supervisory Authority or other competent authority, the court shall order any property, proceeds or instrumentalities derived from, connected with or related to such offence, which are located in Antigua and Barbuda, to be frozen, and the person shall be notified of the order within forty-eight hours, and

- (a) if the charged person does not respond within one hundred and eighty days of the notice of the freeze, the

court shall order the frozen property, proceeds and instrumentalities forfeited to the Government of Antigua and Barbuda;

- (b) if the charged person provides evidence to the court within one hundred and eighty days of the notice of the freeze establishing that the charges were filed for political purposes, or otherwise in bad faith, or are unfounded, the court shall immediately vacate its order;
- (c) if the charged person provides evidence to the court within one hundred and eighty days of the notice of the freeze that he is challenging the charges, the frozen property, proceeds and instrumentalities shall remain frozen pending the outcome of the proceedings in the foreign jurisdiction;
- (d) if the charged person is convicted of the money laundering charge, the frozen property, proceeds and instrumentalities shall upon his conviction becoming final be forfeited to the Government of Antigua and Barbuda;
- (e) if the charged person provides proof to the court that he was acquitted of the money laundering charge or that it was dismissed or otherwise disposed of without a finding of guilt, the court shall immediately vacate its order.

(5) 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.

(6) 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."

14. The principal Act is amended by inserting after section 20 the following section:

Insertion of section 20 A of Act No. 9 of 1996.

"Forfeiture Fund.

20A (1) A fund known as the Forfeiture Fund shall be established under the administration and control of the International Financial Sector Authority as established under the International Business Corporations Act, and all funds and the proceeds from the sale of all other property

forfeited under the Act shall be deposited in such Fund.

(2) An administrative fee of 20% shall be deducted from the funds and proceeds of all property forfeited under the Act which shall be allocated to the Supervisory Authority for the purpose of anti-money laundering activities.

(3) The funds and proceeds from the sale of all other property forfeited under the Act deposited to the Forfeiture Fund in accordance with subsection (1) that are attributable to activities in, of, or by an international financial institution shall be allocated to the general income of the International Financial Sector Authority for use in accordance with the International Business Corporations Act.

(4) The funds and proceeds other than those listed in subsections (2) and (3) shall be paid forthwith into the Consolidated Fund."

Amendment of
section 21 of Act
No. 9 of 1996.

15. Section 21 of the principal Act is amended in subsection (4) by inserting after "shall" the following:

"after the deduction of the administrative fee established in section 20A,".

Amendment of
section 22 of Act
No. 9 of 1996.

16. Section 22 of the principal Act is repealed and the following section is substituted:

"22. The provisions of sections 19 and 20 shall apply to all property possessed by, or under the control of a person after the coming into force of this Act."

Amendment of
section 23 of Act
No. 9 of 1996.

17. Section 23 of the principal Act is repealed and the following section is substituted:

"23. (1) The Court shall cooperate with the court of another State taking the appropriate measures to provide assistance in matters concerning money laundering offences, as defined under this Act, in accordance with all

laws of Antigua and Barbuda, including those respecting confidentiality.

(2) 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, as defined under this Act, in accordance with all laws of Antigua and Barbuda, including those respecting confidentiality.

(3) The competent authority may comply with 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, as defined under this Act, and such assistance shall be rendered in accordance with all laws of Antigua and Barbuda, including those respecting confidentiality.

(4) A final judicial order of judgment that provides for the forfeiture of property, proceeds or instrumentalities connected to money laundering offences, as defined under this Act, 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 and disposed of in accordance with section 20A of this Act.

(5) Under no circumstances shall information pertaining to an account maintained in an international bank, trust or insurance corporation be made available to another State without an order issued by the court.

(6) Under no circumstances shall information pertaining to an account maintained in an international bank, trust or insurance corporation be made available to another State for use in any investigation, prosecution or other proceeding relating to the imposition, assessment or collection of taxes of any kind.

(7) The competent authority may share forfeited assets with foreign authorities or governments in a manner

determined to be equitable by the competent authority, after the deduction of the administrative fee established in section 20A of this Act.

(8) Assistance referred in this section shall be that which is agreed in a bilateral or multilateral mutual assistance treaty of which Antigua and Barbuda is a party and all such assistance shall be granted subject to the terms of such treaties.”.

Amendment of
section 26 of Act
No. 9 of 1996.

18. Section 26 of the principal Act is amended as follows:

- (a) by inserting before “It” the following “(1); and
- (b) by inserting after subsection (1) the following subsections:

“(2) It shall be unlawful for any person to disclose any information relating to the business affairs of a customer of a financial institution that he has acquired as an officer, employee, agent, auditor, or attorney of the financial institution, or otherwise in the performance of his duties of the exercise of his functions, except in the performance or exercise of those duties or functions, in compliance with a requirement of this Act or any other statute, in response to a request from a competent authority, or pursuant to an order of a court of competent jurisdiction in Antigua and Barbuda.

(3) It shall be unlawful for any person to disclose any information relating to the business affairs of a financial institution or a customer of a financial institution that he has acquired as an official, employee, agent, auditor or attorney of the Government of Antigua and Barbuda or otherwise in the performance of his duties or the exercise of his official functions, except in the performance or exercise of those duties or functions, in compliance with a requirement of this Act or any other statute, in response to a request from a competent authority, or pursuant to an order of a court of competent jurisdiction in Antigua and Barbuda.

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(4) Any person guilty of an offence under subsections (2) or (3) is liable on conviction to a fine of up to one hundred thousand dollars, and to imprisonment for up to three years."

Passed the House of Representatives
this 6th day of October, 1998.

Passed the Senate this 15th day
of October, 1998.

B. Harris,
Speaker.

M. Percival,
President.

G. Nicholas,
*Deputy Clerk to the House of
Representatives.*

G. Nicholas,
Deputy Clerk to the Senate.

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