

ANTIGUA AND BARBUDA



THE MONEY LAUNDERING (PREVENTION) (AMENDMENT) ACT, 2009

No. 11 of 2009

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[ L.S.]



I Assent,

**Louise Lake-Tack,**  
*Governor-General.*

21st December, 2009.

**ANTIGUA AND BARBUDA**

**THE MONEY LAUNDERING (PREVENTION) (AMENDMENT) ACT, 2009**

**No. 11 of 2009**

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

**ENACTED** by the Parliament of Antigua and Barbuda as follows:

**1. Short title**

This Act may be cited as the Money Laundering (Prevention) (Amendment) Act, 2009

**2. Interpretation**

The Money Laundering (Prevention) Act 1996, (No.9 of 1996) hereinafter referred to as the principal Act is amended in section 2—

- (a) in the definition of “money laundering offence”, by repealing subparagraph (i) (a) and (d) and substituting the following—

“(a) sections 3, 5, 5A and 5B of this Act;

(d) sections 4, 5, 6(3), 7, 8 and 12 of the Misuse of Drugs Act, Cap. 283; or” and

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

““criminal organization” means a group comprised of two or more persons including persons outside Antigua and Barbuda, whose aims and activities include the facilitation or commission of one or more serious offences that would likely result or has resulted in the receipt of any benefit, including a financial benefit, by the group or any of the persons who constitute the group:

“serious offence” means an offence for which the maximum punishment is imprisonment for two years or more:”.

### **3. Insertion of section 5A                      Facilitation of money laundering**

The principal Act is amended by inserting after section 5 the following section—

“5A Facilitation of money laundering

“A person who enters into or becomes concerned with an arrangement which the person knows, or has reasonable grounds to suspect, facilitates the acquisition, concealment, retention, use or control of proceeds of crime by or on behalf of another person commits an offence and is liable— “

(a) on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding two hundred thousand dollars (\$200,000); or

(b) on conviction on indictment to imprisonment for a term not exceeding 7 years or to a fine not exceeding five hundred thousand dollars (\$500,000) or to both.”

### **4. Insertion of section 5B                      Participation in a criminal organisation**

The principal Act is amended by inserting after section 5 the following section—

“5B Participation in a criminal organisation

“(1) A person who by act or omission, aids, abets, counsels, procures or facilitates a criminal organisation—

(a) to commit a serious offence under any Act; or

(b) to attempt the commission of a serious offence under any Act;

commits an indictable offence and is liable upon conviction to imprisonment for a term not exceeding five years.



(2) A person who, with knowledge of either the aim and general criminal activity of a criminal organisation or the intention of the criminal organisation to commit a serious offence, by his conduct takes part in—

- (a) the criminal activities of the criminal organisation; or
- (b) other activities of the criminal organisation in the knowledge that his participation will contribute to the achievement of the criminal aim of the criminal organisation;

commits an indictable offence and is liable upon conviction to imprisonment for a term not exceeding five years.

(3) A person who conspires with a criminal organisation—

- (a) to commit a serious offence under any Act; or
- (b) to attempt the commission of a serious offence under any Act;

commits an indictable offence and is liable upon conviction to imprisonment for a term not exceeding five years.

(4) Where a person is prosecuted under subsections (1) or (2) it shall not be necessary for the prosecutor to prove—

- (a) that the criminal aim of the criminal organisation was achieved; or
- (b) that the accused knew the identity of any of the persons who constitute the criminal organisation.

(5) In determining whether an accused participates in or contributes to any activity of a criminal organization, the Court may consider, among other factors, whether the accused—

- (a) uses a name, word, symbol or other representation that identifies, or is associated with, the criminal organization;
- (b) frequently associates with any of the persons who constitute the criminal organization;
- (c) receives any benefit from the criminal organization; or
- (d) repeatedly engages in activities at the instruction of any of the persons who constitute the criminal organization.”

## **5. Amendment of section 11A Opening or operating an account in a false name prohibited**

Section 11A of the principal Act is amended in subsection (7) by repealing the words “twenty thousand dollars (\$20,000)”, and substituting the words “five hundred thousand dollars (\$500,000)”.

**6. Amendment of section 12      Retention of financial records**

Section 12 of the principal Act is amended as follows—

- (a) in subsection (2), by repealing the words “Subject to subsection (3),” and substituting “a” with “A”.
- (b) by repealing subsection (6) and substituting the following—

“(6) A financial institution that contravenes subsections (1), (2), (4) or (5) commits an offence and is liable—

  - (i) on summary conviction to a fine not exceeding five hundred thousand dollars (\$500,000); or
  - (ii) on conviction on indictment to a fine not exceeding one million dollars (\$1,000,000).”

**7. Amendment of section 12A      Minimum retention period of a document**

Section 12A of the principal Act is amended by repealing subsection (3) and substituting the following—

- “(3) A financial institution that contravenes subsection (1) or (2) commits an offence and is liable—
- (i) on summary conviction to a fine not exceeding five hundred thousand dollars (\$500,000); or
  - (ii) on conviction on indictment to a fine not exceeding one million dollars (\$1,000,000).”

**8. Amendment of section 13      Reporting of suspicious business transactions by financial institutions**

Section 13 of the principal Act is amended as follows—

- (a) in subsection (1A)(iii), by repealing the words “transaction record” and substituting the words “financial transaction documents.”;
- (b) in subsection (2), by repealing the words “constitute or be related to money laundering” and substituting the words “involve the proceeds of crime”;
- (c) by repealing subsection (6) and substituting the following—

“(6) A financial institution or any director or employee of a financial institution who fails to comply with this section commits an offence and is liable—



- (a) on summary conviction to a fine not exceeding five hundred thousand dollars (\$500,000) or to a term of imprisonment not exceeding six months or both; or
- (b) on conviction on indictment to a fine not exceeding one million dollars (\$1,000,000); and
- (c) in addition the licence may be suspended or revoked by the appropriate Regulatory Authority.”

**9. Amendment of section 18A    Seizure and detention of suspected currency**

The principal Act is amended by repealing section 18A (1) and substituting the following—

“18A(1) A Customs Officer, Police Officer or ONDCP Officer anywhere in the jurisdiction or a member of the Antigua and Barbuda Defence Force engaged in maritime duties may seize and detain currency if he has reason to suspect that it is an instrumentality in the commission of an offence against subsection 18(1) or 18(2) or is the proceeds of crime or is intended for use in unlawful activity.”.

**10. Amendment of section 18B    Application to Magistrate to forfeit seized currency**

Section 18B of the principal Act is amended by repealing subsection (4) paragraph (a) and substituting the following—

“(a) the proceeds of some form of unlawful activity or proceeds intended for use in unlawful activity; or”

**11. Amendment of section 20B    Application for civil proceeds assessment order**

Section 20B of the principal Act is amended in subsection (1), by repealing the word “months” and substituting the word “years”.

““criminal organization” means a group comprised of two or more persons including persons outside Antigua and Barbuda, whose aims and activities include the facilitation

Passed the House of Representatives on  
the 9th day of November, 2009.

Passed the Senate on the 16th day of  
November, 2009.

**D. Gisele Isaac-Arrindell,**  
*Speaker.*

**Hazlyn M. Francis,**  
*President.*

**T. Thomas,**  
*Clerk to the House of Representatives.*

**T. Thomas,**  
*Clerk to the Senate.*