

LAWS OF ANTIGUA AND BARBUDA

No. 9 of 1996 as amended by

No. 18 of 1998 [Repealed]

S.I. No. 49 of 1998

No. 9 of 1999

No. 20 of 2000

No. 6 of 2001

No. 17 of 2002 and

Nos. 11 and 26 of 2003

No. 15 of 2008

MONEY LAUNDERING (PREVENTION) ACT 1996

A consolidated (non-authoritative) version of the Act and its amendments prepared by the ONDCP

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The Text contained in this document consists of a consolidation of:—

The Money Laundering (Prevention) Act 1996 (No. 9 of 1996)

(In force: 28 May 1998 by S.I. No. 10 of 1998)

as amended by:

- **The Money Laundering (Prevention) (Amendment) Act 1998 (No 18 of 1998)**
(In force: 12 November 1998) [Repealed by Act No. 9 of 1999, section 17]
- **The Money Laundering (Amendment of First Schedule) Order (S.I. No. 49 of 1998)**
(In force: 30 November 1998)
- **The Money Laundering (Prevention) (Amendment) Act 1999 (No. 9 of 1999)**
(In force: 9 September 1999)
- **The Law Revision (Miscellaneous) (Amendments) (No.3) Act 2000 (No. 20 of 2000)**
(In force: 28 December 2000)
- **The Money Laundering (Prevention) (Amendment) Act 2001 (No. 6 of 2001)**
(In force: 27 April 2001)
- **The Money Laundering (Prevention) (Amendment) Act 2002 (No. 17 of 2002)**
(In force: 27 December 2002)
- **The Office of National Drug and Money Laundering Control Policy Act 2003 (No. 11 of 2003)**
(In force: 18 December 2003)
- **The Money Laundering (Prevention) (Amendment) Act 2003 (No. 26 of 2003)**
(In force: 5 February 2004)
- **The Money Laundering (Prevention) (Amendment) Act 2008 (No. 15 of 2008)**
(In force: 8 January 2009)

Disclaimer:

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PART I - PRELIMINARY

Section 1 **Money Laundering (Prevention) Act 1996**

ANTIGUA AND BARBUDA

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

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

PART I

PRELIMINARY

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

Interpretation 2. (1) In this Act—

“authorised officer” means a person authorised by the Supervisory Authority to perform certain acts or functions under this Act.

“authorised officer” inserted by s.2 of No. 6 of 2001

“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”, repealed by s.2 of No. 6 of 2001

“civil forfeiture order” means an order made pursuant to section 20A.

“civil forfeiture order” and “civil proceeds assessment order” inserted - amended by s.2(d) of No. 17 of 2002

“civil proceeds assessment order” means an order made pursuant to section 20B.

“financial institution” means any person whose regular

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Section 2(1) Money Laundering (Prevention) Act 1996

occupation or business is, for the account of that person, the carrying on of:—

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

“forfeiture”, re-
plealed by s.2 of
No. 6 of 2001

“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;

“gift” in relation to property, includes a transfer for a consideration significantly less than the greater of—

- (a) the prevailing market value of the property; or
- (b) the consideration paid by the defendant.

“gift inserted by
s.2 of No. 6 of
2001

“identification record” means—

- (a) where the person is a corporate body, the details—
 - (i) of the certificate of incorporation or the incorporation certificate by any other name, such certificate to be notarized where the corporate body is incorporated outside Antigua and 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 and Barbuda;
 - (iii) of any officer of the corporation as required in sub-paragraph (b) of this definition; and

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Section 2(1) Money Laundering (Prevention) Act 1996

- (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 property that is used in connection with or is intended to be used in any manner in or in connection with the commission of —

“instrumentality” inserted by s.2 of No. 6 of 2001

- (i) a money laundering offence; or
- (ii) an offence against subsection 18(1) or subsection 18(4) of this Act.
- (iii) a money laundering activity.

Para (iii) inserted by s.2(c) of No. 17 of 2002

“Minister” means the Minister responsible for national drug control and security unless specifically provided otherwise;

“money laundering” means —

- (a) engaging directly or indirectly, in a transaction that involves money, or other property, or
- (b) receiving, possessing, managing, investing, concealing, disguising, disposing of or bringing into Antigua and Barbuda any money, or other property,

“money laundering” inserted by s.2 of No. 6 of 2001

knowing or having reasonable grounds to suspect that the money, or other property, is derived, obtained or realised, directly or indirectly, from some form of unlawful activity or is an instrumentality.

“or is an instrumentality” inserted at end of the definition of “money laundering” by s.2(a) of No. 17 of 2002

“money laundering offence” means—

“money laundering offence” inserted by s.2 of No. 6 of 2001

PART I - PRELIMINARY

Section 2(1) Money Laundering (Prevention) Act 1996

- (i) an offence against*:
 - (a) sections 3 and 5 of this Act;
 - (b) sections 11A and 18 of this Act
 - (c) section 61 of the Proceeds of Crime Act, 1993; or
 - (d) sections 4, 5, 6(3), 7 and 8 of the Misuse of Drugs Act, Cap. 283; or
- (ii) an offence against:
 - (a) any foreign law specified by regulation under this Act; or
 - (b) any foreign law, whether or not it is specified by regulation under this Act which prescribes dealings in property which is the proceeds of crime, which, if it was committed in Antigua and Barbuda, would be an offence against this Act or any other law of Antigua and Barbuda.

In deciding whether an offence against any foreign law is a money laundering offence within the meaning of this definition, due regard should be given to differences in the form and usages of foreign laws and the meaning of any language used in such law should be construed broadly and not strictly.

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

“prescribed offence”, repealed by s.2 of No. 6 of 2001

PART I - PRELIMINARY

Section 2(1) Money Laundering (Prevention) Act 1996

“proceeds” in relation to an offence, means any property that is derived or realised, directly or indirectly by any person from the commission of the offence.

“proceeds”
inserted by s.2 of
No. 6 of 2001

“proceeds of crime” means:

“proceeds of
crime” inserted
by s.2 of No. 6
of 2001

- (a) proceeds of a criminal offence against the laws of Antigua and Barbuda; or
- (b) any property that is derived or realised, directly or indirectly by any person from acts or omissions that:
 - (i) occurred outside Antigua and Barbuda; and
 - (ii) would, if they had occurred in Antigua and Barbuda, have constituted an offence against the laws of Antigua and Barbuda.

“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.

“unlawful activity” means — an act or omission that constitutes an offence against a law in force in Antigua and Barbuda or against a law in force in a foreign country that would, if it was committed in Antigua and Barbuda, be an offence against a law of Antigua and Barbuda;

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

PART I - PRELIMINARY

Section 2(3) Money Laundering (Prevention) Act 1996

- (3) Knowledge, intent, purpose, belief or suspicion required as an element of any offence under this Act may be inferred from objective, factual circumstances.
- 2A.** (1) For the purposes of Part IVA of this Act a person is convicted of an offence if:
- (i) he is convicted of the offence by a court either in Antigua and Barbuda or elsewhere;
 - (ii) a court, with the consent of the person, takes the offence, of which the person has been found guilty, into account in passing sentence on the person for another offence;
 - (iii) a declaration is made by the High Court pursuant to section 2B that the person has absconded in relation to the offence.
- (2) In any proceeding related to the operation of this Act if the conviction of a person of a money laundering offence is an issue a certified copy or copy with an official stamp, of a certificate of conviction or judgment together with any translation of the said documents into English by a person fluent in the language used in the country in which the person was convicted shall be regarded as conclusive proof of the conviction of the person of the money laundering offence concerned and prima facie proof of any facts asserted and relied upon in the document.
- 2B.** (1) For the purposes of Part IVA of this Act a person shall be taken to abscond in connection to a money laundering offence with which he has been charged in Antigua and Barbuda if:
- (a) an information is laid alleging the commission of the offence by the person; and
 - (b) a warrant for the arrest of the person is issued in relation to that information; and
 - (c) one of the following occurs:

s.2A inserted by s.3 of No. 6 of 2001

s.2A amended, substituting "Part IVA" for "Part IV" by s.3 of No. 17 of 2002

s.2B inserted by s.3 of No. 6 of 2001

"Part IV" deleted from subsections 2B(1), (2), (3) and (4) and "Part IVA" substituted by s.4 of No. 17 of 2002

PART I - PRELIMINARY

Section 2B(1)(c)(I) Money Laundering (Prevention) Act 1996

- (i) the person dies without the warrant being executed;
 - (ii) at the end of the period of 6 months commencing on the day on which the warrant is issued:
 - (a) the person cannot be found; or
 - (b) the person is, for any other reason, not amenable to justice and, if the person is outside Antigua and Barbuda, extradition proceedings have not commenced;
 - (iii) at the end of the period of 6 months commencing on the day on which the warrant is issued:
 - (a) the person is, by reason of being outside Antigua and Barbuda, not amenable to justice; and
 - (b) extradition proceedings have been commenced;

and subsequently those proceedings terminate without an order for the person's extradition being made.
- (2) Upon application being made by the Supervisory Authority, and upon being satisfied that the provisions of subsection (1) are satisfied in respect of a person the High Court shall declare that the person has absconded and, for the purposes of Part IVA of this Act only, is convicted of any money laundering offence of which the person has been charged in Antigua and Barbuda.

PART I - PRELIMINARY

Section 2B(3) Money Laundering (Prevention) Act 1996

- (3) For the purposes of Part IVA of this Act a person shall be taken to abscond in connection with a money laundering offence with which he has been charged in a country other than Antigua and Barbuda if an affidavit is filed in the High Court that has been sworn by an authorised officer which deposes to the following — that:
- (a) a charge has been laid against the person for a money laundering offence;
 - (b) a warrant for the arrest of the person has been issued in relation to that charge; and either
 - (ii) the person has died without the warrant being executed; or
 - (iii) at the end of the period of 6 months commencing on the day on which the warrant was issued the person cannot be found or is, for any other reason, not amenable to justice and no extradition proceedings have been commenced; or
 - (iv) at the end of the period of 6 months commencing on the day on which the warrant is issued the person is, by reason of being outside the country concerned, not amenable to justice; and that extradition proceedings have taken place which terminated without an order for the person's extradition being made.
- (4) Upon application being made by the Supervisory Authority, and upon being satisfied that the provisions of subsection (3) are satisfied in respect of a person the High Court shall declare that the person has absconded and, for the purposes of Part IVA of this Act only, is convicted of any money

PART I - PRELIMINARY

Section 2B(4) Money Laundering (Prevention) Act 1996

laundering offence of which the person has been charged in any foreign country.

- (5) Any affidavit filed in support of an application made pursuant to subsection (2) or (4) together with any document exhibited to it shall be accepted as proof of the contents thereof unless the court has strong grounds for declining to accept any assertion that is made in the affidavit or any document exhibited to it.

- (6) A person who is the subject of an application pursuant to subsection (2) shall, in accordance with the manner prescribed in section 28D, be given at least fourteen days notice of the application by the Supervisory Authority.

Subsection
(6) inserted
by s.4 of No.
17 of 2002

- 2C.** (1) "Property, or an interest in property, may be subject to the effective control of a person within the meaning of this Act whether or not the person has:

s.2C inserted by
s.3 of No. 6 of
2001

(a) a legal or equitable estate or interest in the property; or

(b) a right, power or privilege in connection with the property.

- (2) Without limiting the generality of any other provision in this Act, in determining:

(a) whether or not property, or an interest in property, is subject to the effective control of a person; or

(b) whether or not there are reasonable grounds to suspect that property, or an interest in property, is subject to the effective control of a person;

regard may be had to:

PART I - PRELIMINARY

Section 2C(2)(c) Money Laundering (Prevention) Act 1996

- (c) shareholdings in, debentures over or directorships of a company that has an interest (whether direct or indirect) in the property;
 - (d) a trust that has a relationship to the property; and
 - (e) family, domestic and business relationships between persons having an interest in the property, or in companies of the kind referred to in paragraph (c) or trusts of the kind referred to in paragraph (d), and other persons.
- (3) In determining whether property, or an interest in property is subject to the effective control of a person the court may lift the corporate veil of any company whether it is registered under the laws of Antigua and Barbuda or elsewhere.
- 2D.** For the purpose of an application under this Act, property in which the defendant has an interest includes —
- (1) any property that is, on the day when the first application is made under this Act in respect of that offence or money laundering activity subject to the effective control of the defendant; and
 - (2) any property that was the subject of a gift from the defendant to another person within the period of 6 years before the first application was made under this Act in respect of that offence or money laundering activity.
- 2E.** For the purpose of this Act, two offences are related to one another if the elements of the two offences are substantially the same acts or omissions.
- 2F.** A person may be appointed as a trustee for the purposes of this Act if they are qualified to be appointed as a receiver/ manager or liquidator of a foreign corporation pursuant to the

s.2D inserted by s.3 of No. 6 of 2001

In s.2D comma after “offence” deleted in subsection (1), and “or money laundering activity” inserted after “offence” wherever it occurs - amended by s.5 of No. 17 of 2002

s.2E inserted by s.3 of No. 6 of 2001

s.2F inserted by s.3 of No. 6 of 2001

PART I - PRELIMINARY

Section 2G Money Laundering (Prevention) Act 1996

Business Corporation Act, Cap. 222 (as amended).

2G. For the purposes of any application under this Act —

- (a) any affidavit or statement of a relevant foreign authority which is relevant to an application under this Act shall be accepted as proof of the contents thereof;
- (b) any document which is or purports to be a copy of a business record kept by a person, corporation or other entity in the ordinary course of business shall be accepted as proof of the contents thereof unless the court is satisfied that the contents of the document are false;
- (c) any affidavit filed in support of an application made pursuant to this together with any document exhibited to it shall not be objected to or ruled inadmissible solely on the ground that it contains hearsay evidence;
- (d) a court may take into account in determining the application any material that it thinks fit, including evidence given in any proceeding relating to the offence or money laundering activity in reliance on which the application is made or any related offence or money laundering activity, or other offence or money laundering activity arising from the same facts, and for this purpose, the whole or any part of the record of evidence of those proceedings is admissible in evidence as if it were a record of evidence given on the hearing of the application;

s.2G inserted by s.3 of No. 6 of 2001

In s.2G para (d), “the charging or conviction of” deleted; ”or money laundering activity” inserted after “offence” wherever it occurs - amended by s.6 of No. 17 of 2002

Money laundering activity explained

2H. In this Act a reference to money laundering activity by a person is a reference to anything done by the person that at

s.2H inserted by s.7 of No. 17 of 2002

PART II - MONEY LAUNDERING PROHIBITED

Section 2H **Money Laundering (Prevention) Act 1996**

the time was a money laundering offence whether or not the person has been charged with the offence and, if charged:

- (a) has been tried; or
- (b) has been tried and acquitted; or
- (c) has been convicted (even if the conviction has been quashed or set aside).

PART II

MONEY LAUNDERING PROHIBITED

Offence of Money Laundering

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

Offences committed by a body corporate

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 the body of persons in respect of that offence, whether as director, manager, secretary or other similar officer, or was purporting to act in that capacity, commits that offence and shall be tried under section 3.

Attempts; aiding and abetting; conspiracy

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.

Penalty for money laundering

6. A person who commits an offence under section 3, or 4 or 5 is liable on

- (i) summary conviction to a fine of two hundred thousand dollars or imprisonment for three years or to both; and
- (ii) conviction on indictment to a fine of one million dollars or imprisonment for seven years or to both.

**PART II - MONEY LAUNDERING
PROHIBITED**

Section 7(1) Money Laundering (Prevention) Act 1996

Tipping off

- 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.
- (2) It is an offence for a person who knows or suspects that a financial institution has submitted or is about to submit a suspicious activity report pursuant to section 13(2), to divulge that fact or other related information to another person.
- (3) A person who commits an offence under this section is liable on conviction to a fine of one hundred thousand dollars, and to imprisonment for three years.

ss.7(2)
repealed and
replaced by
s.2 of No. 15
of 2008.

Falsification,
conceal-
ment etc, of
docmetnts

- 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.
- (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.** An offence under this Act, whether or not it occurred in Antigua and Barbuda or any other territorial jurisdiction shall be investigated by the law enforcement authorities or a person authorized by the Supervisory Authority and tried, judged and sentenced by a court in Antigua and Barbuda without prejudice to extradition when applicable in accordance with the law.

PART III

ANTI-MONEY LAUNDERING SUPERVISION

Appoint-
ment of
Supervisory
Authority

- 10.** The person appointed to be Director of the ONDCP pursuant to section 4 of the Office of National Drug and Money Laundering Control Policy Act, 2003 shall be the Supervisory Authority under this Act.

s.10 repealed
and replaced
by s.38
ONDCP Act

**PART III - ANTI-MONEY LAUNDERING
SUPERVISION**

Section 11 Money Laundering (Prevention) Act 1996

11. The Supervisory Authority—

Powers of 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 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 authorized by the Supervisory Authority, 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(1) 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)
- (vi) may instruct any financial institution or to seek the assistance of any government department, statutory body, or other public body 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;

In s.11 para (iii) "section 12(i)" substituted with "section 12(1)" - amended by s.8 of No. 17 of 2002

s.11 para (v) repealed by s.8 of No. 17 of 2002

**PART III - ANTI-MONEY LAUNDERING
SUPERVISION**

Section 11(vii) Money Laundering (Prevention) Act 1996

- (vii) within or without Antigua and Barbuda, make recommendation arising out of any information received, issue guide-lines to financial institutions and advise the Minister 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 section 12(i), and 13(ii), respectively;
- (ix) may consult with any person, institution or organization within or without Antigua and Barbuda for the purposes of the exercise of its powers or duties under the Act; and
- (x) may send a copy of the report received under paragraph (i) and any other information obtained pursuant to this section to the person, institution or organization it is consulting with under paragraph (ix).
- (xi) shall exercise the powers and functions conferred on the Supervisory Authority by this Act to trace property that is the proceeds of offences against the laws of Antigua and Barbuda and elsewhere and to make application for the freezing and forfeiture of such property in accordance with the provisions of this Act.

s.11(xi) inserted by s.5 of No. 6 of 2001

Opening or operating an account in a false name prohibited

- 11A.**
- (1) A person shall not open an account with a financial institution in a false name.
 - (2) A person shall not operate an account with a financial institution in a false name.
 - (3) A person shall not authorise the operation of an account with a financial institution if the account is in a false name.
 - (4) Where a person is commonly known by two or more different names, the person shall not use one of those

s.11A inserted by s.9 of No. 17 of 2002

**PART III - ANTI-MONEY LAUNDERING
SUPERVISION**

Section 11A(4) Money Laundering (Prevention) Act 1996

names in opening an account with a financial institution unless the person has previously disclosed the other name or names to the financial institution.

- (5) Where a person is commonly known by two or more different names, the person shall not use one of those names in operating an account with a financial institution unless the person has previously disclosed the other name or names to the financial institution.
- (6) Where a person using a particular name in dealing with a financial institution discloses to the financial institution a different name or different names by which the person is commonly known, the financial institution shall make a record of the disclosure and shall, upon request in writing from the Supervisory Authority, give the Supervisory Authority a copy of that record.
- (7) A person who contravenes subsection (1), (2), (3), (4), (5) or (6) commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars (\$20,000) or to a term of imprisonment not exceeding two years or to both.
- (8) For purposes of this section:
 - (a) a person opens an account in a false name if the person, in opening the account, or becoming a signatoy to the account, uses a name other than a name by which the person is commonly known; and
 - (b) a person operates an account in a false name if the person does any act or thing in relation to the account (whether by way of making a deposit or withdrawal or by way of communication with the financial institution concerned or otherwise) and, in doing so, uses a name other than a name by which the person is commonly known; and
 - (c) an account is in a false name if it was opened in a false name, whether before or after the commencement of this paragraph.

**PART III - ANTI-MONEY LAUNDERING
SUPERVISION**

Section 12(1) Money Laundering (Prevention) Act 1996

Retention
of financial
records

- 12.** (1) A financial institution shall, subject to section 12A, retain, or retain a copy of, each customer generated financial transaction document for the minimum retention period applicable to the document.
- (2) Subject to subsection (3), a financial institution shall retain, or retain a copy of, each financial transaction document that is not a customer generated financial transaction document the retention of which is necessary to preserve a record of the financial transaction concerned for the minimum retention period applicable to the document.
- (3) -----
- (4) A financial institution required to retain documents under this section shall retain and store them in a way that makes retrieval of the documents reasonably practicable.
- (5) A financial institution shall—
- (i) comply with any instruction given to it by the Supervisory Authority pursuant to section 11(vi);
 - (ii) permit any person authorised by 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 this section and to make any notes or take any copies of the whole or any part of any such record and shall answer any questions of the Supervisory Authority or a person authorised by the Supervisory Authority pursuant to this subsection;
 - (iii) comply with the guidelines and training requirements issued by the Supervisory Authority in accordance with paragraph (vii) or (viii) of section 11.
- (6) A financial institution that contravenes subsections (1), (2), (4) or (5) commits an offence and is liable on summary conviction to a fine not exceeding \$20,000.

s.12 repealed and replaced by s.10 of No. 17 of 2002

s.12(1) repealed and replaced by s.2 of No. 26 of 2003

ss.12(3) repealed by s.3 of No. 15 of 2008

ss.12A and 12B inserted by s.10 of No. 17 of 2002

12A. (1) Where a financial institution is required by law to release

Minimum
retention
period of a
document

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Section 12A(1) Money Laundering (Prevention) Act 1996

an original of a customer generated financial transaction document before the end of the minimum retention period applicable to the document, the financial institution shall retain a complete copy of the document until the end of the period or the return of the document, whichever occurs first.

- (2) The financial institution shall maintain a register of documents released under subsection (1).
- (3) A financial institution that contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars (\$20,000).

Definition of terms used in sections 12 and 12A

12B. (1) For the purposes of sections 12 and 12A —
“customer generated financial transaction document” means a document of a financial institution that relates to:

- (i) the opening or closing by a person of an account with the institution;
- (ii) the operation by a person of an account with the institution;
- (iii) the opening or use by a person of a deposit box or packet held by the institution.
- (iv) the telegraphic or electronic transfer of funds by the institution on behalf of the person to another person;
- (v) the transmission of funds between Antigua and Barbuda and a foreign country or between foreign countries on behalf of a person;
- (vi) an application by a person for a loan from the institution, that is given to the institution by or on behalf of the person whether or not the document is signed by or on behalf of the person;
- (vii) the financial activities of the customer and any correspondence that relates to that customer.

In s.12B “or” deleted from end of s.12B(v); at the end of 12B(vi) full stop replaced with semi-colon; paragraph (vi) inserted after para. (v) - amended by s.4 of No. 15 of 2008

“financial transaction document” in relation to a financial institution, means any document that relates to a financial transaction carried out by the institution in its capacity as a financial institution and, without limiting the generality of this,

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includes a document relating to:

- (a) the opening, operating or closing of an account held with the institution; and
- (b) the opening or use of a deposit box held by the institution.

“minimum retention period” in relation to a financial transaction document or a customer generated financial transaction document means:

- (a) if the document relates to the opening of an account with the institution — the period of six years after the day on which the account is closed;
- (b) if the document relates to the opening by a person of a deposit box held by the institution — the period of six years after the day on which the deposit box ceases to be used by the person; or
- (c) in any other case the period of six (6) years after the day on which the transaction takes place.

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 and to relations and transactions with persons, including business and other financial institutions, from countries that have not adopted a comprehensive anti money laundering programme.

(1A) Financial institutions in relation to all complex, unusual large transactions, whether completed or not, or unusual patterns of transactions which have no apparent or visible economic or lawful purpose, shall—

- (i) examine the background and purpose of the transactions;
- (ii) put their findings in writing; and
- (iii) treat the findings as part of the transaction

ss.13(1A) inserted by s.5(a) of No. 15 of 2008

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Section 13(2) Money Laundering (Prevention) Act 1996

records.

- (2) Upon reasonable suspicion that a transaction or activity could constitute or be related to money laundering, a financial institution shall promptly report the suspicious transaction or activity to othe Supervisory Authority. ss.13(2) repealed and replaced by s.5(b) of No. 15 of 2008
- (2A) The question whether a reasonable suspicion for the purpose of subsection (2) should have been formed, shall be determined objectively, having regard to all the facts and surrounding circumstances; s.13(2A) inserted by s.12(a) of No. 17 of 2002
- (3) Financial institutions shall not notify any person, other than a court, or other person authorized by law, that information has been requested by or furnished to a court or the Supervisory Authority. s.13(3) amended by s.6 of No. 6 of 2001
- (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 authorized 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 authorized 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) 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 on summary conviction to a fine not exceeding fifty thousand dollars (\$50,000) or to a term of imprisonment not exceeding six months or both and in addition the licence may be suspended or revoked by the appropriate Regulatory Authority. s.13(6) repealed and replaced - amended by s.12(b) of No. 17 of 2002
s.13(7) repealed by s.12(c) of No. 17 of 2002

Supervisory Authority's power to obtain search warrant

- 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—

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- (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 authorizing 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.** Upon the application by the Supervisory Authority, a Judge of the High Court, upon being satisfied that there are reasonable grounds for believing that a person (referred to in this section as “the defendant”) is committing, has committed or is about to commit a money laundering offence or has engaged or is about to engage in money laundering activity, may make an order—

- (i) that any person reasonably believed to be in possession or control of any document relevant to—
 - (a) identifying, locating or quantifying any property of the defendant; or
 - (b) identifying or locating any document necessary for the transfer of any property of the defendant,

be required to deliver the document forthwith to the Supervisory Authority or other law enforcement agency,

Property tracking
and monitoring
orders

s.15 repealed and
replaced by s.13 of
No. 17 of 2002

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Section 15(ii) Money Laundering (Prevention) Act 1996

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

Mandatory injunction to enforce compliance

- 16.** (1) A Judge of the High Court may upon an application made by the Supervisory Authority grant a mandatory injunction against an officer or employee of a financial institution in the terms the court deems necessary to enforce compliance 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), (iii) and (iv) and section 13(2).
- (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 an offence for which a person may be sentenced to a term of imprisonment for twelve months or more whether in Antigua & Barbuda or elsewhere may not be eligible or licensed to carry on the business of a financial institution.

s.17 amended by s.7 of No. 6 of 2001

Currency reporting when entering or leaving Antigua and Barbuda

- 18.** (1) Where:
- (a) a person:
- (ii) transfers currency of Antigua and Barbuda or foreign currency out of Antigua and Barbuda; or
- (iii) transfers currency of Antigua and Barbuda or foreign currency into Antigua and Barbuda; and

s.18 repealed and substituted by s.8 of No. 6 of 2001

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- (b) the amount of currency involved in the transfer is not less than US\$10,000 in value;

the person, subject to subsections (2), (3) and (4), commits an offence against this subsection unless a report in respect of the transfer has been made in accordance with this section.

- (2) Where:

- (a) a person receives currency of Antigua and Barbuda or foreign currency transferred to the person from outside Antigua and Barbuda; and
- (b) the amount of currency is not less than US\$10,000 in value;

the person commits an offence against this subsection unless:

- (i) a report in respect of the transfer of the currency into Antigua and Barbuda has been made in accordance with subsection (1) before the transfer; or
- (ii) a report in respect of the receipt of the currency is given in accordance with this section before the period of 30 days commencing on the day of the receipt of the currency.

- (3) A person who commits an offence against subsection (1) or (2) is liable, upon conviction, to a fine of fifty thousand dollars (\$50,000) or to imprisonment for not more than 2 years or both.

- (4) A report under this section shall:

- (a) be on the form approved in the regulations;
- (b) contain the reportable details in relation to the matter being reported;

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Section 18(4)(c) Money Laundering (Prevention) Act 1996

- (c) be signed by the person making the report; and
 - (d) be given to a customs officer assigned for duty at the point of entry or departure.

- (5) A report under this section, other than a report mentioned in subsection 2(b)(i) or (ii), must be given:
 - (a) if the transfer is effected by a person taking the currency out of, or bringing it into Antigua and Barbuda with the person — at the time the currency concerned is brought into or taken out of, Antigua and Barbuda; and
 - (b) in any other case—at any time before the transfer takes place.

- (6) For the purposes of subsection (5), if currency is taken out of Antigua and Barbuda by a person who sends or consigns the currency:
 - (a) through the post to a place outside Antigua and Barbuda; or
 - (b) to another person for carriage to a place outside Antigua and Barbuda by that other person or by a third person;

the time when the currency is taken out of Antigua and Barbuda is the time when it is irrevocably committed by the first mentioned person to the Post Office or to the other person as the case may be.

- (7) For the purposes of subsection (5)(a), the time at which currency is brought into Antigua and Barbuda by a person is:
 - (a) if the person:
 - (i) transfers the currency into Antigua and Barbuda when a passenger on an aircraft, vessel or ship; and

s.18(4)(d)
repealed and re-
placed by s.14(a)
of No. 17 of 2002

s.18(5) para (a)
repealed and re-
placed - amended
by s.14(b) of No.
17 of 2002

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Section 18(7)(a)(ii) Money Laundering (Prevention) Act 1996

- (ii) after disembarking, goes through an area set apart for customs officers to examine the passports and personal baggage of, and perform other duties in respect of, disembarking passengers and for such passengers to collect personal baggage;

as soon as the person reaches the place in that area at which customs officers examine personal baggage or, if the person does not go to that place, when the person leaves that area; or

- (b) in any other case — the first opportunity after arrival in Antigua and Barbuda that the person has to make the report under this section.

- (8) For the purposes of subsection 5(a), the time at which currency is taken out of Antigua and Barbuda by a person is:

- (a) if the person:
 - (i) transfers the currency out of Antigua and Barbuda when a passenger on an aircraft, vessel or ship; and
 - (ii) before embarking, goes through an area set apart for the examination of the passports and baggage of embarking passengers;

when the person is at the place in that area in which passports are examined; or

- (b) in any other case — as soon as the person

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Section 18(8)(b) Money Laundering (Prevention) Act 1996

reaches the person who is to examine the person's passport in relation to the person leaving Antigua and Barbuda or, if there is no such examination, the last opportunity before leaving Antigua and Barbuda that the person has to make the report under this section.

(9) When a report under this section is made, the person to whom it is made shall, after receipt of the report, forward the report to the Supervisory Authority within 48 hours.

(10) For the purposes of this section, if a person:

(a) arranges to leave Antigua and Barbuda on an aircraft, vessel or ship; and

(b) for the purposes of leaving Antigua and Barbuda, goes towards an aircraft, vessel or ship through an area described in subsection (8)(a)(ii); and

(c) either:

(i) takes currency into that area; or

(ii) has currency in his or her personal baggage; and

(d) does not give a report about the currency when at the place described in that subsection;

the person is taken to have transferred the currency out of Antigua and Barbuda.

Seizure and
Detention of
suspected cur-
rency

18A. (1) A Customs Officer, Police Officer or ONDCP Officer on duty anywhere in the jurisdiction or a member of the Antigua and

s.18A inserted
by s.9 of No. 6
of 2001

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Section 18A(1) Money Laundering (Prevention) Act 1996

Barbuda Defence Force engaged in maritime duties may seize and detain currency if he or she has reason to suspect that it is an instrumentality of an offence against subsection 18(1) or 18(2) or is the proceeds of crime or is intended by the person for use in unlawful activity.

s.18A(1) re-
pealed and sub-
stituted by s.6 of
No. 6 of 2008

- (2) Currency seized by virtue of this section shall not be detained for more than 7 days unless an order is made for its continued detention pursuant to subsection (3).
- (3) An application may be made to a magistrate for an order authorising the continued detention of the seized currency for additional periods, not exceeding 6 months on each occasion, providing that the magistrate is satisfied that:
 - (a) there are reasonable grounds for the suspicion referred to in subsection (1); and
 - (b) that continued detention of the currency is justified while its origin or derivation is further investigated or consideration is given to the institution, whether in Antigua and Barbuda or elsewhere, of criminal proceedings against any person for an offence with which the currency is connected and provided that, in total, the currency is not detained for a period in excess of two years from the date of seizure, save that where a criminal proceedings against any person for an offence with which the currency is connected has commenced, the continuing detention of the currency may be ordered until the proceeding is completed.
- (4) An application pursuant to subsection (3) may be made to a magistrate by the Supervisory Authority.
- (5) Any currency subject to continued detention under subsection (3) shall, unless required as evidence of

S.18A(1) is repre-
aled and replaced
- amended by s.6
of No. 15 of 2008

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Section 18A(5) Money Laundering (Prevention) Act 1996

an offence, be delivered forthwith into the care of the Supervisory Authority who shall deposit it into a separate interest bearing account.

- (6) An order under subsection (3) shall remain in force until:
- (a) the expiration of the order;
 - (b) the order is vacated by order of a court.
- (7) Currency which is detained pursuant to an order made under subsection (3) may be released in whole or in part upon the order of a magistrate provided that the magistrate is satisfied that:
- (a) the grounds under which the currency was originally seized or continued to be detained no longer exist; or
 - (b) the continued detention of the currency is no longer justified.
- (8) An application under subsection (7) may be made by:
- (a) the person from whom the currency was seized; or
 - (b) a person who, to the satisfaction of the magistrate, has an interest in the currency; or
 - (c) the person, or one of the persons upon whose application the currency was detained; or
 - (d) the Supervisory Authority.

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Section 18A(9) Money Laundering (Prevention) Act 1996

- (9) An order under subsection (7) may not be made while:
- (a) a criminal prosecution, whether in Antigua and Barbuda or elsewhere, including any appeal against a conviction arising from such a prosecution, to which the seizure of the currency is related is pending, or
 - (b) an application for forfeiture of the currency pursuant to section 18B of this Act, including any appeal therefrom, is pending.

Application to
Magistrate to
forfeit seized
currency

- 18B.** (1) An application for the forfeiture of any currency seized pursuant to section 18A(1) may be made to the Magistrates' Court upon the application of the Supervisory Authority.
- (2) The Supervisory Authority shall, in accordance with the manner prescribed in section 28D, give at least fourteen days notice of an application made pursuant to subsection (1) to the person from whom the currency was seized or to any other person that the Supervisory Authority believes may have an interest in the currency.
- (3) Any person notified under subsection (2) and any other person who claims to have an interest in the seized currency are entitled to appear and to give evidence at the hearing of the application, but the absence of a person does not prevent the court from making a forfeiture order.
- (4) Upon hearing an application pursuant to subsection (1) and upon being satisfied that the seized currency is:
- (a) the proceeds of some form of unlawful activity; or
 - (b) an instrumentality of an offence (whether or not a person has been convicted of any offence);

s.18B inserted
by s.10 of No. 6
of 2001

s.18B(2) repealed
and replaced by
s.16 of No. 17 of
2002

the Court may, subject to subsection (5) order that all

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Section 18B(4) Money Laundering (Prevention) Act 1996

or part of the currency be forfeited to the Government of Antigua and Barbuda.

- (5) In considering whether to make an order under subsection (4) in respect of all or part of the seized currency, the court may have regard to —

s.18C inserted
by s.11 of No. 6
of 2001

- (i) the use ordinarily made, or intended to be made of the currency; and
- (ii) the claim of any third party to an interest in the currency who shows to the satisfaction of the court that they were not involved or aware of any unlawful use or purpose with which the currency may have been associated.

- (6) Any party to an application for forfeiture under subsection (1) may appeal to the High Court by way of rehearing within 30 days of any order pursuant to subsection (4) being made.

Reportable
details and
currency

18C. In sections 18, 18A and 18B:

“reportable details” in relation to a matter being reported, means the details of the matter that are required to be reported that are prescribed in the regulations.

“currency” means cash or bearer negotiable financial instruments.

PART IV

**FREEZING AND FORFEITURE OF ASSETS IN
RELATION TO MONEY LAUNDERING**

Freezing of
property

19. (1) Where a person (referred to in this Part as “the defendant”)—

s.19 repealed
and replaced by
s.12 of No. 6 of
2001

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FORFEITURE OF ASSETS**

Section 19(1) Money Laundering (Prevention) Act 1996

- (a) has been convicted of a money laundering offence; or
- (b) has been, or is about to be charged with a money laundering offence; or
- (c) is suspected of having engaged in money laundering activity.

“;or” inserted into para (1)(b); and para 1(c) inserted by s.17(a) of No. 17 of 2002

the Supervisory Authority may apply to the High Court for an order freezing property in which there is a reasonable suspicion that the defendant has an interest.

- (1A) An application under this section shall be made *ex parte*.
- (1B) The Supervisory Authority shall, in accordance with the manner prescribed in section 28D, give at least fourteen days notice of the order under subsection (1A) to the owner of the property the subject of the order and to any other person the Supervisory Authority has reason to believe may have an interest in the property.
- (2) Subject to subsection (3) an application referred to in subsection (1) may be made against one or more of the following:
 - (a) specified property of the defendant;
 - (b) all the property of or in the name of the defendant (including property acquired after the making of the order);
 - (c) all the property of or in the name of the defendant (including property acquired after the making of the order) other than specified property;
 - (d) specified property of a person other than the defendant.
- (3) Where:
 - (a) the money laundering offence of which the defendant has been convicted or

ss.19(1A) and 19(1B) inserted by s.17(b) of No. 17 of 2002

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FORFEITURE OF ASSETS**

Section 19(3)(a) Money Laundering (Prevention) Act 1996

- charged or money laundering activity in which the defendant is suspected of having been engaged falls within the definition of subparagraph (i) of the definition of money laundering offence the property in respect of which an application for a freezing order may be made pursuant to subsection (2) may be located in Antigua and Barbuda or anywhere else in the world;
- (b) the money laundering offence of which the defendant has been convicted or charged or money laundering activity in which the defendant is suspected of having been engaged falls within the definition of subparagraph (ii) of the definition of money laundering offence the property in respect of which an application for a freezing order may be made pursuant to subsection (2) may only be located in Antigua and Barbuda.
- (4) Where the Supervisory Authority applies to the High Court for an order under this section, the High Court may, subject to subsection 19A, by order:
- (a) direct that the property, or such part of the property as is specified in the order, is not to be disposed of, or otherwise dealt with, by any person, except in such manner and in such circumstances (if any) as are specified in the order; and
- (b) if the High Court is satisfied that the circumstances so require—direct a trustee to take custody and control of the property, or of such part of the property as is specified in the order.
- (5) The High Court may, without limiting the generality of its power under this section to impose such conditions upon a

“or money laundering activity in which the defendant is suspected of having been engaged” inserted after “charged” in paras. 19(3)(a) and (b) - amended by s.17(c) of No. 17 of 2002

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FORFEITURE OF ASSETS**

Section 19(5) Money Laundering (Prevention) Act 1996

freeze order as it sees fit, make provision for meeting, out of property or a specified part of the property, all or any of the following:

- (a) the defendant's reasonable living expenses (including the reasonable living expenses of the defendant's dependants (if any) and reasonable business expenses;
 - (b) the defendant's reasonable expenses in defending a proceeding under this Act or any criminal charge to which this proceeding relates.
- (6) The following restrictions apply to orders making provision for the payment of expenses of the defendant or dependants of the defendant pursuant to subsection (5):
- (a) no provision is to be made for expenses except to the extent (if any) that the High Court is satisfied that the defendant cannot meet the expenses concerned out of the defendant's unfrozen property;
 - (b) no provision is to be made in relation to any particular interest in frozen property if a reasonable suspicion exists that the interest is unlawfully acquired property;
 - (c) no provision is to be made unless a statement pursuant to subsection 19B(1)(d) has been filed in the High Court;
 - (d) no provision is to be made unless the High Court is satisfied that the defendant has taken all reasonable steps to bring all of his or her interests in property within the jurisdiction of the Court;
 - (e) any provision for the payment of expenses must specify the particular interest in property

In para. 19(5)(b) "any" substituted for "the" on its second occurrence - amended by s.17(d) of No. 17 of 2002

In s.19(6)(c) delete "19B(1)(e)" and substitute "19B(1)(d)" - amended by s.17(e) of No. 17 of 2002

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Section 19(7) Money Laundering (Prevention) Act 1996

out of which the expenses concerned may be met.

- (7) For the purpose of this section a defendant's unfrozen property is any interest in property of the defendant:
- (a) that is not subject to a freeze order under this Act; or
 - (b) that the High Court is satisfied is not within the Court's jurisdiction (whether or not it is subject to a freeze order under this Act).
- (8) Where a trustee is given direction under subsection 4(b) in relation to property, the trustee may do anything that is reasonably necessary for the purpose of preserving the property including, without limiting the generality of this:
- (a) becoming a party to a civil proceeding affecting the property;
 - (b) ensuring that the property is insured;
 - (c) if the property consists, wholly or partly, of securities or investments—realising or otherwise dealing with the securities or investments; and
 - (d) if the property consists wholly or partly of a business:
 - (i) employing, or terminating the employment of, persons in the business; and
 - (ii) doing any other thing that is necessary or convenient for carrying on the business on a sound commercial basis.
 - (e) if the property consists wholly or partly of

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Section 19(8)(e) Money Laundering (Prevention) Act 1996

shares the trustee may exercise the rights attaching to the shares as if he or she were the registered holder of the shares to the exclusion of any rights held by the registered holder.

- (9) The Supervisory Authority may direct a financial institution in writing to freeze property for a period of up to 7 days whilst it makes application pursuant to subsection (1) for a freeze order.

Subsection 19(9) inserted by s.17(f) of No. 17 of 2002

Procedure for dealing with freeze order application

- 19A.** (1) Where an application is made pursuant to paragraph 19(1)(a), the High Court shall make a freeze order.

s.19A inserted by s.13 of No. 6 of 2001

- (1A) Where an application is made pursuant to paragraph 19(1)(b) the High Court shall not make a freeze order unless—

ss.19A(1) and (2) repealed and substituted by s.18(a) of No. 17 of 2002

- (a) the application for the order is supported by an affidavit of an authorised officer stating that he suspects that the defendant committed the offence; and
- (b) the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for holding that suspicion.

- (1B) Where an application is made pursuant to paragraph 19(1)(c) the High Court shall not make a freeze order unless—

- (a) the application for the order is supported by an affidavit of an authorised officer stating that he suspects that the defendant has engaged in money laundering activity; and
- (b) the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for holding that suspicion.

- (2) Where a freeze order is made upon the basis that—

- (a) the defendant has been charged or is about to be charged with a money laundering offence;

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or

- (b) the defendant is suspected of having engaged in money laundering activity;

the freeze order will cease to have effect thirty (30) days after it is made unless by that time the defendant has been charged with money laundering offence, or an application for a civil forfeiture order or civil proceeds assessment order has been filed.

- (3) Where the application seeks a freeze order against the specified property of a person other than the defendant the court shall not make a freeze order against the property unless:

- (a) the application is supported by an affidavit of an authorised officer stating that

- (i) the officer suspects that the property is an instrumentality; or
- (ii) the officer suspects that the defendant has an interest in the property; and

In s.19A(3)(a)(i) “instrument of the offence” deleted and replaced with “instrumentality” - amended by s.18(c) of No. 17 of 2002

- (b) the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for holding that suspicion.

- (4) The High Court may make a freeze order in respect of property whether or not there is any risk of the property being disposed of, or otherwise dealt with, in such manner as would defeat the operation of this Act.
- (5) The Supervisory Authority shall, in accordance with the manner prescribed in section 28D, give at least fourteen days notice of an order made pursuant to subsection 19(4) to the defendant and to any other person the Supervisory Authority has reason to believe may have an interest in the property.

Subsection 19A(5) repealed and substituted by s.18(5) of No. 17 of 2002

**PART IV - FREEZING AND
FORFEITURE OF ASSETS**

Section 19B(1) Money Laundering (Prevention) Act 1996

High Court to
make ancillary
orders

19B. (1) Where the High Court makes a freeze order, the Court may, at any time when it makes the freeze order or at any later time, make any ancillary orders that the Court considers appropriate and, without limiting the generality of the Court's power, the Court may make any one or more of the following orders:

s.19B inserted
by s.14 of No. 6
of 2001

- (a) an order varying the property to which the freeze order relates;
- (b) an order varying a condition to which the freeze order is subject;
- (c) an order for the examination on oath before the Court of any person, including:

- (i) a person whose property is the subject of the freeze order (in this section called the "owner"); or
- (ii) a person who is the defendant within the meaning of section 19 in relation to the offence to which the freeze order relates (in this subsection called the "defendant");

In s.19B(1)(c)(i)
"restraining order"
deleted and replaced
with "freeze order"
- amended by
s.19(a) of No. 17
of 2002

about the affairs (including the nature and location of any property) of:

- (iii) anyone who is either the owner or the defendant or both; and
 - (iv) if the person to be examined is either the owner or the defendant or both—that person;
- (d) an order directing
- (i) the owner; or
 - (ii) if the owner is not the defendant—the defendant; or
 - (iii) if the owner or the defendant is a body corporate—a director of the

**PART IV - FREEZING AND
FORFEITURE OF ASSETS**

Section 19B(1)(d) Money Laundering (Prevention) Act 1996

body corporate specified by the
court:

to give to:

- (iv) where the freeze order is, or includes, an order made under section 19(4)(b)—the trustee; and
- (v) in any other case—the applicant for the ancillary order or such other person as the court directs;

within a period specified in the ancillary order, a statement sworn on oath setting out such particulars of the property, or dealings with the property, of the owner or the defendant, as the case may be, and as the court thinks proper;

- (e) where the freeze order directed a trustee to take custody and control of property:
 - (i) an order regulating the manner in which the trustee may exercise his or her powers or perform duties under the freeze order;
 - (ii) an order determining any question relating to the property to which the freeze order relates, including any question relating to:
 - (a) the liabilities of the owner; or
 - (b) the exercise of the powers, or the performance of the duties, of the trustee with respect to the property to which the restraining order relates;

- (2) An order under subsection (1) may be made on application

**PART IV - FREEZING AND
FORFEITURE OF ASSETS**

Section 19B(2) Money Laundering (Prevention) Act 1996

by:

- (a) the Supervisory Authority;
 - (b) the owner;
 - (c) where the freeze order directed a trustee to take custody and control of property — the trustee; or
 - (d) with the leave of the court — any other person.
- (3) An ancillary order made in relation to a freeze order does not cease to have effect merely because the freeze order, or part of it, ceases to be in force.

(4) Where:

- (a) a person (in this subsection called the defendant) has been—
 - (i) convicted of a money laundering offence or money laundering activity; or
 - (ii) charged with a money laundering offence or money laundering activity or is about to be charged with a money laundering offence or money laundering activity; or
 - (iii) joined as a defendant in an application pursuant to sections 20A or 20B or is about to be joined as a defendant in such an application;
- (b) the High Court has made a freeze order against any property under section 19; and
- (c) a person having an interest in the property applies to the court for a variation of the order to exclude the person's interest from the order;

Paras (a) and (b) of s.19B(4) repealed and substituted by s.19(b) of No. 17 of 2002

the High Court shall grant the application if:

- (d) where the applicant is not the defendant and the freeze order was not made by virtue of section 19A(3) — the High Court is satisfied that:

**PART IV - FREEZING AND
FORFEITURE OF ASSETS**

Section 19B(4)(d) Money Laundering (Prevention) Act 1996

- (i) the applicant was not, in any way, involved directly or indirectly in the commission of the offence or money laundering activity; and
- (ii) the applicant had no knowledge of the commission of the offence or money laundering activity or any illegal use to which instrumentalities the subject of the application may have been put (providing that this lack of knowledge was not the result of wilful blindness); and
- (iii) the applicant's interest in the property was not acquired by means of a gift from the defendant or any person or entity under the effective control of the defendant; and
- (iv) where the applicant acquired the interest at the time or after the commission, or alleged commission, of the offence or money laundering activity—the applicant acquired the interest without knowledge, or in circumstances such as not to arouse a reasonable suspicion, that the property was an instrumentality;
- (e) where the applicant is not the defendant and the freeze order was made by virtue of section 19A(3) — the High Court is satisfied that:
 - (i) the applicant was not, in any way, involved in the commission of the offence or money laundering activity; and
 - (ii) the applicant's interest in the property is not subject to the effective control of the defendant; and

In s.19B(4)(d)(iv) "of the offence" deleted after "instrumentality" and "or money laundering activity" inserted after "offence" wherever it occurs - amended by s.19(c) of No. 17 of 2002

**PART IV - FREEZING AND
FORFEITURE OF ASSETS**

Section 19B(4)(e)(iii) Money Laundering (Prevention) Act 1996

- (iii) the applicant had no knowledge of the commission of the offence or money laundering activity or to any illegal use to which instrumentalities the subject of the application may have been put (providing that this lack of knowledge was not the result of wilful blindness); and
- (iv) the applicant's interest in the property was not acquired by means of a gift from the defendant or any person or entity under the effective control of the defendant; and
- (v) where the applicant acquired the interest at the time or after the commission, or alleged commission, of the offence or money laundering activity — the applicant acquired the interest without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was an instrumentality.

In s.19B(4)(e)(v) “of the offence” deleted after “instrumentality” and “or money laundering activity” inserted after “of-fence” wherever it occurs - amended by s.19(c) of No. 17 of 2002

(5) Where:

- (a) a person (in this subsection called the defendant) has been—
 - (i) convicted of a money laundering offence; or
 - (ii) charged with a money laundering offence or is about to be charged with a money laundering offence; or
 - (iii) joined as a defendant in

ss.19B(5)(a) and (b) repealed and substituted - amended by s.19(d) of No. 17 of 2002

**PART IV - FREEZING AND
FORFEITURE OF ASSETS**

Section 19B(5)(a) Money Laundering (Prevention) Act 1996

- an application pursuant to sections 20A or is about to be joined as a defendant in such an application;
- (b) the High Court has made a freeze order against any property under section 19; and
 - (c) the defendant has an interest in the property;
 - (d) the defendant applies to the High Court for an order under this subsection in relation to the interest; and
 - (e) the court is satisfied that:
 - (i) the property was not used in, or in connection with, any unlawful activity and was not derived, directly or indirectly, by any person from any unlawful activity; and
 - (ii) the property was not related in any way, directly or indirectly, to any unlawful activity including (and without limiting the generality of the foregoing) any money laundering scheme established in Antigua and Barbuda or elsewhere,

In s.19B(5)(e)
“subject to
paragraph (f)”
inserted after
“may”- amended
by s.19(c) of No.
17 of 2002

the High Court may subject to paragraph (f) order that the freeze order, to the extent to which it relates to the interest in property the subject of the application, be discharged.

- (f) (i) Where property or an interest in property, subject to an application under this subsection, is also subject to a freeze order for the purpose of securing an application for a civil proceeds assessment order pursuant to section 20B, the High Court may not make an exclusion order in respect of that

Para (f) of
s.19B(5)
inserted by
s.19(c) of No.
17 of 2002

**PART IV - FREEZING AND
FORFEITURE OF ASSETS**

Section 19B(5)(f)(i) Money Laundering (Prevention) Act 1996

- property or interest in property pursuant to this subsection. It may instead declare that the property or interest in property satisfies the requirements of paragraph (e);
- (ii) When a declaration is made in relation to property or an interest in property pursuant to subparagraph (i):
- (A) section 20 shall not operate in relation to that property or any interest in that property;
- (B) no civil forfeiture order may be made in relation to that property or any interest in that property.
- (6) The onus of proof in an application made pursuant to subsections (4) or (5) lies upon the person seeking relief under those subsections.
- (7) Where a person is examined before the High Court pursuant to an order under paragraph (1)(c), the person is not excused from answering a question when required to do so by the court on the ground that the answer to the question might tend to incriminate the person or make the person liable to forfeiture or a penalty.
- (8) Where a person is examined before the High Court pursuant to an order under paragraph (1)(c), a statement or disclosure made by the person in answer to a question put in the course of the examination, and any information, document or thing obtained as a direct or indirect consequence of the statement or disclosure, is not admissible against the person in any criminal proceedings except a proceeding for giving false testimony in the course of the examination.
- (9) A person whom an order under subsection (1)(d) directs to give a statement is not excused from giving the statement, or from setting out particulars in the statement, on the ground that the statement or particulars, as the case may be, might tend to incriminate the person or make the person liable to a forfeiture or penalty.
- (10) Where a person gives a statement under an order made

PART IVA - AUTOMATIC FORFEITURE

Section 19(10) Money Laundering (Prevention) Act 1996

under paragraph (1)(d), neither the statement, nor any information, document or thing obtained as a direct or indirect consequence of the statement is admissible against the person in any criminal proceedings except a proceeding in respect of the falsity of the statement.

PART IVA

Heading inserted
by s.20 of No. 17
of 2002

**AUTOMATIC FORFEITURE UPON CONVICTION OF
A MONEY LAUNDERING OFFENCE**

Forfeiture
of property
proceeds or
instrumentali-
ties

20. (1) If:

- (a) a person (in this section called the “defendant”) is convicted of a money laundering offence;
- (b) a freeze order is or was granted in respect of property (whether property of the defendant or of some other person) in reliance on:
 - (i) the defendant’s conviction of that offence; or
 - (ii) the charging or proposed charging of the defendant with that offence or a related offence;
- (c) the freeze order, to the extent to which it relates to the property, is not the subject of a discharging order under section 19B(5);

s.20 repealed
and substituted
by s.15 of No. 6
of 2001

subject to subsection (2) the frozen property is forfeited to the Crown upon the expiry of 90 days after

- (i) the making of the freeze order; or
- (ii) the conviction of the defendant,

whichever is later.

(2) If, within the period of 90 days referred to in subsection (1), an application has been made for an order under section

PART IVB - CIVIL FORFEITURE

Section 20(2) **Money Laundering (Prevention) Act 1996**

19B(5) in respect of frozen property, the property is forfeited to the Crown —

- (a) if the application is refused or dismissed, at the end of the period during which the person may appeal against the refusal or dismissal or, if such an appeal is lodged, when the appeal is abandoned or finally determined without the order having been made;
- (b) if the application is withdrawn or struck out, on that withdrawal or striking out.

PART IVB

Part IVB,
ss.20A-20C
inserted by
s.22 of No.
17 of 2002

CIVIL FORFEITURE

Civil forfei-
ture orders

- 20A.** (1) If a freeze order is in force under Part IV, the Supervisory Authority may apply to the High Court for a civil forfeiture order forfeiting to the Crown all or any of the interests in property that are subject to the freeze order when the forfeiture order takes effect.
- (2) The High Court shall make a civil forfeiture order if the Court finds that it is more probable than not that the person (in this section called the “defendant”) in respect of whom the freeze order was made had, at any time, not more than six (6) years before the making of the application for the civil forfeiture order, engaged in money laundering activity.
- (3) A finding of the High Court for the purposes of subsection (2) need not be based on a finding as to commission of a particular offence, and can be based on a finding that some offence or other constituting a money laundering activity was committed.
- (4) When a civil forfeiture order is made pursuant to this section it must be made in respect of specified interests in property.
- (5) The reference in subsection (2) to a period of six (6) years includes a reference to a period that began before the commencement of this section.
- (6) The quashing or setting aside of a conviction for a money

PART IVB - CIVIL FORFEITURE

Section 20A(6) Money Laundering (Prevention) Act 1996

laundering offence does not affect the validity of a civil forfeiture order based on the same conduct that was made before or after the conviction was quashed or set aside.

- (7) The making of a civil forfeiture order under this section does not prevent the making of a civil proceeds assessment order which assesses the value of the proceeds of the money laundering activity on which the civil forfeiture order is based.
- (8) The Supervisory Authority shall, in accordance with the manner prescribed in section 28D, give at least fourteen days notice of an application made under this section to the defendant and to any other person he has reason to believe may have interest in the property subject to the application.
- (9) Any person notified of an application pursuant to this section is entitled to appear and give evidence at the hearing of the application, but the failure or absence of that person to appear and give evidence does not prevent the court from making an order under subsection (2).

Application
for civil pro-
ceeds assess-
ment order

- 20B.** (1) The Supervisory Authority may apply to the High Court for a civil proceeds assessment order requiring a person (in this section called the “defendant”) to pay to the Crown an amount assessed by the High Court as the value of the benefit he derived from the money laundering activities that took place not more than six months before the making of the application for the order.
- (2) The High Court must make a civil proceeds assessment order if the Court finds it to be more probable than not that the defendant was, at any time not more than six (6) years before the making of the application for the order, engaged in a money laundering activity from which a benefit was derived.
- (3) For the purposes of subsection (2) a finding by the High Court does not need to be based on the commission of a particular offence; but may be based on a finding that the defendant had engaged in any money laundering activity.
- (4) The reference in subsection (2) to a period of six (6) years includes a reference to a period that began before the commencement of this section.
- (5) In making a finding under this section, the High Court shall

PART IVB - CIVIL FORFEITURE

Section 20B(5) Money Laundering (Prevention) Act 1996

apply the standard of proof used in civil proceedings.

- (6) The validity of a civil proceeds assessment order is not affected by the quashing or setting aside of a conviction based upon the same money laundering activity upon which the civil proceeds assessment order was made.
- (7) The making of a civil proceeds assessment order under this section does not prevent the making of a civil forfeiture order based on the same money laundering activity upon which the civil proceeds assessment order was made.
- (8) The Supervisory Authority shall, in accordance with the manner prescribed in section 28D, give at least fourteen days notice of an application made pursuant to this section to the defendant and to any other person the Supervisory Authority has reason to believe may have interest in the property.
- (9) Any person notified of an application pursuant to this section is entitled to appear and give evidence at the hearing of the application, but the failure or absence of that person to appear and give evidence does not prevent the court from making an order under subsection (2).
- (10) A civil proceeds assessment order is a debt payable by the defendant to the Crown and is recoverable as such.
- (11) If an order under this section is made against a dead person, subsection (10) has effect before the final distribution of the estate as if the person had died the day after the making of the order.
- (12) The amount recovered under a civil proceeds assessment order is to be processed in accordance with section 20D.
- (13) The High Court may, at the time it makes a civil proceeds assessment order or at any later time, make any ancillary orders that the Court may consider appropriate.

20C. (1) For the purpose of making a civil proceeds assessment order under section 20B in relation to a person in this section referred to as (“the defendant”), the High Court shall have regard to the following matters—

- (a) the money, or the value of any interest in property other than money, directly or indirectly

Matters to be considered in making an order under section 20B

PART IVB - CIVIL FORFEITURE

Section 20C(1) Money Laundering (Prevention) Act 1996

- acquired by—
- (i) the defendant; or
 - (ii) another person at the request, or by the direction, of the defendant,
- as a result of the money laundering activity;
- (b) the value of any service, benefit or advantage provided for—
 - (i) the defendant; or
 - (ii) another person at the request, or by the direction, of the defendant,as a result of the money laundering activity;
 - (c) the value of the defendant's property before and after the money laundering activity;
 - (d) the defendant's income and expenditure before and after the money laundering activity.
- (2) If evidence is given at the hearing of an application for a civil proceeds assessment order that the value of the defendant's property after a money laundering activity or money laundering activities exceeded the value of the defendant's property before the activity or activities, the High Court is to treat the excess as proceeds derived by the defendant from the money laundering activity or activities, except to the extent (if any) that the High Court is satisfied the excess was due to causes unrelated to the money laundering activity or activities.
- (3) If evidence is given at the hearing of an application for a civil proceeds assessment order of the amount of the defendant's expenditure during the period of six years before the making of the application for the order, the High Court is to treat any such amount as proceeds derived by the defendant from the money laundering activity or activities, except to the extent (if any) that the High Court is satisfied the expenditure was from income, or money from other sources, unrelated to any money laundering activity or activities.
- (4) The High Court is not to take expenditure into account under subsection (3) to the extent that the Court is satisfied that it

**PART IVC - EFFECT AND ENFORCE-
MENT OF CONFISCATION**

Section 20C(4) Money Laundering (Prevention) Act 1996

- resulted in the acquisition of property the value of which is taken into account under subsection (2).
- (5) In making an assessment as provided by this section the High Court shall make no allowance for the following—
- (a) expenses or outgoings incurred by the defendant in relation to the money laundering activity or activities;
 - (b) the value of any proceeds derived as agent for or otherwise on behalf of some other person (whether or not any proceeds are received by that other person).
- (6) This section applies to, and in relation to—
- (a) property in which the defendant has an interest, either within or outside Antigua and Barbuda;
 - (b) proceeds acquired either within or outside Antigua and Barbuda in relation to a money laundering activity or activities.

PART IVC

EFFECT AND ENFORCEMENT OF CONFISCATION

Effect and enforcement of confiscation

- 20D.** (1) If an interest in property is forfeited by operation of section 20 or a civil forfeiture order is made pursuant to section 20A, the interest is forfeited to and vests in the Crown, and the Supervisory Authority may take possession of the property on behalf of the Crown.
- (2) An interest forfeited under subsection (1) is to be disposed of by the Supervisory Authority and the proceeds are to be paid to the Fund.
- (3) The High Court may, upon the forfeiture of assets under section 20 or when it makes a civil forfeiture order under section 20A, or at any later time, make any ancillary orders that the Court considers appropriate, including ancillary orders for and with respect to facilitating the transfer to the Crown of interests in property forfeited to the Crown.

Part IVC,
ss.20D-20F
inserted by
s.23 of No.
17 of 2002

**PART IVC - EFFECT AND ENFORCE-
MENT OF CONFISCATION**

Section 20E(1) Money Laundering (Prevention) Act 1996

Disposition
of prop-
erty subject
to forfeiture
prohibited

- 20E.** (1) A person shall not dispose of or otherwise deal with an interest in property that is forfeited pursuant to section 20 or the subject of a civil forfeiture order pursuant to section 20B.
- (2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding two (2) years or both.
- (3) It is a defence to a charge under subsection (1) if the defendant can prove, that he or she had no notice that the interest was forfeited to the Crown and no reason to suspect that it was forfeited.
- (4) If an interest in property is disposed of or otherwise dealt with in contravention of this section and the disposition or dealing was either not for sufficient consideration or not in favour of a person at arms length, acting in good faith, the disposition is void.
- (5) It is not a contravention of this section if an interest in property is disposed of or dealt with in accordance with an order of the High Court or the written directions of the Supervisory Authority.

Property in ef-
fective control
of a person
subject to civil
proceeds as-
sessment order

- 20F.** (1) Upon the application of the Supervisory Authority, the High Court shall, if it is of the opinion that an interest in property is the subject of the effective control of a person in relation to whom the court has made a civil proceeds assessment order, make an order declaring that the interest is available to satisfy the order to the extent that other property is not readily available for that purpose.
- (2) The Supervisory Authority shall, in accordance with the manner prescribed in section 28D, give at least fourteen days notice of an application made pursuant to subsection (1) to the defendant and to any other person that the Supervisory Authority believes may have an interest in the property.

Part IVD Head-
ing inserted
- amended by
s.21 of No. 17
of 2002

PART IVD - FORFEITURE FUND

Section 20G **Money Laundering (Prevention) Act 1996**

PART IVD

FORFEITURE FUND

- 20G.** (1) There shall be established a Forfeiture Fund (in this Act referred to as “the Fund”) under the administration and control of the Minister. s.20A renum-bered as s.20G - amended by s.21 of No. 17 of 2002
- (2) All funds and proceeds from sale of property forfeited under section 20 and 20A or penalties paid pursuant to section 20B shall be deposited in the fund after deduction of twenty per centum (20%) management expenses to be paid into the Consolidated Fund. ss.20A(2) and (3) repealed and substituted as ss.20G(2) and (3) - amended by s,21 of No. 17 of 2002
- (3) Subject to subsection (2), the monies deposited into the Fund shall be applied for the purposes of the Office of the ONDCP and for any other purpose the Minister may consider proper.

PART IVE

Part IVE heading inserted by s.24 of No. 17 of 2002

PROTECTION OF THIRD PARTIES

Rights of bona fide third parties

- 21.** (1) If property is forfeited to the Crown under section 20 and 20A, a person (other than the defendant) who claims to have had an interest in the property immediately before it was forfeited may, subject to subsections (2) and (4), apply to the High Court for an order under section 22. s.21 repealed and substituted by s.16 of No. 6 of 2001
- (2) The application must, subject to subsection (3), be made before the end of the period of 60 days when the property is forfeited to the Crown. In s.21 “section 20”deleted and “sections 20 and 20A” substituted - amended by s.25 of No. 17 of 2002
- (3) The High Court may grant a person leave to apply after the end of the period referred to in subsection (2) if it is satisfied that the delay in making the application is not due to neglect on the part of the applicant.
- (4) An application for an order under section 22 in relation to an interest in property must not be made by a person who was given notice of—

**PART IV - PROTECTION OF THIRD
PARTIES**

Section 21(4) Money Laundering (Prevention) Act 1996

- (a) proceedings on the application for the relevant freeze order; or
- (b) the making of the relevant freeze order—

except with the leave of the court.

- (5) The High Court may grant a person leave under subsection (4) to make an application if the court is satisfied that the person's failure to seek to have the property excluded from the relevant freeze order was not due to neglect on the part of the applicant.
- (6) An applicant must give written notice of the application, and of the grounds on which it is made—
 - (a) to the Supervisory Authority; and
 - (b) to any person whom the applicant has reason to believe had an interest in the property immediately before it was forfeited.
- (7) Any person notified under subsection (6) is entitled to appear and give evidence at the hearing of the application but the absence of that person does not prevent the court from making an order under section 22.

Limitations
on freezing or
forfeiture of
property

- 22.** (1) On an application made under section 21, the High Court may make an order excluding property in which the applicant claims an interest from the operation of section 20 if the court is satisfied that —
 - (a) the applicant was not, in any way, involved in the commission of the offence or money laundering activity; and
 - (b) the applicant's interest in the property is not subject to the effective control of the defendant; and
 - (c) the applicant had no knowledge of the commission of the offence or money laundering activity or of any illegal use to which instrumentalities the subject of the application may have been put (providing that this lack of knowledge was not the result of wilful blindness);

s.22 repealed
and substituted
by s.17 of No. 6
of 2001

In s.22(1)
“or money
laundering
activity” in-
serted after
“offence”
wherever
it occurs-
amended by
s.26 of No.
17 of 2002

**PART V - INTERNATIONAL
COOPERATION**

Section 22(1)(d) Money Laundering (Prevention) Act 1996

and

- (d) the applicant's interest in the property was not acquired by means of a gift from the defendant or any person or entity under the effective control of the defendant; and
- (e) where the applicant acquired the interest at the time or after the commission, or alleged commission, of the offence or money laundering activity—the applicant acquired the interest without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was an instrumentality of the offence or money laundering activity.

PART V

INTERNATIONAL COOPERATION

Assistance
to foreign
countries

- 23.** (1) The court or the Supervisory Authority in consultation with the central authority for Antigua and Barbuda under any mutual legal assistance treaty 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.
- (2) The court or the Supervisory Authority in consultation with the central authority for Antigua and Barbuda under any mutual legal assistance treaty 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 Part IVA or IVB 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

“Competent Authority” is deleted from ss.23(1),(2),(4),(5) and (5a) and “Supervisory Authority...treaty” substituted by s.18 of No. 6 of 2001

**PART V - INTERNATIONAL
COOPERATION**

Section 23(3) Money Laundering (Prevention) Act 1996

be recognized 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 Supervisory Authority in consultation with the central authority for Antigua and Barbuda under any mutual legal assistance treaty 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 provisions 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, save that no information relating to a client account held by a financial institution shall be disclosed unless the client is the subject of a criminal investigation involving the offence of money laundering and the court has, on application by the Supervisory Authority in consultation with the central authority for Antigua and Barbuda under any mutual legal assistance treaty ordered the disclosure of the information.
- (5a) The Supervisory Authority in consultation with the central authority for Antigua and Barbuda under any mutual legal assistance treaty shall cooperate with the competent authority of another State in obtaining testimony or facilitating the voluntary presence or availability in the required 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.
- (5b) Information pertaining to any investigation, prosecution or other proceeding relating to the imposition, assessment or collection of taxes of any kind shall only be disclosed to any other competent authority where a mutual assistance treaty on a bilateral or multilateral basis exists between the requesting State and Antigua and Barbuda in accordance

In s.23(2)
“sections
19 and 20”
deleted and
substituted
with “Parts
IVA or IVB”
- amended
by s.27 of
No. 17 of
2002

PART VI - MISCELLANEOUS

Section 23(6) Money Laundering (Prevention) Act 1996

with the terms of the treaty.

- (6) Any provisions referring to secrecy or confidentiality shall not be an impedient to compliance with this section, when the information is requested by or shared with the court.
- (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 extradition purposes

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

Secrecy obligations overridden

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.

Disclosure protected

- 26.** (1) It shall not be unlawful for any person to make any disclosure in compliance with this Act.
- (2) The Supervisory Authority may share any information relating to suspicious transactions reported to it in a suspicious activity report submitted by a financial institution, with any governmental agency or regulatory authority in or outside Antigua and Barbuda for the purpose of assisting such agency or authority in conducting criminal investigations or prosecutions.

s.26 re-numbered as s.26(1), and s.26(2) inserted -amended by s.7 of No. 20 of 2000

Prosecution of offences

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

In s.27 “Competent Authority” is deleted and substituted with “Supervisory Authority” by s.19 of No. 6 of 2009

PART VI - MISCELLANEOUS

Section 28 Money Laundering (Prevention) Act 1996

Limitation of proceedings	28.	All prosecutions, actions, suits or other proceedings brought for any offence, or for the recovery of any fines, under this Act or the regulations made thereunder, shall be brought within six years next after the date of the offence committed.	In s.28 “penalties or forfeitures” and “or the cause of action accrued” deleted- amended by s.28 of No. 17 of 2002
Determination of questions of fact	28A.	Any question of fact to be decided by a court on an application under this Act is to be decided on the balance of probabilities.	ss.28A, 28B, 28C inserted by s.20 of No. 6 of 2001
Proceedings on application to be treated as civil	28B.	<p>(1) Proceedings on an application under this Act are civil in nature, except as otherwise provided in this Act.</p> <p>(2) The fact that criminal proceedings may have been instituted or commenced is not a ground on which a court may stay proceedings under this Act.</p>	
Award of costs	28C.	<p>(1) Costs may only be awarded in accordance with this section.</p> <p>(2) If —</p> <p style="padding-left: 40px;">(a) a person brings, or appears at, proceedings under this Act before a court in order to have property of the person excluded from</p> <p style="padding-left: 80px;">(i) a freezing order; or</p> <p style="padding-left: 80px;">(ii) a detention order; or</p> <p style="padding-left: 80px;">(iii) a forfeiture order pursuant to section 18B(4) or section 20A; or</p> <p style="padding-left: 80px;">(iv) the operation of section 20; or</p> <p style="padding-left: 80px;">(v) a declaration pursuant to section 20F; and</p> <p style="padding-left: 40px;">(b) the person is successful in those proceedings; and</p> <p style="padding-left: 40px;">(c) the Court is satisfied that the person was not involved in any way in the commission of the offence or money laundering activity in respect of which the freezing, detention, civil proceeds assessment order, civil forfeiture order or forfeiture order was made or in respect of which section 20 operated—</p> <p style="padding-left: 40px;">the Court may order the applicant for the forfeiture order or freezing order to pay the legal costs incurred by the person in connection with the proceedings or any part of those costs</p>	<p>In s.28C(2) subpara (a)(iii) “or section 20A” inserted after “18B(4)”; subpara (iv) “or” substituted for “and”; subpara (v) inserted - amended by s.29 of No. 17 of 2002</p> <p>In s.28C(2) sub-para 2(c) deleted and substituted - amended by s.29(c) of No. 17 of 2002</p>

PART VI - MISCELLANEOUS

Section 28D Money Laundering (Prevention) Act 1996

Procedure for giving notice of certain applications and orders

that is determined by the Court.

28D. Notice to any person—

(a) of an application made pursuant to sections 2B, 18B(2), 19(1A), 20(A), 20B(1) or 20F(3); or

(b) of an order pursuant to section 19A(5),

shall be given by the Supervisory Authority by one or more of the following methods:

(a) personal service on him;

(b) service at the business address of counsel (if any) acting on his behalf;

(c) service at his last known address, or place of business within the jurisdiction;

(d) in the case of a body corporate by service upon the registered or principal office of the body corporate;

(e) publication in the Gazette in Antigua and Barbuda;

(f) publication in two consecutive issues of a local newspaper circulating in Antigua and Barbuda;

(g) without limiting the generality of paragraph (a), by effecting service upon him in a foreign jurisdiction by or through a foreign authority.

s.28D inserted by s.30 of No. 17 of 2002

Regulations

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.

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

30. (1) Subject to subsection (2), the amendments to Part IVA do not apply to a person's conviction of a money laundering offence if the person was convicted of the offence before the

s.30 repealed and substituted by s.21 of No. 6 of 2001

FIRST SCHEDULE

Section 30(2) **Money Laundering (Prevention) Act 1996**

- commencement of this Act;
- (2) Subject to subsection (1), the amendments to Part IVA apply to an offence committed or suspected to have been committed at any time (whether before or after the commencement of this Act);
- (3) The amendments to Part III apply from the commencement of this Act.

in s.30 "Part IV" deleted and substituted with "Part IVA" - amended by s.31 of No. 17 of 2002

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 Corporations 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

FIRST SCHEDULE

Money Laundering (Prevention) Act 1996

(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;
16. Insurance business
17. Dealers in precious metal, art or jewelry
18. Casinos
19. Internet gambling
20. Sports betting

First Sched-
ule amended
by s.22 of
No. 6 of
2001

Second
Schedule
repealed by
s.23 of No. 6
of 2001