

ANTIGUA AND BARBUDA



**OFFICE OF NATIONAL DRUG AND MONEY LAUNDERING CONTROL POLICY
(AMENDMENT) BILL, 2020**

No. of 2020

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**OFFICE OF NATIONAL DRUG AND MONEY LAUNDERING CONTROL POLICY
(AMENDMENT) ACT, 2020**

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(AMENDMENT) ACT, 2020**

NO. OF 2020

BILL FOR

AN ACT to amend the Office of National Drug and Money Laundering Control Policy Act, 2003 No. 11 of 2003.

ENACTED by the Parliament of Antigua and Barbuda as follows:

1. Short Title

This Act may be cited as Office of National Drug and Money Laundering Control Policy (Amendment) Act, 2020.

2. Interpretation

In this Act-

“principal Act” means the Office of National Drug and Money Laundering Control Policy Act, 2003 No. 11 of 2003.

3. Amendment of section 3-Establishment of the Office of National Drug and Money Laundering Control Policy

Subsection (3) of section 3 of the principal Act is repealed and replaced by the following-

“(3) The House of Representatives shall appoint a Standing Committee, consisting of three members, one of whom shall be a member of the minority parties in the House of Representatives.

(4) Where there is no minority party in the House, the Speaker shall request the President of the Senate to consult with the Leader of the minority party in the Senate to appoint one person from the minority party to serve on the Standing Committee.

(5) The Standing Committee shall meet, at least, once, every quarter, unless the chairperson of the Standing Committee or the Director considers that there is a matter of urgency of which the Standing Committee needs to be informed.

4. Amendment of Section 7-Removal of the Director or Deputy Director from Office

Section 7 of the principal Act is repealed and replaced by the following-

“(1) A person holding the Office of Director or Deputy Director may be removed from office for inability to perform the functions of his office, whether arising from infirmity of body or mind or for stated misbehaviour.

(2) If the Minister represents to the House of Representatives that the question of removing the Director or the Deputy Director from Office should be investigated, the Speaker shall, after consultation with the Prime Minister and the Leader of the minority parties in the House, appoint the chairperson and two other members, one of whom shall be a member of the minority parties in the House, to serve on a Select Committee.

(3) Where there is no minority party in the House, the Speaker shall request the President of the Senate to consult with the Leader of the minority party in the Senate to appoint one person from the minority party to serve on a Select Committee.

(4) The Select Committee shall, without delay, enquire into the question of removing the Director or Deputy Director from office, and submit its findings and recommendations to the Speaker, who shall present the findings and recommendations to the House to determine whether or not, the Director or Deputy Director, ought to be removed from office.

(5) If the House determines that the Director or the Deputy Director, as the case may be, ought to be removed from office, the Minister shall remove that person from office and provide him with reason for his removal in writing.

5. Amendment of section 10-Functions of the ONDCP

Section 10 of the Principal Act is amended as follows-

- (a) by the repeal of paragraph (e) of subsection (1) and the substitution therefor of the following-

“(e) to share financial intelligence or information with local, regional and international law enforcement agencies, regulatory or statutory bodies, as the Director may determine.”

- (b) by the repeal of subsection (2) and the substitution therefor of the following-

“(2) The Director shall, in the exercise of his powers or the performance of his functions under subsection (1), not be subject to the direction or control of any other person or authority.”

6. Amendment of section 11-Performances of ONDCP functions

Section 11 of the principal Act is amended by inserting after subsection (7) thereof of the following subsection-

- “(8)(a) The Director or any officer acting on his behalf may, by notice in writing, require any person to provide him within the time specified in the notice, such information, including, documents, estimates or returns, concerning any of the matters set out in

the First and Second Schedules to the Misuse of Drugs Act, Cap. 283, which is believed to be in the person's possession or custody.

- (b) Any person, who has custody of or is in charge of any record or document, which, in the opinion of the Director, contains a source of information concerning any of the matters set out in the First and Second Schedules to the Misuse of Drugs Act, Cap. 283 shall, notwithstanding any law to the contrary and on request, permit the Director or any person acting on his behalf, to have access to such source of information or document for the purpose of creating a data bank for use by the ONDCP in carrying out its functions.
- (c) The Director may, by notice published in the Official Gazette and on its website or other forms of electronic media, require any person or class of persons named in the notice to provide the Director or any officer designated by the Director, within 28 days of such publication, information concerning the business or activities carried on by the person or class persons named in the notice for the purpose of creating a data bank on the matters referred to in paragraphs (a) and (b).

7. Amendment of section 12 –Cooperation with persons and authorities outside Antigua and Barbuda

Subsections (1) and (2) of section 12 of the Principal Act is repealed and replaced by the following:-

“(1) The Director or any officer of the ONDCP may, in the performance of any of the functions under this Act, cooperate and liaise with-

- (a) the Antigua and Barbuda Police Force, the Antigua and Barbuda Defence Force, the Customs Department, the Financial Services Regulatory Commission and any other Government and local authority in Antigua and Barbuda; and
- (b) any other authority outside Antigua and Barbuda specified by a treaty of cooperation to which Antigua and Barbuda is a party on any of the matters specified by this Act.”

“(2) The Director may, for the purpose of facilitating the performance of the functions of the ONDCP under this Act, cooperate with a public authority or private institution in a foreign state for the purpose of providing assistance in any of matters prescribed by this Act.”

8. Section 14 of the principal Act is repealed and replaced-Estimates of Income and expenditure

The principal Act is amended by the repeal of section 14 and the substitution therefor of the following-

“(1) The Director shall, for the purpose of carrying out the functions of the ONDCP under this Act, establish and administer a special fund in accordance with the provisions of Part VI of the Finance Administration Act, or any Act that amends or replaces the Finance Administration Act, 2006.

(2) For the proper management and administration of the funds of the ONDCP, including moneys paid into the fund established under subsection (1), the ONDCP shall comply with Part XI of the Finance Administration Act, 2006 or any Act that amends or replaces the Finance Administration Act, 2006.

9. Sections 30A, 30B, 30C, 30D and 30E repealed and replaced

Sections 30A, 30B, 30C, 30D and 30E of the principal Act are repealed and replaced by the following:-

“30A. Authority to sell and dispose of unclaimed property

- (1) Where the ownership of property, which has been seized or frozen by the ONDCP during an investigation into a specified offence cannot be ascertained, such property shall be sold disposed of or assigned to the use of the Director of the ONDCP in the manner provided under section 30B.
- (2) The Director or an authorised Officer of the ONDCP may, subject to subsection (1), apply to a Judge of the High Court for an order to sell, or dispose of or assign to the use of the Director of the ONDCP any property of which the owner cannot be found or ascertained.
- (3) An application pursuant to subsection (2) shall be made within a period of three months after such property was seized or frozen by the Director.
- (4) In an application to a Judge of the High Court under subsection (2), the Director or an Officer of the ONDCP must satisfy the Judge that:-
 - (a) the investigation of the person was discontinued by the prosecution; or
 - (b) the charges were dismissed or the person was acquitted at the trial; and
 - (c) all efforts to ascertain the owner of the property have not been successful.
- (5) If after hearing Counsel for the ONDCP, the Judge is satisfied that the conditions set out in subsections (3) have been met, and having regard to all the circumstances, he shall make an order for the sale or disposal of the property in the manner provided by section 30B or in any other manner that he sees fit.
- (6) Subject to section 30C, the proceeds of sale of property under this Part shall be paid into the Forfeiture Fund established pursuant to section 42 of the Finance Administration Act, 2006 No. 23 of 2006.
- (7) If after a period of 12 months following the sale of property under this section, a person claiming to be the owner or personal representative of the person claiming ownership may apply to a Judge of the High Court for an order directing the Director to pay over to the claimant the proceeds of the sale of the property, less any amount reasonably incurred by the Director in storing, preserving or conserving the property.

- (8) In making an application under subsection (7) a person claiming ownership must produce such evidence satisfactory to the Judge that he or she is the rightful owner of the property sold; and that the property was not the proceeds of crime.”

Section 30B Sale of Property

“(1) All property ordered to be sold under this Act shall be sold by public auction at such time as the Director determines, or by private sale where the expense of sale by public auction would, in the opinion of the Director, not be justified by any test of reasonableness.

(2) No property shall be sold under this section without the property having been valued by an accredited valuer, and in the case of land, by the Chief land valuer of the Government or an accredited valuer.”

30C Application of the proceeds of sale or unclaimed money

The proceeds of the Sale of property ordered under this Act or any unclaimed money, being money seized or frozen during investigation conducted under this Act may, after the elapse thirty-six months of the court order be applied to all or any of the following purposes-

- (a) expenses for the administration and implementation of this Act;
- (b) the payment of reasonable compensation to any person by whom the property was delivered by the ONDCP for safe keeping and storage; and
- (c) such other purposes as the Minister may consider expedient.

30D Approval of sale or other disposal

- (1) No property held by the Director may be sold or otherwise dispose of without the permission of a Judge of the High Court.
- (2) The Director may, if the financial interest of the ONDCP so requires, apply to a judge in chambers to appoint a public officer to conduct the sale by auction in accordance with the provisions of this Act or for an order to sell or dispose of the property by private treaty.

10. Amendment of section 32- Protection of ONDCP confidential information

The principal Act is amended by the repeal of section 32 and the substitution therefor of the following-

(1) A member of the ONDCP, who discloses information that has come to his knowledge during the period of his employment with the ONDCP to a person other than a person entitled to receive such information, commits an offence.

(2) A person, who is not a member of the ONDCP commits an offence, if he discloses such information received from a member of the ONDCP to any person-

- (a) other than a person entitled to receive such information;

EXPLANATORY MEMORANDUM

The primary purpose of the amendments proposed in this Bill was in response to the recommendations of the Caribbean Financial Task Force (CFTF) and the Egmont Group. These recommendations were made after a review of the jurisdiction's laws on misuse of drugs and anti-money laundering legislation. While the Government accepts that the recommendations would ensure for a more effective non-interference in the operations of the Office of the National Drug and Money Laundering Control Policy, it would like to emphasise that there is a zero non-interference policy of the Government in the operational affairs of the ONDCP.

2. The Government does not, however believe that a non-interference policy includes avoidance of constitutional and governmental responsibility over the running of the ONDCP as a statutory body established by Parliament and funded by the Government. In this regard, the Government intends to exercise its constitutional duties to ensure that there is an effective Parliamentary oversight supervision of the ONDCP. It proposes to do this through a Parliamentary oversight committee, consisting of three members of the House, including one member of the minority parties in the House, and where there are no minority parties in the House by incorporating a minority party of the Senate. To give effect to this proposal, the Bill seeks to amend section 3 of the Act to provide for the establishment of an oversight committee of the House of Representatives to look after the general governance of the ONDCP, and for the Director to brief the oversight committee, from time to time, on matters relating to good governance of the ONDCP.

3. The ONDCP is established as a corporate sole, vesting authority to exercise its powers and functions in the Director. For the proper and efficient management of the ONDCP the Bill proposes to amend section 5 to authorise the Director, where necessary, to delegate some of the functions vested in him to his deputy or an officer of the ONDCP as he sees fits.

4. The Bill seeks to further strengthen the operational independence of the ONDCP by establishing a legislative procedure for the removal of the Director or Deputy Director from office. For this purpose, clause 5 amends section 7 and proposes to establish a procedure for removing the Director or Deputy Director from office. The Bill also provides the grounds for removing the Director or Deputy Director from office. These include inability to perform the duties of the office held by the Director and deputy Director, whether arising from infirmity of body or mind or for stated misbehaviour. The House is further authorised to investigate whether there exist evidence that requires the removal of the Director or deputy director.

5. The amendment in clause 6 seeks to add to the number of law enforcement institution with whom the ONDCP may share information. This clause further provides that the Director or deputy Director is not subject to the control of any person or authority in performing the duties conferred upon them by the Act. Thus providing a legislative authority for maintenance of its operational independence.

6. Clause 7 seeks to amend section 11 to authorise the ONDCP to access information concerning matters contained in the Misuse of Drugs Act or specified in any anti-money laundering legislation, which is believed by the Director to be in the possession or custody of any entity or

agency, and relevant for the purpose of creating a statistical data bank for facilitating the performance the duties of the ONDCP.

7. In clause 8 of the Bill, section 12 is repealed and replaced by a new section, which among other things, authorises the Director to cooperate with bodies inside and outside Antigua and Barbuda, including bodies and other institutions in countries to which Antigua and Barbuda has obligation under international treaty.

8. Clause 9 seeks to replace section 14 by authorising the ONDCP to establish a special fund into which shall be paid moneys seized by the ONDCP during investigation, and remained unclaimed, or the proceeds of sale of properties seized or frozen during its investigation. The special fund proposed under this clause would be required to be established in accordance with Part VI of the Financial Administration Act. Under the Financial Administration Act, all statutory Corporations are required to comply with Part XI in the management and reporting of the use of moneys paid into the Special Fund.

9. Clause 10 of the Bill, proposes to revise, the existing provisions for disposal of property seized or frozen by the ONDCP during an investigation into a specified offence, and of which the owner could not be found or ascertained. The existing provisions are contained in sections 30A, 30B, 30C and 30D. Under the amended provisions a property seized or frozen by the ONDCP could not be disposed of unless the Director has obtained an order from a Judge of the High Court, authorising the sale. Before making such order, the Director would be required to provide the Judge with evidence that he has satisfied the conditions required under the Act.

10. Section 30B, as amended, would require that any property of which the owner could not be found or ascertained be sold by public auction, after a valuation of the property. No sale or disposal of property is permitted under this section without an order of a Judge of the High Court. It is the view of the Government that the disposal of such property is a serious matter which should be dealt with by Judge of the High Court with unlimited jurisdiction rather than by a Magistrate, whose jurisdiction is limited.

11. The amendment to section 30C, would make provision for the application of the proceeds of sale. It would also specify the matters on which the Director would be required to apply the proceeds. Finally, provision is made in section 30D, as to amend, to permit sale by auction conducted by a public officer appointed by a Judge of the High Court in circumstances where the Director considers that sale by a licensed auctioneer would not be financially beneficial to the ONDCP.

Clause 11 proposes to amend section 32 to address the disclosure of confidential information by unauthorised ONDCP officer or other public servant to a person under investigation, or charged with specified offence, or to a persons who is not entitled to receive such information.

Hon. Steadroy Benjamin
Attorney General and
Minister of Justice
and Legal Affairs
with responsibility
of the ONDCP