

ANTIGUA AND BARBUDA



PREVENTION OF TERRORISM (AMENDMENT) BILL, 2020

No. of 2020

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ARRANGEMENT OF CLAUSES

CLAUSES

| | | |
|-----|--|----|
| 1. | Short title..... | 4 |
| 2. | Interpretation..... | 4 |
| 3. | Amendment of section 2 | 4 |
| 4. | Amendment of section 3 | 4 |
| 5. | Amendment to section 4 | 9 |
| 6. | Insertion of a new sections 4B and 4C..... | 9 |
| 7. | Insertion of new section 7A | 10 |
| 8. | Amendment to section 12B..... | 11 |
| 9. | Amendment to section 12C..... | 11 |
| 10. | Amendment to section 20A..... | 11 |
| 11. | Insertion of new section 20B..... | 11 |
| 12. | Insertion of new section 34A | 12 |
| 13. | Amendment to section 37 | 13 |

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AN ACT to amend the Prevention of Terrorism Act, 2005 No. 12 of 2005 and for connected purposes.

ENACTED by the Parliament of Antigua and Barbuda as follows:

1. Short title

This Act may be cited as the Prevention of Terrorism (Amendment) Act, 2020.

2. Interpretation

In this Act—

“principal Act” means the Prevention of Terrorism Act 2005 No. 12 of 2005.

3. Amendment of section 2

The principal Act is amended in section 2 by –

(a) deleting the definition of “financial institution” and substituting the following –

“financial institution” means a commercial bank, or any other institution which makes loans advances or investments or accepts deposits of money from the public or engages in business activity listed in the First Schedule to the Money Laundering (Prevention) Act 1996, No. 9 of 1996”.

(b) by inserting the following word and its meaning in its proper alphabetical position within the section –

“proliferation entity” is a person or entity engaged in the proliferation of or the financing of the proliferation of weapons of mass destruction”.

4. Amendment of section 3

The principal Act is amended in section 3 by –

(a) deleting paragraph (b) in 3(2) and substituting the following –

“(b) direct any person or financial institution in Antigua and Barbuda to freeze or restrain any account or other property held by them on behalf of the specified entity”.

(b) deleting subsection (3) and substituting the following –

“(3) Under subsection (2)(b) the Attorney General shall

(a) make a freezing order concerning the following –

(i) all funds or other assets that are owned or controlled by the specified entity;

(ii) those funds or other assets that are wholly or jointly owned or controlled, directly or indirectly by the specified entity;

(iii) those funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by the specified entity;

(iv) funds or other assets of persons and entities acting on behalf of, or at the direction of the specified entity; and

(b) publish such order in the next available edition of the Gazette”.

(c) deleting subsection (2A) and substituting the following –

“(2A) For the purposes of subsection 2(b),

(i) the Order of the Attorney General directing a person or financial institution to freeze or restrain any account or other property held by the person or financial institution on behalf of the specified entity shall be published in the next available edition of the Gazette in electronic form and if necessary by extraordinary Gazette so that it can be publicized without delay;

(ii) the Order shall be immediately binding and effective on the person or financial institution notwithstanding that the Order has not been Gazetted.”

(d) deleting subsection (2B) and substituting the following –

“(2B) An Order under subsection 2(b) issued to a person or financial institution comes into effect and is binding on the day the Order was served on the person or financial institution.”

(e) inserting immediately after subsection (2C) the following –

“(2D) Service of an Order made under subsection (2)(b) shall be made on officer of the manager or compliance officer of the financial institution or any other person authorised by the financial institution to accept service.

“(2E) A person or financial institution who receives an Order of the Attorney General to freeze or restrain accounts or other property –

- (a) shall report in writing to the Attorney General through the Director of the ONDCP within twenty-four (24) hours of the receipt of Order, any action taken to give effect to the Order;
- (b) shall report in writing, to the Director of the ONDCP where there is no specified entity to take action to freeze or restrain property;
- (c) commits an offence if they fail to submit a report under paragraph (a) or (b) and is liable on summary conviction to a fine of seventy-five thousand dollars (\$75,000).

“(2F) Where action is taken in good faith under this section to give effect to the Attorney General’s Order in respect of freezing and restraint of accounts and property, the person or financial institution and their employees, staff, directors, owners or other representative shall be exempted from criminal, civil or administrative liability, as the case may be, for complying with the Order.

“(2G) In determining whether or not to declare a specified entity the Attorney General shall-

- (a) identify and designate the subject in accordance with the process and designation criteria set out in regulations and guidelines based on reasonable grounds to suspect that the subject meets the criteria;
 - (b) make such application to a court, without notice to the subject of the investigation and other persons affected, when necessary.”
- (f) in subsection 9 by inserting the words “or Commissioner of Police” immediately after the word “ONDCP”.
- (g) inserting immediately after subsection (10) the following -

“(11) Where the Minister of Foreign Affairs, by Order, declares a person or entity a proliferation entity, the Attorney General shall take the following –

- (a) by Order, direct any person or financial institution within Antigua and Barbuda to restrain or freeze any account or other property held by the person or financial institution on behalf of the proliferation entity;
- (b) immediately publish the Order by in the Gazette in electronic form and if necessary by extraordinary Gazette so as to publicize the Order without delay;
- (c) for the purposes of this subsection, the Order of the Attorney General directing a financial institution to restrain or freeze any account or other property held by the financial institution on behalf of the proliferation entity shall be immediately binding and effective on the person of the financial institution notwithstanding that the Order has not yet been published in the Gazette;
- (d) an order to a person or a financial institution under this subsection may be communicated by the Attorney General using such methods as may be appropriate in the circumstances or as may be prescribed by Regulations;

- (e) Without limiting the generality of paragraph (d) above, the Order may be communicated by the Attorney General through the Director of the ONDCP.

“(12) A proliferation entity may apply to the Director of the ONDCP or the Commissioner of Police within ninety days of the making of an order under subsection (11) in respect of that entity requesting that the Director of the ONDCP or the Commissioner of Police recommend to the Attorney General the revocation of the order.

“(13) On receipt of an application under section (12), the Director of the ONDCP or the Commissioner of Police, as appropriate, shall forthwith notify the Attorney General of the application.

“(14) If, on an application by a proliferation entity made under subsection 12, the Director of the ONDCP or the Commissioner of Police -

- (a) decides that there are reasonable grounds for making the recommendation requested in the application, he shall make the requested recommendation to the Attorney General;
- (b) decides that there are no reasonable grounds for making the recommendation requested in the application, he shall refuse the application and shall, within 60 days of receiving the application, inform the applicant and the Attorney General of his decision.

“(15) Where on consideration of a recommendation made under subsection (13) (a), the Attorney General -

- (a) is satisfied that there are no reasonable grounds to refuse the request for revocation of the order, he shall -
 - (i) forthwith revoke the order;
 - (ii) forthwith notify, in writing, the applicant, every financial institution which had received a direction under subsection (11)(a) in respect of the entity, and, as applicable, the Director of the ONDCP or the Commissioner of Police, of the revocation; and
 - (iii) within seven (7) days publish a notice in the Gazette.
- (b) is satisfied that there are reasonable grounds to refuse the request for revocation of the order shall -
 - (i) refuse the application;
 - (ii) within seven (7) days of the decision, notify, as applicable, the Director of the ONDCP or the Commissioner of Police, in writing of that decision.

“(16) The Director of the ONDCP or the Commissioner of Police, as the case may be, shall, upon receipt of the notification from the Attorney General under subsection (14)(b), notify the applicant in writing of the decision not to revoke the Order.

“(17) If within sixty (60) days of making an application under subsection (12) the proliferation entity -

(a) has not been notified of a decision to refuse the application; or

(b) has not been notified in writing of the revocation of the order,

the proliferation entity may apply to a Judge of the High Court for a revocation of the Order made under subsection (11).

“(18) An applicant may, within sixty (60) days of receiving a decision made under subsections (13)(b) or 15, apply to a Judge of the High Court for a review of that decision.

“(19) Upon an application being made under subsection (17), the Judge shall—

(a) examine in chambers, any security or intelligence reports considered in recommending or making an order under subsection (11) in respect of the applicant and hear any other evidence or information that may be presented by or on behalf of the Director of the ONDCP or the Commissioner of Police, and may, at the request of the Director of the ONDCP or the Commissioner of Police, hear all or part of that evidence or information in the absence of the applicant or any counsel representing the applicant, if the judge is of the opinion that the disclosure of the information would be prejudicial to national security or endanger the safety of any other person;

(b) provide the applicant with a statement summarising the information available to the judge, so as to enable the applicant to be reasonably informed of the reasons for the decision, without disclosing any information the disclosure of which would, in the judge’s opinion, be prejudicial to national security or endanger the safety of any other person;

(c) provide the applicant with a reasonable opportunity to be heard; and

(d) determine whether or not the Order should be revoked on the basis of the information available to the Judge and, if he determines that the Order should be revoked, make an order for such revocation.

“(20) The Judge may receive in evidence, anything (including information obtained from the government or institution or agency of a foreign state or international organisation) that, in the opinion of the Judge, is reliable and relevant, even if the thing would not otherwise be admissible in law, and may base his decision on that evidence.

“(21) Where the Minister of Foreign Affairs communicates to the Attorney General the revocation of an order under section 4(1) declaring a proliferation entity, the Attorney General shall:

(a) revoke the order under subsection (11) in respect of that proliferation entity;

(b) publish a notice of revocation in the Gazette;

(c) give notice in writing of the revocation of the order to the applicant, every financial institution which has received a direction under subsection (11) in respect of the proliferation entity and, as applicable, the Director of the ONDCP or the Commissioner of Police.

“(22) Where the Attorney General has reasonable grounds to believe that a proliferation entity no longer meets the conditions for listing under a UN Security Council Resolution, he shall request the Minister of Foreign Affairs to submit the United Nations Security Council a request to revoke the designation in accordance with procedures in the Regulations.”

5. Amendment to section 4

The principal Act is amended in section 4 by inserting immediately after subsection (2) a new subsection, the following -

“(3) Where an Order under subsection (1) makes provision to the effect that there are reasonable grounds to suspect that an entity specified in the Order is engaged in the proliferation or the financing of the proliferation of weapons of mass destruction, the Order shall constitute a declaration of the entity to be a proliferation entity with effect from the date of the Order and the Minister shall forthwith communicate the Order to the Attorney General for appropriate action.”

6. Insertion of a new sections 4B and 4C

The principal Act is amended by inserting after section 4A, the following –

“4B Proposing Designation of Entities to the Security Council

- (1) Where the Attorney General declares a specified entity under section 3 and has reason to believe that the entity is an intended target of United Nations Security Council Resolutions concerned with terrorism and the suppression of the financial of terrorism, he may request the Minister of Foreign Affairs to propose the specified entity to the appropriate Security Council Committee for listing as a specified entity.
- (2) Where the Attorney General has under section 3 declared a specified entity and by order under section 3(2)(b) directed the freezing of property of the entity, he may through the Minister of Foreign Affairs or by mutual legal assistance treaty request, request a foreign country to give effect to the freeze order in its jurisdiction in relation to the specified entity by process set out in regulations.”

“4C Requests from a Foreign Country

- (1) Where the Minister of Foreign Affairs receives from another country a request which, in order to be given effect, requires the designation of a specified entity, the Minister shall provide the request to the Attorney General for determination of the matter under the criteria set out in the regulations .
- (2) Where the Attorney General designates a specified entity under section 3 as a result of giving effect to a request received under subsection (1), he may where it is appropriate, request the Minister of Foreign Affairs to propose the listing of the specified entity to the Security Council of the United Nations under section 4B(1).”

7. Insertion of new section 7A

The principal Act is amended by inserting after section 7, the following –

“7A Prohibition against transactions with designated entities

- (1) A financial institution shall not directly or indirectly engage in any transactions with a specified entity or proliferation entity, and to do so shall be an offence.
- (2) Where a contract, agreement or obligation arose prior to the date on which an account of a proliferation entity became subject to the order of the Attorney General requiring the freezing of the account, the financial institution may permit the adding of interest or other earnings to the account or payments due under contracts, agreements or obligations that arose prior to the date on which the account became subject to freezing, but such interest, other earnings or payments shall be frozen subject to the Attorney General’s Order to freeze the account.
- (3) The freezing of an account under the Attorney General’s order should not prevent a proliferation entity from making any payment due under a contract entered into prior to the designation of such proliferation entity, provided that:
 - (a) it is determined that the contract is not related to any of the prohibited items, materials, equipment, goods, technologies, assistance, training, financial assistance, investment, brokering or service prohibited in relation to Weapons Of Mass Destruction;
 - (b) the payment is not directly or indirectly received by a proliferation entity; and
 - (c) ten days before such payments are authorized, notification is provided to the UN Security Council of the intention to make or receive such payments, or to authorise, where appropriate, the unfreezing of funds, other financial assets or economic resources for this purpose.”

8. Amendment to section 12B

The principal Act is amended in section 12B by –

- (a) deleting the word “or” after the word “transfer and replacing it with a comma;
- (b) inserting the words “use and their means of delivery” after the word “transportation”;
- (c) deleting the words “of seventy five thousand dollars (\$75,000)” immediately after the word “fine” and replacing them with the following “ of one million dollars (\$1,000,000)

9. Amendment to section 12C

The principal Act is amended by in section 12C by inserting the word “unlawfully” immediately after the word “who”.

10. Amendment to section 20A

The principal Act is amended by repealing section 20A and substituting the following –

“20A. A person or financial institution who fails to comply with an Order of the Attorney General made under section 3(2)(b) commits an offence and is liable on conviction –

- (a) in the case of a financial institution on indictment to a fine of five million dollars; or
- (b) in the case of an individual on summary conviction to six months in prison or to a fine of one hundred thousand dollars.

11. Insertion of new section 20B

The principal Act is amended by inserting after section 20A, the following section –

“20B Prohibition on making funds available to specified entities

- (1) It is an offence for anyone to make available for the benefit of a specified entity or a person acting on behalf of a specified entity any funds, assets, economic resources, or financial or other related services.
- (2) It is an offence for anyone to make available for the benefit of a proliferation entity or a person acting on behalf of a proliferation entity any funds, assets, economic resources, or financial or other related services unless licensed, authorized or otherwise notified in accordance with relevant United Nations Security Council Resolutions.
- (3) The penalty under this section on conviction –
 - (a) in the case of a financial institution on indictment to a fine of five million dollars; or
 - (b) in the case of an individual on summary conviction to six months in prison or to a fine of one hundred thousand dollars.”

12. Insertion of new section 34A

The principal Act is amended by inserting after section 34, the following section –

“34A Duty to disclose information relating to property of proliferation entities

(1) Every financial institution shall forthwith disclose to the Commissioner of Police or the Director of the ONDCP or a designated officer of the Commissioner of Police or the Director of the ONDCP for that purpose -

- (a) the existence of any property in his possession or control, which is to its knowledge, owned or controlled by or on behalf of a proliferation entity;
- (b) any information regarding a transaction or proposed transaction in respect of any property in respect of paragraph (a).

(2) The Commissioner of Police or the Director of the ONDCP shall disclose to the Financial Intelligence Unit of any foreign state or the appropriate authority of a foreign state, as the case may be, any information in its possession relating to any property owned or controlled by or on behalf of a proliferation entity if such information is requested or if the Commissioner of Police or the Director of the ONDCP is of the view that the information would be relevant to a foreign state.

(3) Every financial institution shall report, every three months, to the Director of the ONDCP and any person authorised by law to supervise or regulate that financial institution—

- (a) that it is not in possession or control of any property owned or controlled by or on behalf of a proliferation entity; or
- (b) that it is in possession or control of such property, and the particulars relating to the persons, accounts and transactions concerned and the total value of the property and of transactions conducted with such property.

(4) In addition to the requirements of subsection (3) every financial institution shall report to the Director of the ONDCP, every transaction or attempted transaction which occurs within the course of its activities, and in respect of which there are reasonable grounds to suspect that the transaction, attempted transaction, or proposed transaction is:

- (a) related to the proliferation of Weapons of Mass Destruction;
- (b) conducted by or on behalf of a proliferator of Weapons of Mass Destruction or a proliferation entity;
- (c) conducted by or on behalf of a person who finances the proliferation of Weapons of Mass Destruction.

(5) No civil or criminal proceedings shall lie against any person for making a disclosure or report, in good faith, under this subsection.

financial institutions. The FATF refers to as Designated Non Financial Businesses and Professions, and Entities.

Clause 4 amends section 3(2)(b) which addresses FATF criterion 6.5(a) and provides for the Attorney General to make an order requiring individuals to freeze or restrain property of a specified entity; presently the law only applies to financial institutions; section 3(2)(c) addresses FATF criterion 6.5(b) setting out the types and categories of property that can be frozen; amendment to section 3(2A) addresses FATF criterion 6.5(a) to provide for individuals to be subject to the Attorney General's order to freeze property.

Clause 4 also amends section 3 by inserting a new subsection 3(2E) which addresses CFATF Recommendation on FATF criterion 6.5(e) that financial institutions report actions they have taken in response to the order of the Attorney General to freeze property.

Clause 4 also amends section 3 by inserting a new subsection 3(2F) which addresses FATF criterion 6.5(f) which requires protection of bona fide third parties acting in good faith when implementing obligations under the regime such as the Attorney General's order to freeze property.

Clause 4 also amends section 3 by inserting a new subsection 3(2G) which addresses CFATF Recommendation on FATF criteria 6.1(b) and 6.2(b) concerning measures for identifying targets for designation based on UN Security Council criteria, which is to be done by a process set out in regulations. Section 2F(a) also establishes the evidentiary standard of "reasonable grounds" in accordance with FATF criterion 6.2(d).

Clause 4 also amends section 3 by inserting a new subsection 3(11) which addresses FATF criterion 7.1 for the implementation of targeted financial sanctions related to the proliferation of WMD without delay. The targeted entities are those designated by UN Security Council Resolutions. Section 3(11)(c) addresses FATF 7.2(a) for natural and legal persons to freeze without delay. Sections 3(11)(d) to (e) address FATF criterion 7.2(d) for communicating designations of proliferation entities to financial institutions and DNFBPs.

Clause 4 also amends section 3 by inserting a new subsections 3(12) to (17) which addresses FATF criterion 7.4(a) relating to submission of de-listing requests. Also sections 3(18) to (22) addresses FATF criterion 7.4(b) relating to publicly known procedures to unfreeze funds. Section 3(15)(A) and 3(21)(c) addresses FATF criterion 7.4(d) relating to communicating to financial institutions action taken to unfreeze property of a proliferation entity.

Clause 6 amends the principal Act to insert a new section 4B which addresses CFATF Recommendation on FATF criterion 6.1(a) concerning the need for a competent authority capable of proposing designation of a specified entity to the UN Security Council. The Minister of Foreign

Affairs (who acts on the advice of the Attorney General) is made the competent authority for designating specified entities to the UNSC.

Clause 6 amends the principal Act to insert a new section 4C addresses which FATF criterion 6.2(e) to request another country to take action to give effect to actions taken under the freezing mechanism. It also addresses FATF criterion 6.2(a) and Caribbean Finance Action Task Force (CFATF) recommendation 6.4 to provide for requests from a foreign country for designation and to give effect to a freeze order against a specified entity.

Clause 7 amends the principal Act to insert a new section 7A. 7A(1) addresses FATF criterion 7.2(c) to ensure that funds and assets are not made available to or for the benefit of persons designated with respect to proliferation of WMD. 7A(2) addresses FATF criterion 7.5(a) allowing payment of interest relating to contracts and agreements that arose prior to the date on which accounts became subject to targeted financial sanctions. 7A(3) addresses FATF criterion 7.5(b) relating to making payments due on contracts and agreement made prior to imposition of financial sanctions.

Clause 8 amends section 12B expanding the offence of knowingly financing Weapons of Mass Destruction to include financing the means of delivery of Weapons of Mass Destruction.

Clause 9 amends section 12C by inserting the word “unlawfully” into the offence of transfer or transporting Weapon of Mass Destruction so as to restrict the offence to unlawful transportation.

Clause 11 amends the principal Act to insert a new section 20B which addresses CFATF recommendation on FATF criterion 6.5(c) and FATF criterion 7.2(c), requiring the prohibition of making funds, assets, economic resources available for designated entities or persons acting on their behalf, not just for terrorist and terrorist groups.

Clause 12 amends the principal Act to insert a new section 34A which addresses FATF criterion. 7.2(e) to require financial institutions to report to competent authorities assets frozen or actions taken in compliance with prohibitions of the UNSCR implemented by the Attorney General. Section 34A (5) addresses FATF criterion 7.2(f) requiring protection of bona fide third parties acting in good faith who implement the obligations to prohibit and report transactions relating to proliferation entities.

Clause 13 amends section 37 giving the Attorney General the powers to apply for forfeiture of property of a financier of proliferation of Weapon of Mass Destruction or a proliferation entity.