



[L.S.]

I Assent,

James B. Carlisle,
Governor-General.

3rd September, 1999.

ANTIGUA AND BARBUDA

No. 9 of 1999

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

[*9th September, 1999*]

ENACTED by Parliament of Antigua and Barbuda as follows:

1. This Act may be cited as the Money Laundering (Prevention) Short title.
(Amendment) Act, 1999.

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

- (a) by repealing "of Finance" in paragraph (b) of the definition of "financial institution";
- (b) by repealing "or other competent authority" in the definition of "forfeiture";
- (c) by inserting after "incorporation" in the definition of "identification record" the following:

"or the incorporation certificate by any other name": and

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(d) by repealing "legal affairs" in the definition of "Minister" and substituting the following:

"national drug control and security".

Amendment of section 4.

3. Section 4 of the principal Act is repealed and the following section substituted:

"4. Where an offence under the provisions of section 3 is committed by a body of persons, whether corporate or unincorporate, 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."

Amendment of section 6.

4. Section 6 of the principal Act, is repealed and the following section is substituted:

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

(a) summary conviction to a fine of two hundred thousand dollars or imprisonment for three years or to both; and

(b) conviction on indictment to a fine of one million dollars or imprisonment for seven years or to both."

Amendment of section 9.

5. Section 9 of the principal Act, is repealed and the following section substituted:

'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 authorised 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."

6. Section 10 of the principal Act, is amended by repealing 'of Finance' **Amendment of section 10.**

7. Section 11 of the principal Act, is amended as follows: **Amendment of section 11.**

- (a) in paragraph (iii) by repealing "for such a purpose";
- (b) in paragraph (vi) by inserting after "financial institution" the following:

"or to seek the assistance of any government department, statutory body, or other public body";

- (c) in paragraph (vii) by repealing "of Finance and the Attorney General";

- (d) in paragraph (viii) by repealing the full stop and substituting a semicolon; and

- (e) by inserting after paragraph (viii) the following paragraphs.

"(ix) may consult with any person, institution or organisation 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 organisation it is consulting with under paragraph (ix)."

8. Section 12 (iii) of the principal Act, is amended by inserting after "Supervisory Authority" in the two places it **occurs** the following: **Amendment of section 12.**

"or a person authorised by the Supervisory Authority".

9. Section 13 of the principal Act, is amended in subsection (1) by inserting after "purpose" the following: **Amendment of section 13.**

"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".

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Amendment of
section 16.

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

"(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)."

Amendment of
section 18.

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

"18. (1) A person who transports or causes the transportation of cash or bearer negotiable financial instruments into or out of Antigua and Barbuda in United States currency exceeding ten thousand dollars or equivalent in Eastern Caribbean or other currency, or in any lesser amount prescribed under the regulations issued under this Act, must report that fact to the Supervisory Authority at the prescribed time and in the prescribed manner.

(2) A person who fails to report the transportation of currency or bearer negotiable financial instruments as required by subsection (1) commits an offence, and is liable on summary conviction to imprisonment of three months or a fine of ten thousand dollars or both and in addition the cash or bearer negotiable instrument being transported shall be confiscated.

(3) Notwithstanding subsection (2), property involved in a violation of subsection (1) may be detained by the Supervisory Authority for a period of up to thirty days in order that investigations may be conducted to determine if the funds are directly or indirectly derived from or obtained through or are connected with a prescribed offence."

Amendment of
section 19.

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

(a) in subsection (1) by **repealing** "changed with money laundering offence" and substituting the following:

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

- (b) in subsection (3) by repealing "of forty-eight hours following the hour" and substituting the following:

"of thirty days following the day"; and

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

"(4) The person charged shall be notified by the Supervisory Authority of an order made under this section either by

- (a) service at the business address of counsel (if any) acting on his behalf;
- (b) service at his last known address, or place of business within the jurisdiction;
- (c) in the case of a body corporate the registered or principal office of the body corporate;
- (d) publication in the *Gazette* in Antigua and Barbuda; or
- (e) publication in two consecutive issues of a local newspaper circulating in Antigua and Barbuda,

within fourteen days of the order being issued.

(5) The Supervisory Authority may direct a financial institution in writing to freeze property for a period of up to four days whilst it makes application for a freeze order from the Court, if it is satisfied that the property is derived from or connected with a money laundering offence."

13. Section 20 of the principal Act, is amended as follows:

**Amendment of
section 20.**

- (a) in subsection (1) by
 - (i) inserting after "offence" in the first place it occurs the following:

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"under the laws of Antigua and Barbuda";

- (ii) inserting after "forfeited" the following:

to the Government of **Antigua** and Barbuda."; and

- (iii) repealing "and disposed of in such manner as the minister may **direct.**";

- (b) by inserting after subsection (1) the following subsection:

"(1a) When a person is charged with a money laundering offence under the laws of Antigua and Barbuda and he has been notified of the charge either by

- (a) service at the business address of counsel (if any) acting on his behalf;
- (b) service at his last known address, or place of business within the jurisdiction;
- (c) in the case of a body corporate the registered or principal office of the body corporate;
- (d) publication in the *Gazette* in Antigua and Barbuda; or
- (e) publication in two consecutive issues of a local newspaper circulating in **Antigua** and Barbuda,

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

- (c) by inserting after subsection (2) the following subsection:

(2a) When a person is charged in any jurisdiction other **than** Antigua and Barbuda with a money laundering offence as defined in this Act, upon application of the Supervisory Authority or the competent authority, the court shall order any property, proceeds or instrumentalities derived from or connected with the offence which are located in, or under the control of persons presently in **Antigua** and Barbuda, to be frozen, and the person shall be notified of the order either by service at his last known address and in the case of a body corporate the registered or principal office of the body corporate, by publication in the *Gazette* in Antigua and Barbuda or by publication in two consecutive issues of a local newspaper circulating in Antigua and Barbuda within four days and

- (a) if the person charged does not respond within one hundred and eighty days of the freeze order the court shall order the frozen property, proceeds and instrumentalities forfeited to the Government of Antigua and Barbuda;
- (b) if the person charged provides satisfactory evidence to the Court within one hundred and eighty days of the notice of the **freeze** order that the charges were filed for **political purposes** or otherwise in bad faith or are unfounded, the court shall immediately vacate its order;
- (c) if the person charged provides evidence to the Court **within** one hundred and eighty days of the notice of the freeze order that he is challenging the charges, then the freeze order shall remain in force pending the outcome of the proceedings in the foreign **jurisdiction**; and
- (d) if the person charged is convicted of the money laundering offence then on his

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conviction becoming final the frozen property, proceeds and instrumentalities shall be forfeited to the Government of Antigua and Barbuda."

Insertion of section 20 A.

14. After section 20 of the principal Act, the following section is inserted:

"Forfeiture Fund.

20A. (1) There shall be established a Forfeiture Fund (in this Act referred to as "the Fund") under the administration and control of the Minister.

(2) ~~All~~ funds and the proceeds from the sale of all property forfeited under section 20 shall be deposited in the Fund after the deduction of a 20% administrative fee to be deposited into the Consolidated Fund.

(3) The funds and proceeds forfeited under section 20 and deposited into the Fund shall be used for the purpose of anti money laundering activities and other activities the Minister deems fit."

Amendment of section 22.

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

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

Amendment of section 23.

16. Section 23 of the principal Act is amended as follows:

(a) by repealing subsection (5) and substituting the following subsections:

"(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 competent authority, ordered the disclosure of the information.

(5a) The competent authority 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 with the terms of the treaty."; and

(b) in subsection (6) by repealing "or other competent authority".

17. (1) The amendments made to the principal Act by the money Laundering (Prevention) (Amendment) Act, 1998 are repealed and the principal Act as it was ~~before~~ the amendment is revived. Repeal **and savings.**
No. 18 of 1998.

(2) The Money Laundering (Prevention) Regulations, 1998 are repealed. **S.I. 44 of 1998.**

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AND *(Amendment) Act, 1999.*
BARBUDA

Passed the House of Representatives
this 26th day of August, 1999.

Passed the Senate this 16th day
of August, 1999.

S. Bowen
Deputy. Speaker.

M. Percival
President.

S. Walker
Clerk to the House of Representatives.

S. Walker
Clerk to the Senate.

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