

ANTIGUA AND BARBUDA



MONEY LAUNDERING (PREVENTION) (AMENDMENT) ACT, 2017

No. 6 of 2017

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ANTIGUA AND BARBUDA

MONEY LAUNDERING (PREVENTION) (AMENDMENT) ACT, 2017

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[L.S.]



I Assent,

Rodney Williams,
Governor-General.

9th June, 2017.

ANTIGUA AND BARBUDA

MONEY LAUNDERING (PREVENTION) (AMENDMENT) ACT, 2017

No. 6 of 2017

AN ACT to amend the Money Laundering (Prevention) Act, 1996.

ENACTED by the Parliament of Antigua and Barbuda as follows:

1. Short Title

This Act may be cited as the Money Laundering (Prevention) (Amendment) Act, 2017

2. Interpretation

In this Act “the principal Act” means the Money Laundering (Prevention) Act, 1996.

3. Amendment of section 2 of the principal Act

The definition “money laundering offence” contained in the section 2 of the principal Act is repealed and replaced by the following new definition –

“money laundering offence” means –

- (a) an offence against:
 - (i) sections 3, 5, 5A and 5B of this Act;

- (ii) sections 11A and 18 of this Act;
 - (iii) sections 61 and 62 of the Proceeds of Crime Act 1993;
 - (iv) sections 4, 5, 6(3), 7, 8 and 12 of the Misuse of Drugs Act, Cap. 283;
 - (v) section 3 of the Maritime Piracy Act;
 - (vi) sections 5, 6, 7, 8, 9, 10 and 12 of the Prevention of Terrorism Act 2005, conspiracy to commit those offences contrary to section 17 of the Act, and participation in those offences contrary to section 20 of the Act;
 - (vii) sections 13, 14, 17, 18, 21, 22, 23, 24(1)(a), 25 and 26 of the Trafficking in Persons (Prevention) Act, 2010;
 - (viii) sections 7, 8, 10, 11, 12(1)(a), 13, 14 and 15 of the Migrant Smuggling (Prevention) Act 2010;
 - (ix) offences under the Forgery Act, Cap. 181;
 - (x) offences under the Larceny Act, Cap. 241;
 - (xi) sections 9, 10 and 15 of the firearms Act, Cap. 171;
 - (xii) any offence for which a charge has been brought alleging conduct from which proceeds of crime of \$50,000 or more has been derived directly or indirectly;
 - (xiii) any offence under the Prevention of Corruption Act, 2004;
 - (xiv) section 68 of the Tax Administration and Procedure Act, 2012; and
 - (xv) any indictable or hybrid criminal offence contrary to the Laws of Antigua and Barbuda in which the person has obtained a benefit as referred to section 20B(1) and assessed in section 20C of the Act;
- (b) an offence against:
- (i) any foreign law specified by regulation under this Act; or
 - (ii) 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.”

4. Amendment of section 5A of the principal Act

Paragraph (b) of section 5A of the principal Act is amended by deleting the words and figure “five hundred thousand dollars (\$500,000)” and replacing it with the words and figure “one million dollars (\$1,000,000)”.

5. Amendment of section 5B of the principal Act

Section 5B of the principal Act is amended in subsections (1), (2) and (3) by deleting all the words appearing after the word “commits” in each case, and adding thereafter the following words, in each, of the subsections:

“an offence and is liable –

- i. on summary conviction to a fine not exceeding two hundred thousand \$200,000. or to imprisonment for a term not exceeding six months or both; or
- ii. on indictment to a fine of not exceeding one million dollars or to imprisonment for a term not exceeding seven years or to both such fine and imprisonment.”

6. Repeal and replacement of section 11 of the principal Act

Section 11 of the principal Act is repealed and replaced by a new section 11 as follows –

“11. Powers of the Supervisory Authority

(1) The Supervisory Authority –

- (a) shall receive the reports issued by the financial institutions pursuant to the provisions of section 13(2);
- (b) shall send any such 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;
- (c) or a person authorised 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;

- (d) shall send to the law enforcement authorities any information derived from an inspection carried out pursuant to paragraph (c) 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;
- (e) 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;
- (f) may compile statistics and records, disseminate information within or without Antigua and Barbuda, make recommendation arising out of any information received, issue guidelines to financial institutions and advise the Minister with regard to any matter relating to money laundering;
- (g) 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 sections 12(1) and 13(2) respectively;
- (h) 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
- (i) may send a copy of the record received under paragraph (a) and any other information obtained pursuant to this section to the person, institution or organization it is consulting with under paragraph (h)
- (j) 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;
- (k) may serve a notice of non-compliance on a person for failure to comply with the provisions of this Act or the regulations;
- (l) may issue directives to a financial institution for the purpose of achieving proper and adequate compliance with the provisions of this Act, the regulations, guidelines or directives;

- (m) may order regular reports from a financial institution on the anti-money laundering or combating of terrorism measures it is taking;
- (n) may use administrative measures as the Supervisory Authority deems appropriate or as may be prescribes;
- (o) may in support of an investigation of money laundering or the financing of terrorism by directive
 - (i) require a financial institution to disclose in a timely manner
 - (A) whether a person holds or controls accounts or does business with the institution, and
 - (B) to identify those accounts and assets represented by those accounts or involved in business activity,
 - (ii) require any person providing telecommunications or other electronic communications service to disclose in a timely manner –
 - (A) the name and address of a subscriber to any of its services
 - (B) whether a person is a subscriber to its telecommunications service, and if so,
 - (C) Identify the number used by the subscriber to access its services and the address of the subscriber;
 - (D) The name and number of any person with whom he has made contact using those services.

(2) The notice of non-compliance under subsection (1)(k) shall –

- (a) State which provision of the Act, the regulations, guidelines or directives, has not been complied with; and
- (b) Specify the action required to achieve compliance and the time within which the action is required to be taken.

(3) Where a person fails to remedy the breach within the time specified in the notice of non-compliance, the Supervisory Authority shall assess and impose such administrative civil sanctions as may be prescribed.

(4) A customer, owner or account holder shall not be notified by the financial institution of an inquiry under this section.”

7. Amendment of the section 13 of the principal Act

The principal Act is amended by inserting after subsection 13(6) the following new subsections:

“(7) All financial institutions have a legal obligation to inform the Supervisory Authority in writing or email, of—

- (a) any single transaction which exceeds thirty thousand dollars (\$30,000) in Eastern Caribbean currency or its equivalent in another currency or combination of currencies; and
- (b) all related transactions over a period of forty-eight hours or less, by a single customer, that have an aggregate value of thirty thousand dollars (\$30,000) Eastern Caribbean currency or its equivalent in another currency or combination of currencies.

(8) The Minister may by order change the amounts specified in subsection (7).”

8. Amendment of section 17B of the principal Act

Section 17B of the principal Act is amended, in subsection (1) thereof by inserting after the word “Authority” but before the word “may” the following words: “, for purpose of onsite examinations,”

9. Amendment of section 17E of the principal Act

Section 17E of the principal Act is amended in subsection (1) by deleting the words “Part III of”.

10. Insertion of section 18D into the principal Act

The principal Act is amended by inserting after section 18C the following new section 18D to read as follows:

“18D Supervision relating to terrorist financing

The provisions of this Part shall apply for the purposes of countering the financing of terrorism.”

11. Amendment of section 19 of the principal Act

Section 19(1) of the principal Act is amended by -

- (a) removing the word “or” at the end of subparagraph (b);

- (b) deleting the end mark at the end of subparagraph (c) and replacing it with the following words, “; or”
- (c) by adding a new subparagraph (d) to read as follows –
 - “(d) is being investigated on suspicion of having engaged or is engaged in money laundering.”

12. Amendment of section 19A of the principal Act

Section 19A of the principal Act is amended by adding after subsection (1B) a new subsection (1C) to read as follows –

“(1C) Where an application is made pursuant to section 19(1)(d) the High Court shall not make a freeze order unless-

- (a) the application is supported by the affidavit of an authorized officer stating that he/she has reasonable grounds to suspect that the defendant has, or is, engaged in money laundering; and
- (b) the Judge is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for the suspicion.”

13. Amendment of the First Schedule of the principal Act

The First Schedule to the principal Act under the title ‘Activities of Financial Institutions’, is amended as follows –

- (a) at item 16, by deleting the word “of” and replacing it with the word “or”;
- (b) at item 20 –
 - (i) by deleting the word “car” and replacing it with the words “motor vehicle”;
 - and
 - (ii) by adding at the end of the line in brackets the following: (including used motor vehicle) ;
- (c) at item 30, by deleting the words “The Unincorporated Business Act, 2016” and replacing them with “An Agent licensed Under the Antigua and Barbuda Citizenship by Investment Act;

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Money Laundering (Prevention) (Amendment) Act,

(d) by adding a new item as follows: “32. Wealth Management and Investment Advising”

Passed by the House of Representatives
on the 11th day of May, 2017.

Passed by the Senate on the 19th
day of May, 2017.

Gerald Watt, Q.C.,
Speaker

Alicia Williams Grant,
President

Ramona Small
Clerk to the House of Representatives

Ramona Small
Clerk to the Senate