ANTIGUA AND BARBUDA

THE MONEY LAUNDERING (PREVENTION) (AMENDMENT) BILL, 2020

No. of 2020

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ARRANGEMENT OF CLAUSES

CLAUSE

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AN ACT to amend the Money Laundering (Prevention) Act 1996, No. 9 of 1996 and for other incidental and connected purposes.

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, 2020

2. Interpretation

In this Act "the principal Act" means the Money Laundering (Prevention) Act 1996, No. 9 of 1996

3. Amendment to Section 2 – Interpretation

Section 2(1) of the principal Act is amended as follows –

(a) in the definition of "money laundering" as follows -

(i) in paragraph (a) of the definition –

(A) by repealing subparagraph (xii) in its entirety and replacing it with the following:

"(xii) any criminal offence which involves proceeds in excess of $50,000;"

(B) by repealing subparagraph (xiv) in its entirety and replacing it as follows:

"(xiv) tax evasion as defined under the Tax Administration and Procedure Act 208;"

(ii) in paragraph (b)(ii) of the definition by inserting after the words "proceeds of crime" the words, "or an instrumentality, or a conspiracy to do so;"

(b) in the definition of "property" by inserting immediately after the word "assets", the words ", virtual assets";

(c) by inserting the following words and their meaning in the correct alphabetical order within subsection 2(1):

"concealing property" includes concealing its nature, source, location, disposition, movement or ownership or any rights with respect to it; and the term "disguising property" shall be given the same meaning;"

"officer" in relation to a financial institution means a director, secretary, executive officer, person in a senior management position or the compliance officer;

"virtual asset" is a digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes, including digital representations of value that function as a medium of exchange, a unit of account, and/or a store of value. (It does not include digital representation of fiat currencies or securities).

"virtual asset service provider" means any natural or legal person who is not covered elsewhere under the provisions of this Act, and as a business conducts one or more of the following activities or operations for or on behalf of another natural or legal person: (i) exchange between virtual assets and fiat currencies; (ii) exchange between one or more forms of virtual assets; (iii) transfer of virtual assets; (iv) safekeeping and/or administration of virtual assets or instruments enabling control over virtual assets; and (v) participation in and provision of financial services related to an issuer's offer and/or sale of a virtual asset.

"unexplained wealth order" means an order made under section 20H of the Act."

4. Amendment of Section 3 – Offence of money laundering

Section 3 of the principal Act is amended by renumbering it as subsection (1) and inserting the following subsection thereafter:

"(2) Where a person is being prosecuted under subsection (1), it shall not be necessary for the prosecutor to prove that there has been a criminal conviction in relation to the property involved."

5. Amendment of Section 5A – Facilitation of money laundering

Section 5A of the principal Act is amended by repealing and replacing paragraphs (a) and (b) with the following:

"(a) on summary conviction —

(i) if an individual, to a fine not exceeding two hundred thousand dollars ($200,000) or to imprisonment for a term not exceeding six months or to both;

(ii) if a body corporate, to a fine not exceeding five hundred thousand dollars ($500,000) or two times the value of the proceeds generated by the offence, whichever amount is greater."

(b) on conviction on indictment—

(i) if an individual, to a fine not exceeding one million dollars ($1,000,000) or to imprisonment for a term not exceeding seven (7) years, or to both;

(ii) If a body corporate, to a fine not exceeding five million dollars ($5,000,000) or an amount equivalent to three times the market value of proceeds generated by the offence, whichever amount is greater."

6. Amendment to Section 5B – Participation in a criminal investigation

Section 5B(1) of the principal Act is amended by repealing subparagraphs (i) and (ii) thereof and replacing these with the following:

"(i) on summary conviction —

(A) if an individual, to a fine not exceeding two hundred thousand dollars ($200,000) or to imprisonment for a term not exceeding twoyears or to both;

(B) of a body corporate, to a fine not exceeding five hundred thousand dollars ($500,000) or two times the value of the proceeds generated by the offence, whichever amount is greater."

(ii) on conviction on indictment—

(A) if an individual, to a fine not exceeding one million dollars ($1,000,000) or to a term of imprisonment not exceeding seven (7) years, or to both;

(B) if a body corporate, to a fine not exceeding five million dollars ($5,000,000) or to three times the market value of the proceeds generated by the offence, whichever amount is greater."

7. Amendment to Section 6 – Penalty for money laundering

Section 6 of the principal Act is amended by repealing paragraphs (a) and (b) thereof and replacing these with the following:

"(a) summary conviction —

(i) if an individual, to a fine not exceeding two hundred thousand dollars ($200,000) or to imprisonment for a term not exceeding threeyears, or to both;

(ii) if a body corporate, to a fine not exceeding five hundred thousand dollars ($500,000) or two times the value of the proceeds generated by the offence, whichever amount is greater."

(b) conviction on indictment—

(i) if an individual, to a fine not exceeding one million dollars ($1,000,000) or to imprisonment for a term not exceeding seven (7) years or;

(ii) if a body corporate, to a fine not exceeding five million dollars ($5,000,000) or an to three times the market value of proceeds generated by the offence, whichever amount is greater."

8. Amendment to Section 7 – Tipping off

Section 7 of the principal Act is amended as follows:

(a) in subsection (1) by inserting after the words "money laundering" the words "or the financing of terrorism";

(b) in subsection (2) by inserting after the word "submit" the words "or is considering the filing of".

(c) by repealing subsection (3) in its entirety and replacing it as follows:

"(3) Where a financial institution forms a suspicion of money laundering or terrorist financing and reasonably believes that performing the customer due diligence process will tip off the customer, the financial institution may forego the customer due diligence process and instead file a suspiciousactivity report under section 13."

(d) by inserting immediately after subsection (3) a new subsection ()4 as follows –

"(4) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding eight hundred thousand dollars ($800,000) or to imprisonment for a term not exceeding three years, or to both;

9. Amendment to Section 11A – Powers of the Director of the ONDCP

Section 11A of the principal Act is amended as follows:

(a) in paragraph (c) by repealing the word "to" appearing after the words "financial institution" and replacing this with the word "or";

(b) in paragraph (h) –

(i) by deleting the word "and" at end of subparagraph (i)(a), and replacing this with the word "or";

(ii) by inserting the word "; and" at the end of subparagraph (i)(b);

(iii) by inserting a new subparagraph (i)(c) as follows –

"(c) information on all financial transaction or activity with those acccounts."

(c) by inserting immediately after paragraph (h) the following new paragraph –

"(i) shall create training requirements and standards and provide AML/CFT training for non-profit organizations and charities registered under the Companies Act or the Friendly Societies Act, which shall, inter alia,also include business transaction record-keeping under those Acts and suspicious activity reporting obligations under the Prevention of Terrorism Act 2005."

10. Insertion of Section 12D – Registration of unregulated financial institution

The principal Act is amended by inserting after section 12C the following new sections –

"**12D. Registration of unregulated financial institution**

(1) A financial institution that is not required by any law to file a report of its activities with a Regulator shall not engage in any business activity listed in the First Schedule unless the business is registered with the Intellectual Property and Commerce Office pursuant to the Companies Act 1995 or the Business Names Act, Cap. 63 or the Business Licence Act, 1994

(2) An unregistered financial institution doing business prior to the commencement of this section shall within one (1) month after the commencement of this section, register the business as required by subsection (1).

(3) The Supervisory Authority may An unregistered financial institution that fails to register in accordance with subsection (1) or (2) shall be liable on summary conviction to a fine of one thousand dollars, and in addition thereto, to a further penalty of one thousand dollars for every week that the financial institution fails to register after receiving notification from the Supervisory Authority of its default.

(4) Where a financial institution fails to register under subsection (1), the Supervisory Authority may in lieu of instituting criminal proceedings under subsection (2), serve a notice of non-compliance and impose an administrative penalty of one thousand dollars ($1,000) on the financial institution, and if the default is not remedied by a deadline given, may thereafter, impose a weekly penalty of five hundred dollars ($500) until registration is completed. Such penalty shall be a debt owed to the Supervisory Authority and recoverable by application to the High Court by claim form.

(5) The Supervisory Authority shall have authority to require any unregulated First Schedule financial institution to submit to a fit and proper assessment pursuant to section 17 of the Act. For that purpose, the Supervisory Authority is empowered to request of the financial institution all relevant information for the making of a proper assessment.

(6) Where an unregulated financial institution objects to a request for information by the Supervisory Authority under this section on the grounds that the information is not relevant, the financial institution may before any deadline set by the Supervisory Authority for the provision of

the information, apply to the High Court for an order exempting it from producing the information.

(7) Failure of an unregulated financial institution to comply with a Supervisory Authority request for relevant information under subsection (4) is an offence punishable on summary conviction to a finenot exceeding ten thousand dollars.

(8) Where an unregulated financial institution fails to comply with a Supervisory Authority request for relevant information under subsection (4), the Supervisory Authority may in lieu of instituting criminal proceedings, serve a notice of non-compliance and impose an administrative penalty of one thousand dollars ($1,000) on the financial institution, and if the default is not remedied by a deadline given, may thereafter, impose a daily penalty of five hundred dollars ($500) until the default is remedied. Such penalty shall be a debt owed to the Supervisory Authority and recoverable by application to the High Court by claim form.

(9) Failure of an unregulated financial institution to comply with a Supervisory Authority request for relevant information under subsection (4) shall be a basis on which the Supervisory Authority may advise the Registrar of Intellectual Properties and Commerce Office to strike off the business from the register, thereby preventing it from legally engaging in business activity or obtaining a certificate of good standing.

12E. Approval of certain officers

(1) No person shall be appointed as compliance officer of a financial institution unless the Supervisory Authority gives its approval of the person as a fit and proper person to hold the position of compliance officer.

(2) No person shall continue to hold the position of compliance officer where the Supervisory Authority objects to that person continuing in the post on the grounds that the person is not a fit and proper person to hold the office.

(3) Where the Supervisory Authority objects to a person being appointed or continuing in the position of compliance officer, the Supervisory Authority shall –

` (a) serve written notice of its objection on the person against whom the objection is being made, the Regulator and the financial institution; and

(b) inform the person against whom the objection is being made and the financial institution that they have a period of 14 days, commencing from the day on which the notice of objection is served on them, to make representation to the Supervisory Authority in relation to the objection.

(4) The Supervisory Authority shall take into consideration the representations made to it pursuant to subsection (3)(b) in making its final determination of the approval or non-approval of the person against whom the objection was made."

11. Amendment to Section 13 – Reporting of suspicious business transactions by financial institutions

Subsection 13(6) of the principal Act is amended by repealing paragraphs (a) and (b) and replacing these with the following:

"(a) on summary conviction —

(i) if an individual, to a fine of five hundred thousand dollars ($500,000) or to imprisonment for a term not exceeding of six months, or to both;

(ii) if a body corporate, to a fine not exceeding five hundred thousand dollars ($500,000)."

(b) on conviction on indictment—

(i) if an individual, to a fine of one million dollars (1,000,000);

(ii) if a body corporate, to a fine of five million dollars ($5,000,000).

(c) in addition to the penalty in paragraph (a) or (b), the financial institution may have its licence suspended or revoked by the appropriate Regulatory Authority or its registration struck off."

12. Amendment to Section 15 – Property tracking and monitoring orders

Section 15 of the principal Act is amended by repealing paragraph (b) thereof and replacing it as follows –

"(b) that a financial institution forthwith produce to the Supervisory Authority or other law enforcement agency all customer due diligence information obtained by the financial institution and any information on 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."

13. Amendment to Section 17 – Other measures to avoid money laundering

Section 17 of the principal Act is repealed and replaced with the following:

"17. (1) A person who has been convicted of an offence, whether in Antigua and Barbuda or elsewhere, and sentenced to a term of imprisonment of twelve months or more may not be eligible or licensed to carry on the business of a financial institution.

(2) A person ineligible under subsection (1) shall not be eligible to be a director or officer of a financial institution.

(3) Every financial institution shall maintain a policy setting out fit and proper criteria for the selection of a director or officer.

(4) No person shall hold or continue in a management position of a financial institution unless he or she satisfies the fit and proper criteria set out in the regulations."

14. Amendment to Section 17B – Powers and authority

Section 17B of the principal Act is amended -

(a) by repealing subsection (2) and replacing it with the following:

"(2) A financial institution that fails to comply with the requests made pursuant to subsection (1) commits an offence and is liable on summary conviction:—

(a) if an individual, to a fine not exceeding $100,000 or to imprisonment for a term not exceeding six (6) months;

(b) if a body corporate,to a fine not exceeding $500,000.00,

but the financial institution may, before the deadline for producing the documents requested under subsection (1), apply to the High Court for an Order exempting it from producing them."

(b) by inserting immediately after subsection (2) the following new subsections as follows -

"(2A) The obligation of the financial institution to comply with the request of the Supervisory Authority under subsection (1) shall subsist unless the financial institution makes a successful application to the High Court to exempt it from producing the documents,

(2B) The Supervisory Authority may request the Regulator to take appropriate measures to compel compliance with the request under subsection (1)."

15. Amendment to Section17E – General sanctions for non compliance

Subsection (1) of section 17E of the principal Act is amended by repealing and replacing paragraphs (a) and (b) with the following:

"(a) on summary conviction —

(i) if an individual, to a fine not exceeding five hundred thousand dollars ($500,000) or to imprisonment for six months or or both;

(ii) if a body corporate, to a fine not exceeding five hundred thousand dollars ($500,000).

(b) on conviction on indictment—

(i) if an individual, to a fine not exceeding one million dollars ($1,000,000);

(ii) if a body corporate, to a fine not exceeding five million dollars ($5,000,000)"

16. Amendment to Section 18 – Currency reporting when leaving Antigua and Barbuda

Section 18 of the principal Act is amended as follows –

(a) by inserting the following new subsections immediately after subsection (9):

"(9A) The report submitted pursuant to subsection (9) shall be kept confidential;

(9B) The Director of the ONDCP –

(a) shall use the information contained in the report for statistical and analytical purposes; and

(b) may share the information with any competent authority for the purpose of conducting an investigation"

(b) by inserting after subsection (10) the following new subsection as follows:

"(11) A person who, having knowledge of the report, divulges the content of the report to another person without being so authorised commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars ($10,000) or to a term of imprisonment of six months or to both."

17. Amendment to Section 19 – Freezing of property

Section 19 of the principal Act is amended:

(a) in subsection (1) by repealing paragraph (d) and replacing it with the following:

"(d) is being investigated in relation to a money laundering offence."

(b) by inserting after subsection (1B) a new subsection as follows –

"(1C) The defendant or a person affected by a freeze order may apply to the High Court to vary or discharge the order."

(c) by inserting after subsection (9) the following new subsections:

"(10) The Director of the ONDCP may apply to the Court prior to the expiration of the freeze order for an extension of the order.

(11) An application to extend a freeze order shall be accompanied by evidence on affidavit given by the authorised officer stating the reasons why the extension is needed.

(12) The Court may grant an order extending the period for which a freeze order is to remain as it considers reasonable in all the circumstances."

18. Amendment to Section 19A – Procedure for dealing with freeze order application

Section 19A of the principal Act is amended as follows –

(a) by repealing subsection (2) and replacing it as follows –

"(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;

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

(c) the defendant is being investigated in relation to a money laundering offence

the freeze order will cease to have effect upon being discharged by the Court or on the expiration of a period specified in the order unless by that time the defendant has been charged with a money laundering offence, or an application for a civil forfeiture order, or a civil proceeds assessment order, or an unexplained wealth order has been filed."

(b) by inserting the following new subsections after subsection (2) –

"(2A) .A freeze order remains in force where:

(a) forfeiture is pending in accordance with section 20(1) or 20(2);

(b) there is a pending application for a civil forfeiture order;

(c) there is apending application for a civil proceeds assessment order;

(d) there is an unsatisfied civil proceeds assessment order in force against the person whose money laundering activity formed the basis of the freeze order;

(e) there is an unexplained wealth declaration order in effectin relation to property specified thereinthat is the subject ofthe freeze;

(f) there is a pending application for an unexplained wealth order; or

(g) there is a pending applicationfor the extension of a freeze order

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(2B) Reference in this section to applications under sections 20A, 20B, 20G or 20I are in respect of applications for a civil forfeiture order, a civil proceeds assessment order, an unexplained wealth declaration order or an unexplained wealth order."

19. Amendment of Section 19B – High Court to make ancillaryorders

Section 19B of the principal Act is amended by inserting after subsection (1) the following new subsections-

"(1A) The court may –

(a) designate a person to whom custody of the property frozen is entrusted for the duration of the freezing order;

(b) direct that the frozen property be maintained and conserved by the person designated at paragraph (a); and

(c) direct that the cost of maintaining and conserving the property be borne by the owner or the holder of the property.

(1B) Where the holder of the property is to bear the cost of its maintenance and conservation, moneys spent on maintaining and conserving the property shall operate as a charge on the property and the person designated to maintain and conserve the property shall be entitled to sell the property to recover the cost owed, with the balance, if any, being placed in an interest bearing account for the benefit of the owner until the freezing order comes to an end."

20. Amendment to Section 20 – Forfeiture of property, proceeds or instrumentalities

Section 20 of the principal Act is amended by inserting after subsection (2) the following new subsections –

"(3) Subsection (4) shall apply if any property forfeited under this section as a result of any act or omission of the defendant —

(a) cannot be located on the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third party;

(c) has been placed beyond the jurisdiction of the court;

(d) has been substantially diminished in value; or

(e) has been commingled with property which cannot be divided without difficulty.

(4) In any case listed in subsection (3), the court shall order the forfeiture of any other property of the defendant up to the value of any property described in subsection (3) as appropriate.

(5) In the case of property described in subsection (3)(c), the court may, in addition to any other action authorized by this section, order the defendant to return the property to the jurisdiction of the court so the property may be seized and forfeited."

21. Amendment to Section 20D – Effect and enforcement of confiscation

Section 20D of the principal Act is amended in subsection (2) by inserting the word "Confiscated Asset" before the word "Fund"

22. Insertion of Sections 20G – 20N– Unexplained Wealth Orders and Forfeiture of undisclosed property

The principal Act is amended by inserting after section 20F, the following new sections:

"20G. Unexplained wealth declaration orders

(1) Where the Director of the ONDCP has reason to suspect that a person (herein referred to as "the respondent") –

(a) owns or has effective control over property;

(b) has acquired property valued in excess of what the known sources of his income would have enabled him to obtain'

the Director may apply to the High Court for an Unexplained Wealth Declaration Order, requiring the respondent to file a declaration and answer questions as required by the Director in relation to his assets.

(2) An application for an Unexplained Wealth Declaration Order may be made ex parte.

(3) It does not matter for purposes of subsection (1):

(a) whether or not there are other persons who hold the property;

(b) whether the property was obtained by the respondent before the coming into force of this section.

(4) An application under subsection (1) shall be accompanied by an affidavit of an authorized officer stating —

(a) the identity of the respondent;

(b) the grounds on which the applicant reasonably suspects that the total wealth of the respondent exceeds the value of his lawfully obtained wealth; and

(c) the grounds on which the applicant reasonably suspects that any property is owned by the respondent or is under his effective control.

(5) An unexplained wealth declaration order is an order requiring the respondent to provide a declaration —

(a) setting out the nature and extent of the respondent's interest in the property in respect of which the order is made,

(b) explaining how the respondent obtained the property (including, in particular, how any cost incurred in obtaining it were met),

(c) where the property is held by the trustee of a settlement, setting out such details of the settlement as may be specified in the order, and

(d) setting out such other information in connection with the property as may be so specified.

(6) The order must specify —

(a) the form and manner in which the declaration is to be given,

(b) the person to whom it is to be given, and

(c) the place at which it is to be given or, if it is to be given in writing, the address to which it is to be sent.

(7) The order may, in connection with requiring the respondent to provide the declaration mentioned in subsection (5), also require the respondent to produce documents of a kind specified or described in the order.

(8) The respondent must comply with the requirements imposed by an unexplained wealth declaration order within whatever period the court may specify (and different periods may be specified in relation to different requirements).

(9) A person who knowingly makes a declaration which is false in a material particular in response to an unexplained wealth declaration order commits an offence and is liable on summary conviction to a fine not exceeding one hundred thousand dollars and to imprisonment not exceeding six months.

20H. Conditions for making an unexplained wealth declaration order

(1) The Court in making an unexplained wealth declaration order must be satisfied that there are reasonable grounds to suspect that —

(a) the respondent owns or is in effective control of the property;

(b) the known sources of the respondent's lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain the property;

(c) the respondent:

i. is, or has been, involved in money laundering activity (whether in Antigua and Barbuda or elsewhere), or

ii. a person connected with the respondent is, or has been, so involved.

(2) Where the Court is satisfied of the conditions in subsection (1), it may make an unexplained wealth declaration order requiring the respondent to file a declaration and appear before the Court to answer questions relative to his assets for the Court to decide whether to make an unexplained wealth order.

(3) The unexplained wealth declaration order shall be served on the respondent.

(4) Where the Court makes an unexplained wealth declaration order, the respondent may within twenty-eight (28) days of service of the order apply to the Court for the order to be set aside or discharged.

(5) In making an unexplained wealth declaration order, the Court may order an inter partes hearing of the matter within fourteen days.

(6) Where an unexplained wealth declaration order is applied for, the Director of the ONDCP may also apply in the same proceedings for a freeze order in respect of the property under section 19(1)(d) for the purposes of avoiding the risk of any unexplained wealth order that might subsequently be made being frustrated.

20I. Unexplained wealth orders

(1) The Director of the ONDCP may apply to the High Court for an unexplained wealth order requiring a respondent to pay to the Crown an amount assessed by the Court as the value of the unexplained wealth of the person.

(2) An application under subsection (1) shall be accompanied by —

(a) an affidavit of an authorised officer setting out the reasons why an unexplained wealth order should be made; and

(b) documents in support of the application.

(3) The High Court must make an unexplained wealth order if the Court is satisfied that there is a reasonable suspicionthatthe person against whom the order is sought has, at any time before the making of the application for the order:

*i.*engaged in money laundering activity (whether in Antigua and Barbuda or elsewhere), or

*ii.*acquired property derived from any money laundering activity of another person (whether or not the person against whom the order is made knew or suspected that the property was derived from illegal activities).

(4) A finding under this section need not be based on a reasonable suspicion as to the commission of a particular offence and can be based on a reasonable suspicion that some offence or other constituting money laundering activity was committed.

(5) Engagement in money laundering activity or the acquisition of property derived from money laundering activity referred to in subsection (3) extends to engagement in money laundering activity or the acquisition of property derived from money laundering activity before or after the commencement of this section.

(6) If application is made for both a proceeds assessment order and an unexplained wealth order, the High Court cannot make both orders, but is to make the order that requires payment of the greater amount.

(7) If the Director of the ONDCP applies for only one of the orders, he may before the application is determined extend the application so that it includes an application for the other order.

20J. Assessment of unexplained wealth

(1) This section applies for the purpose of making an assessment for an unexplained wealth order of the unexplained wealth of a person against whom the order is made.

(2) The **unexplained wealth** of a person is the whole or any part of the current or previous wealth of the person that the High Court is not satisfied on the balance of probabilities is not or was not illegally acquired property or the proceeds of an illegal activity.

(3) The burden of proof in proceedings against a person for an unexplained wealth order is on the person to prove that the person's current or previous wealth is not or was not illegally acquired property or the proceeds of an illegal activity.

(4) The **current or previous wealth** of a person is the amount that is the sum of the values of the following:

(a) all interests in property of the person;

(b) all interests in property that are subject to the effective control of the person;

(c) all interests in property that the person has, at any time, expended, consumed or otherwise disposed of (by gift, sale or any other means),

(d) any service, advantage or benefit provided at any time for the person, whether acquired, disposed of or provided before or after the commencement of this section and whether within or outside the jurisdiction.

(5) In assessing if there are reasonable grounds for suspecting that the known sources of a person's lawfully obtained income would have been insufficient for the purpose of enabling the person to obtain certain property:

(a) regard is to be had to any mortgage, charge or other kind of security that it is reasonable to assume was or may have been available to the person for the purposes of obtaining the property;

(b) it is to be assumed that the person obtained the property for a price equivalent to its market value;

(c) income is "lawfully obtained" if it is obtained lawfully under the laws of the country from where the income arises;

(d) "known" sources of the person's income are the sources of income (whether arising from employment, assets or otherwise) that are reasonably ascertainable from available information at the time of the making of the application for the order;

(e) where the person has an interest in other property comprised in a settlement, the reference to the person obtaining the property is to be taken as if it were a reference to the person obtaining direct ownership of such share in the settled property as relates to, or is fairly represented by, that interest.

(6) In assessing the unexplained wealth of a person, the Court is not required to consider any current or previous wealth of which the applicant for the order has not provided evidence.

(7) The value of anything included as current or previous wealth is:

(a) in the case of wealth that has been expended, consumed or otherwise disposed of — the greater of:

i. the value at the time the wealth was acquired, and

ii. the value immediately before the wealth was expended, consumed or otherwise disposed of, or

(b) in any other case — the greater of:

i. the value at the time the wealth was acquired, and

ii. the value at the time the application for the unexplained wealth order was made.

20K. Effect of non-compliance with unexplained wealth declaration order

(1) Where the respondent fails without reasonable excuse to comply with the requirements imposed by an unexplained wealth declaration order in respect of any property before the end of the response period, the property is to be presumed to be property derived from money laundering activity, unless the contrary is shown and to be assessed as part of the respondent's unexplained wealth when the Court is making an unexplained wealth order.

(2) The presumption in subsection (1) applies only to the interest of the respondent in the property.

(3) The "response period" is whatever period the court specifies in an unexplained wealth declaration order as the period within which the requirements imposed by the order are to be complied with.

(4) In a case where the respondent to an unexplained wealth order is connected with another person who is, or has beeninvolved in money laundering activity, the respondent's interest is to be taken to include any interest in the property of the person involved in money laundering activity with whom the respondent is connected.

20L. General provisions applying to proceeds assessment and unexplained wealth orders

(1) In assessing the amount payable under an unexplained wealth order, the High Court must deduct the following (but only if those amounts would otherwise be included in the assessment of the amount payable under the order):

(a) the value of any interest in property of the defendant forfeited under another forfeiture order under this or other Act;

(b) any amount paid or payable by the defendant under any previous proceeds assessment order or unexplained wealth order under this Act or any confiscation, proceeds assessment or unexplained wealth order;

(2) The quashing or setting aside of a conviction for a money laundering offence does not affect the validity of an unexplained wealth order.

(3) The making of an unexplained wealth order does not prevent the making of a forfeiture order under sections 20 or 20A, in relation to which the unexplained wealth order is made.

(4) The amount a person is required to pay under an unexplained wealth order is a civil dept payable by the person to the Crown on the making of the order and is recoverable as such and shall be paid into the ConfiscationFund.

(5) If an unexplained wealth order is made against a dead person, subsection (4) has effect before final distribution of the estate as if the person had died the day after the making of the order.

(6) The absence of a person entitled to be given notice of an unexplained wealth order does not prevent the High Court from making the order.

(7) The High Court may, when it makes an unexplained wealth order or at any later time, make any ancillary orders that the Court considers appropriate.

(8) Despite any rules of law, or any practice, relating to hearsay evidence, the High Court may, for the purposes of an unexplained wealth order, receive evidence of the opinion of:

(a) a member of the Police Force,

(b) an officer of the ONDCP,

(c) an officer of the Customs Division,

who is experienced in the investigation of illegal activities involving plants or drugs, being an opinion with respect to:

(d) the amount that was the market value at a particular time of a particular kind of plant or drug, or

(e) the amount, or range of amounts, ordinarily paid at a particular time for the doing of anything in relation to a particular kind of plant or drug.

20M. Enforcement of order against property under effective control

(1) On the application of the Director of the ONDCP, the High Court must, if of the opinion that an interest in property is subject to the effective control of a person in relation to whom the Court has made an unexplained wealth order, make an order delaying that the interest is available to satisfy the order to the extent that the property is not readily available for that purpose.

(2) If the High Court declares that an interest in property is available to satisfy an unexplained wealth order, the order may be enforced against the property to the extent specified in the declaration.

(3) If application is made for an order under this section:

(a) the Director of the ONDCP must give notice of the application to the person against whose interest in property the order is sought and to any other person who the Director has reason to believe may also have an interest in the property to which the application relates, and

(b) each person to whom notice is given, and any other person who claims an interest in the property, may appear, and adduce evidence, at the hearing of the application.

20N. Charge on property

(1) If the High Court makes an unexplained wealth order against a person, all the interest of the person in property are, while the assessed amount remains unpaid, charged in favour of the Crown to the extent necessary to secure payment of the assessed amount.

(2) A charge created by subsection (1) on the making of an unexplained wealth order ceases to have effect:

(a) if the unexplained wealth order is discharged on the hearing of an appeal against the making of the order, or

(b) on payment to the Accountant General of the assessed amount, or

(c) on the bankruptcy of the person subject to the order, or

(d) on the sale or other disposition of the interest charged under the authority of this Act, or

(e) on the sale of the interest charged to a purchaser for sufficient consideration who, at the time of purchase, had no notice of the charge, whichever first occurs.

(3) A charge that, on the making of an unexplained wealth order, is created by subsection (1) over an interest in property:

(a) is subject to every encumbrance on the property that came into existence before the charge and that would, apart from this paragraph, have priority over the charge, and

(b) has priority over all other encumbrances, and

(c) subject to subsection (2), is not affected by any change of ownership of the interest charged.

20O. Forfeiture orders after interest in property is not disclosed

(1) This section applies if:

(a) a forfeiture order or proceeds assessment order or unexplained wealth order is made, and

(b) evidence or a statement or other representation was given or made in proceedings for the order, or disclosure or declaration proceedings under this Act, by a person against whom the order is made (the defendant) as to the defendant's interests in property.

(2) The Director of the ONDCP may apply to the High Court for an order forfeiting, and vesting, in the Crown a specified interest in property of the defendant at the time the evidence, statement or representation was given or made that was not disclosed in the evidence, statement or representation.

(3) The High Court must make the order if the Court finds it more probable than not that the interest in property was an interest of the defendant at the time the evidence, statement or representation was given or made.

(4) An order may be made even if the interest in property was disposed of after the evidence, statement or representation was given or made but may not extend to an interest in property if:

(a) the whole or part of that interest was subsequently acquired by a person for sufficient consideration without knowing, and in circumstances that would not arouse a reasonable suspicion, that the interest was, at the time of acquisition, serious crime derived property or illegally acquired property, or

(b) the whole or part of that interest subsequently vested in a person as a result of the distribution of the estate of a deceased person.

(5) An order may be made despite the terms of any orders previously made by consent.

(6) Notice of an application under this section is to be given to the defendant and any person having an interest in property to which the application relates and the defendant or person may appear, and adduce evidence, at the hearing of the application.

(7) The absence of a person entitled to be given notice of an application for an order under this section does not prevent the Court from making the order.

(8) An application under this section may be made together with an application under section 20N.

20P. Forfeiture orders, proceeds assessment orders or unexplained wealth orders after interests in property is not disclosed

(1) This section applies if:

(a) an application for a forfeiture order or proceeds assessment order or unexplained wealth order is made, and

(b) evidence or a statement or other representation is given or made in proceedings for the order, or examination proceedings under this Act, by a person against whom the order is made (the defendant) as to the defendant's interests in property.

(2) The Director of the ONDCP may apply to the High Court for an order requiring the defendant to pay to the Crown the value of the whole or part of an interest in property of the defendant at the time the evidence, statement or representation was given or made, that was not disclosed in the evidence, statement or representation, if:

(a) the whole or part of that interest was subsequently acquired by a person for sufficient consideration without knowing, and in circumstances that would not arouse a reasonable suspicion, that the interest was, at the time of acquisition, serious crime derived property or illegally acquired property, or

(b) the whole or part of that interest subsequently vested in a person as a result of the distribution of the estate of a deceased person.

(3) An order may be made despite the terms of any orders previously made by consent.

(4) The High Court must make an order under this section if it finds it more probable than not that:

(a) an interest in property was an interest of the defendant at the time the evidence, statement or representation was given or made, and

(b) the interest was subsequently disposed of as referred to in subsection (2) (a) or (b).

(5) Notice of an application under this section is to be given to the defendant and any person having an interest in property to which the application relates and the defendant or person may appear, and adduce evidence, at the hearing of the application.

(6) The absence of a person entitled to be given notice of an application for an order under this section does not prevent the Court from making the order.

(7) The amount a defendant is required to pay under an order under this section is recoverable as a debt payable by the defendant to the Crown and shall be paid into the Forfeiture Fund.

(8) Sections 2K and 20L apply to an order made under this section in the same way as they apply to a proceeds assessment order or unexplained wealth order.

(9) An application under this section may be made together with an application under section 20M.

23. Insertion of section 23A

After Section 23 of the principal Act, the following section is inserted

23A. Application to registerforeign forfeiture orders

(1) The Attorney General for Antigua and Barbudaor any person so authorized by him may pursuant to any mutual legal assistance treaty apply to the Court on behalf of a foreign authority, to register a foreign forfeiture order (as defined by section 23L) in Antigua and Barbuda.

(2) An application under subsection (1) may be made on an ex parte application to a judge in chambers.

23B. Conditions for Court to give effect to external orders

(1) The Court shall give effect to a foreign forfeiture order by registering it where it is satisfied—

(a) the foreign forfeiture order was made consequent on the conviction of the person named in the order and no appeal is outstanding in respect of that conviction; or

(b) the foreign forfeitureorder was made consequent on an application in civil proceedings whether or not a person has been convicted;

(c) the person against whom the order was made appeared in the proceedings or was given adequate notice of the proceedings sufficient to enable him to defend them;

(d) the foreign forfeitureorder is in force and no appeal is outstanding in respect of it;

(2) In subsection (1), "appeal" includes—

(a) proceedings by way of discharging or setting aside the order, and

(b) an application for a new trial or for a stay of execution.

23C. Registration of foreign forfeiture orders

(1) Where the Court decides to give effect to a foreign forfeiture order as defined in section 23L of this Act, it shall—

(a) register the order in the Court;

(b) provide for notice of the registration to be given to any person affected by the order; and

(c) set out particulars as to the enforcement of the order.

(2) The Court may cancel the registration of the foreign forfeiture order, or vary the property to which it applies, on an application by the Attorney General or any person affected by it if, or to the extent that, the Court is of the opinion that any of the conditions in subsection 23B is not satisfied.

(3) The Court shall cancel the registration of the foreign forfeiture order, on an application by the Attorney General or any person authorized by himor any person affected by it, if it appears to the Court that the order has been satisfied—

(a) in the case of an order for the recovery of a sum of money specified in it, by payment of the amount due under it;

(b) in the case of an order for the recovery of specified property, by the surrender of the property; or

(c) by any other means.

(5) Where the registration of a foreign forfeiture order is cancelled or varied under subsection (2) or (3), the Court shall provide for notice of this to be given to the Attorney General and any person affected by it.

23D. Appeal to Court of Appeal concerning foreign forfeiture orders

(1) If on an application for the Court to give effect to a foreign forfeiture order by registering it, the Court decides not to do so, the Attorney General may appeal to the Court of Appeal against the decision.

(2) If an application is made under subsection 23C(3)or (4) in relation to the cancellation of the registration of a foreign forfeiture order, the Attorney General or any person affected by the registration may appeal to the Court of Appeal in respect of the Court's decision on the application.

(3) On appeal under subsection (1) or (2), the Court of Appeal may—

(a) confirm or set aside the decision to register; or

(b) direct the Court to register the external order, or so much of it as relates to property other than to which subsection 23B(1)(c) applies.

23E. Application for an Order Registering a ForeignRegistration Order

(1) The Attorney General for Antigua and Barbuda or any person so authorized by him may pursuant to any mutual legal assistance treaty under which a foreign authority hasrequestedAntigua and Barbuda to give effect to a foreign restraint order (as defined by section 23L),may apply to the High Courtforan order under section 23F registeringthe foreign restraint order .

(2) An application for the registration of a foreignrestraint order may be made on an ex parte application to a judge in chambers.

23F. Registeringa Foreign Restraint order

(1) Where the Court is satisfied in relation to a foreign restraint order that:

(a) property identified in the order is located in Antigua and Barbuda;

(b) proceedings for an offence have been commenced in the country where the foreign restraint order was made, and not concluded; or

(c) civilproceedings relating to forfeiture of the property identified in the foreign restraint order have been commenced but not concluded; and

(d) there is reasonable grounds to suspect that the person named in the order has benefited from criminal conduct or acquiredthe property knowing or having reasonable grounds to suspect that it was derived from criminal conduct or is an instrumentality,the Court may make an order registering the foreign restraint order the effect of which shall be to prohibit any specified person from dealing with the property identified in the foreign restraint order.

(2) A High Court order registering aforeign restraint order—

(a) may make provision—

*i.*for reasonable living expenses and reasonable legal expenses in connection with the proceedings seeking a restraint order or the registration of an external order where the defendant or person affected by the order is unable to meet those expenses out of other property; and

*ii.*make provision for the purpose of enabling any person to carry on any trade, business, profession or occupation, and

(b) may be made subject to such conditions as the Court considers fit.

(3) Where the Court makes a registrationorder it may, on the application of the Applicant, (whether as part of the application for the restraint order or at any time thereafter) make such order as it believes is appropriate for the purpose of ensuring that the registrationorder is effective.

(4) For the purposes of this section, dealing with property includes removing it from Antigua and Barbuda.

23G. Discharge and variation ofan order registering aforeign restraint order

(1) An application to discharge or vary an order registering a foreign restraint order or an order under subsection 23F(3) may be made to the Court by—

(a) the Applicant for the registration order; or

(b) any person affected by the order.

(2) On an application under subsection (1), the Court may—

(a) discharge the order; or

(b) vary the order.

(3) The Court shall discharge the order registering a foreignrestraint order if—

(a) at the conclusion of the proceedings for an offence with respect to which the order was made, no order forfeiting the rights and interests in the property restrained has been made; or

(b) within a reasonable time, a forfeiture order has not been registered under subsection 23C.

23H. Appeal

(1) If on an application for the registration of a foreign restraint order the Court decides not to make the order, the Applicant for the order may appeal to the Court of Appeal against the decision.

(2) If an application is made under subsection 4(1), in relation to an order registering a foreign restraint order or an order under subsection 3(3), the Applicantor any person affected by the order may appeal to the Court of Appeal in respect of the Court's decision on the application.

(3) On an appeal under subsection (1) or (2), the Court of Appeal may—

(a) confirm the decision; or

(b) make such order as it believes is appropriate.

23I. Seizure of property subject to an order registering aforeign restraint order

(1) If an order registering aforeign restraint order is in force, a law enforcement officer may seize any property which is specified in it to prevent its removal from Antigua and Barbuda.

(2) Property seized under subsection (1) shall be dealt with in accordance with the directions of the Court which made the order.

23J. Hearsay evidence in restraint proceedings

(1) Evidence shall not be excluded in restraint proceedings on the ground that it is hearsay (of whatever degree).

(2) For the purposes of subsection (1), restraint proceedings are proceedings—

(a) for an order registering a foreign restraint order;

(b) for the discharge or variation of a restraint order;

(c) on an appeal under subsection 23H.

(3) Nothing in this section affects the admissibility of evidence which is admissible apart from this section.

23K. Restrictions relating to foreign restraint orders

(1) Where the Court makes an order registering a foreign restraint order—

(a) no distress may be levied against any property which is specified in the order except with the leave of the Court and subject to any terms the Court may impose; and

(b) if the order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term of condition of the tenancy, except with the leave of the Court and subject to any terms the Court may impose.

(2) If proceedings are pending before the Court in respect of any property and the Court is satisfied that a registrationorder has been applied for or made in respect of the property in the foreign restraint order, the Court may either stay the proceedings or allow them to continue on any terms it thinks fit.

(3) Before exercising any power conferred by this section, the Court shall give an opportunity to be heard to—

(a) the Applicant for the registration order; and

(b) any receiver appointed in respect of the property.

23L. Interpretation of Terms

In this Part—

(a) "foreign forfeiture order" is an order or judgment which—

i. is made by a foreign court where property is found or believed to have been obtained as a result of or in connection with a money laundering offence; and

(a) is for the forfeiture or confiscation of the proceeds, instrumentalities or benefits of crime which is represented by specified property or a specified sum of money; or

(b) "foreign restraint order" is an order of a foreign court, whichrestrains or freezes dealings with property (i) whichis or is suspected on reasonable grounds of being, property derived or obtained,directly or indirectly from the commission of a foreign offence or (ii) which is subject to an order of a foreign court imposing on a person against whom the order is made pecuniary penalty calculated by reference to the value of property derived or obtained,directly or indirectly from the commission of a

foreign offence, or (iii) which may serve as substitute property where property that may be forfeited under a foreign forfeiture order is not available.

(c) "foreign offence" for purposes of this section is an act carried out in a country outside Antigua and Barbuda, which if carried out in Antigua and Barbuda, would —

i. constitute a money laundering offence;

ii. constitute an attempt, conspiracy or incitement to commit an offence specified in paragraph (i); or

iii. constitute aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (i);

(d) "foreign court" is a court of a country or jurisdiction outside Antigua and Barbuda;

(e) "foreign authority" is an authority which has responsibility in a country outside Antigua and Barbuda for making a request to an authority in another country (including Antigua and Barbuda) to prohibit dealing with relevant property or for the forfeiture of property or for the enforcement of a pecuniary penalty imposed in criminal or civil proceedings.

(f) "relevant property" is property in relation to which there are reasonable grounds to believe that it may be needed to satisfy a foreign forfeitureorder which has been or which may be made or a foreign restraint order.

(g) "specified property" means property specified in a foreign forfeiture orrestraintorder, other than an order that specifies a sum of money.

24. Insertion of section 24A

After section 24 of the principal Act the following is inserted:

"**24A. Disposition of Forfeited and Confiscated Property not otherwise provided for**

(1) Unless otherwise provided for in law, property forfeited in criminal or civil proceedings initiated by the Director of the ONDCP under any other Act shall be deemed to be in the custody of the Attorney General.

(2) Whenever property is seized subsequent to forfeiture, the Attorney General may:

(a) remove the property to a place designated by him; or

(b) require the Minister of Public Works to take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

(3) Whenever property is forfeited in criminal or civil proceedings any other Act, and come within the possession of the Attorney General under section 24A(1) the Attorney General may: —

(a) retain the property for official use or transfer the property to any law enforcement agency which participated directly in the seizure or forfeiture of the property;

(b) except as provided otherwise in law, sell by public sale any forfeited property;

(c) transfer the forfeited property or the proceeds of the sale of any forfeited property to any foreign country which participated directly or indirectly in the seizure or forfeiture of the property, if such a transfer —

i. has been agreed by the Prime Minister;

ii. is authorized in an international agreement between Antigua and Barbuda and the foreign country.

25. Amendment to Section 28 – Limitation of proceedings

Section 28 of the principal Act is repealed and replaced with the following:

"28. Limitation of Proceedings

(1) Proceedings under Part IVA of the Act relating to civil forfeiture ordersand civil proceeds assessment orders,shall be brought within six years next after the date of themoney laundering activity upon which they are based.

(2) All prosecutions, actions, suits or other proceedings brought under Part III – Anti-Money Laundering Supervision or the regulations, shall be brought within six years next after the date of the offence or breach.

(3) Proceedings under Part IVA of the Act are brought when —

(a) a claim form is filed, or

(b) an application is made for a freeze order in relation to property,whichever is the earlier."

26. Amendment to Section 28A

Section 28A of the principal Act is amended by inserting the following subsection:

"(2) A certificate signed by the Director of the ONDCP and certifies that a specified personwas or was not an authorised officerat a stated timeis admissible in any proceedings under this Act and is evidence of the fact certified."

27. Amendment of the First Schedule

(1) The First Schedule to the principal Act is amended as follows:

(a) by replacing business activities listed as items 4, 5, 6, 9, 10, 11, 12, 14, 15, 20, 21, 23, 24, 25, 26 and inserting item 9Aas follows:

"4. Transmission of money or monetary value in any form,as defined by the Money Service Business Act 2011;

5. Issuing and administering means of payment (e.g. credit cards, travellers' cheques);

6. Guarantees and commitments;

9. Money lending as defined in the Money Service Business Act 2011;

9A. Pawning as defined by the Pawnbrokers Act, Cap. 309;

10. Money exchange (e.g. casa de cambio) as defined by the Money Service Business Act 2011;

12. Real property businessinvolving purchase, sale or lease of real property, and real estate development with a property sales office;

14. Trust business as defined in the Corporate Management and Trust Service Providers Act 2008;

15. Insurance business, as defined by the Insurance Act 2007 andinternational insurance companies operatingunder the IBC Act, Cap. 222;

20. Buying, selling or leasing new or used motor vehicles as defined in the Vehicles and Road Traffic Act, Cap. 460and alsomotor vehicles not adapted foruse on roads;

21. [repealed];

23. Company service providersas defined in the Corporate Management and Trust Service Providers Act 2008;

24. Attorneys-at-Law when they prepare for, or carry out, transactions for their clients concerning the following activities: buying and selling of real estate; managing of client money, securities or other assets; management of bank, savings, escrow or securities accounts; organisationof contributions for the creation, operation or management of companies; creating, operating or management of legal persons or arrangements, and buying and selling of business entities.

25. Notaries when they prepare for, or carry out, transactions for their client concerning the following activities: buying and selling of real estate; managing of client money, securities or other assets; management of bank, savings, escrow or securities accounts; organisation of contributions for the creation, operation or management of companies; creating, operating or management of legal persons or arrangements, and buying and selling of business entities.

26. Accountants when they prepare for, or carry out, transactions for their client concerning the following activities: buying and selling of real estate; managing of client money, securities or other assets; management of bank, savings, escrow or securities accounts; organisation of contributions for the creation, operation or management of companies; creating, operating or management of legal persons or arrangements, and buying and selling of business entities.

(b) by inserting at the end in numerical order, the following:

"Escrow services

Virtual assetsservice providers."

……..... **……..**

Speaker. *President.*

…… **……..**

Clerk to the House of Representatives. *Clerk to the Senate.*

EXPLANATORY MEMORANDUM

Reference in this Memorandum to CFATF recommendations relates to the CFATF Mutual Evaluation Report on Antigua and Barbuda 2018.

Reference to the MER is a referencxe to the CFATF Mutual Evaluation Report on Antigua and Barbuda 2018

Reference to FATF recommendations relate to the FATF 40 Recommendations 2012 as updated.

Amendments to section 2concernsclarification of the definition of "money laundering offence". It redefines thegeneral money laundering offence under paragraph (xii) to be more generic, and it simplifies the definition of tax evasion under paragraph (xiv). It provides.the meaning of concealing property and disguising property.It also defines "virtual assets" and their service providers. These relate to the changes made to the FATF 40 Recommendations by the FATF at its Plenary on 19 October 2018, where a public statement was issued stating:

"Given the urgent need for an effective global, risk-based response to the AML/CFT risks associated with virtual asset financial activities, the FATF hasadopted changes to the FATF Recommendations and Glossary that clarify how the Recommendations apply in the case of financial activities involvingvirtual assets. These changes add to the Glossary new definitions of "virtual assets" and "virtual asset service providers" – such as exchanges, certaintypes of wallet providers, and providers of financial services for Initial Coin Offerings (ICOs). These changes make clear that jurisdictions should ensurethat virtual asset service providers are subject to AML/CFT regulations, for example conducting customer due diligence including ongoing monitoring,record-keeping, and reporting of suspicious transactions. They should be licensed or registered and subject to monitoring to ensure compliance. TheFATF will further elaborate on how these requirements should be applied in relation to virtual assets."

Amendmentsto section 3, 5A, 5B, 5C 6, 7, 11(7), 12(6), 12A(3), 13(6) and 17E addressFATF criterion 35 – making sanctions dissuasive, especially for financial institutions. This relates to para. 316 of the MER in relation to criterion 35.1 in which the CFATF stated:

"Overall while the penalties under the MLPA and the MLPR may be dissuasive for natural personsthey cannot be considered so for legal persons and in particular for FIs belonging to international financialgroups which has larger financial assets and resources particularly as none of the penalties exceedUS$400,000."

Amendments to section 7 address FATF criterion 21.2for the tipping-off prohibition to cover financing of terrorism reports, considering filing a suspicious activity report and (including 22.1 in relation to DNFBPs) to be able to file a suspicious activity report instead of pursuing the customer due diligence process where there is a likelihood of the CDD tipping off the customer. At para. 174 of the MER, the CFATF found:

"Criterion 21.2 MLPA, s. 7(1) prohibits providing information against a person from divulgingknowledge of the fact that an investigation into ML has been made, is being made or is about to be made,to prejudice that investigation. This prohibits any persons who knows, suspects that an investigation intomoney laundering has been, is being or is about to made to divulge the fact or other information to another. The measures set out in 7 (1) (2) and (3) provides the prohibition elements in regard to financial institutions and their directors, officers and employees. This does not appear to prohibit the disclosure of the fact that an STR or related information is being been filed. Contextually, not all STRs or related information result in ML investigations. However, Sec. 2 of the MLPA 2008 amends section 7 of the MLPA by repealing and substituting the following "If is an offence for a person who knows or suspects that a financial institution has submitted or is about to submit a suspicious transaction report pursuant to section 13(2), to divulge that fact or other related information to another person Additionally, the MLPA is focused on making provisionsfor the prevention of ML and consequently TF is not covered. Part II, Chapter 4 of the MLFTG capturestipping off and confidentiality as it relates to the prevention of terrorism and terrorist financing."

Amendments to section 11A(h)(i) inserts subparagraph (c) which provides for obtaining information on transactions related to accounts being investigated, which is at the heart of requests made by the FIU and without which, information provided by financial institutions are not particularly useful, especially in urgent matters. It also insertsSection 11A (i) which concerns the power to require non-profit organisations to receive AML/CFT training and for the Director to provide such training. This relates to CFATF Recommendation relating to criterion 8.2(b) at para. 74 of the MER which states that "Antigua and Barbuda has no measures to encourage and undertake outreach and educational programmes to raise and deepen awareness among NPOs as well as the donor community about the potential vulnerabilities of NPOs to terrorist financing abuse and terrorist financing risks."

Insertion of section 12D co-opts to the use of the Supervisory Authority for AML/CFT purposes, the business registration process utilised by the Intellectual Properties and Commerce Office and is targeted to registration of companies and unincorporated businesses that engage in First Schedule business activities. This is a necessary step in addressing the CFATF recommendation on FATF Rec. 26 for periodic review of financial institutions which includes assessment of suitability of significant shareholders, for which the financial institutions have to first be identified.

Insertion of section 12E provides the Supervisory Authority to have an input into whether officers of financial institutions exercising the vital function of a compliance officer are fit and proper for the position.

Amendments to section 15 addresses FATF criterion 22.2 to address all scenarios of request for information, including CDD. At para. 109 of the MER, the CFATF finds:

"Criterion 11.4 – The MLPA 15(ii) states "that a financial institution forthwith produce to the Supervisory Authority or other law enforcement agency required 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.". This does not address all scenarios of request for information including requests for CDD information and therefore does not fully address the criteria."

Amendments to section 17 address FATF criterion 28.4 – prevents criminals from holding a management function in a financial institution; FATF criterion 28.5 – establishes a basis on which the Director of ONDCP determines when to conduct examinations of financial institutions. Para. 251 of the MER states:

"251. Criterion 28.4 (a) Section 17 B (1) of the MLPA gives the Supervisory Authority the powers and authority to perform its functions, including powers to monitor compliance including requiring the production of documents or provision of information. (b) Section 17 of the MLPA restricts persons who have be sentenced to a term of imprisonment for twelve months or more whether in Antigua and Barbudaor elsewhere from being eligible or licensed to carry on the business of a financial institution. This would apply to all other categories of DNFBP's. However, this provision applies only as a bar to entry at the licensing stage and does not apply to subsequent governance changes. (c) As noted in relation to criterion 27.4 above, the Supervisory Authority pursuant to Section 17C of the MLPA has power to apply sanctions broadly in line with recommendation 35."

Amendments to section 18 addresses FATF criterion 32.10 to ensure the proper use of information collected through the currency declaration system. At para. 299 of the MER, CFATF finds:

"**Criterion 32.10** There is no information regarding the measures that have been put in place in Antigua and Barbuda to ensure the proper use of information collected through the declaration system. There is no evidence that the declaration system doesn´t restrict trade payments between countries for goods and services or the freedom of capital movements. There are no guidelines as

to strict safe guards that are in place to ensure proper use of information collected through the declaration system."

Amendment to sections 19 – 19Bclarifies the effect and duration of freeze ordersapplied for under section 19(1).

Amendment to section 20 re-introduces the power of the court to forfeit substitute property where forfeitable property becomes unavailable due to a defendant's actions or omissions. See section 22(2) of Act No. 9 of 1996. This provisions appears to have been inadvertently deleted in subsequent amendments to the Act. Such provisions are available in US law. In the 2018 FATF President's Paper "Anti money laundering and counter terrorist financing for judges and prosecutors", it states at page 51 in the section on Seizing and freezing:

"Extent and nature of the provisionalorder – *Whichever authority is competentto issue preliminary orders should ensurethat property will be preserved and***available to satisfy any confiscation order***that is subsequently made. Practitionersagreed that the scope of the ordershould be broad, and, if possible, includeincome derived from property that can***be confiscated and equivalent value or***substitute assets."*

Amendments to section 20D are to facilitate the Minister ordering forfeited property to be kept and used by a government department rather than being sold or liquidated as most forfeiture provisions in various Acts require. This is introduced in response to recent complications that have arisen is dealing with property after forfeiture, especially where forfeited under section 27 of the Misuse of Drugs Act. The section also empowers the Director of the ONDCP to take possession of the property on behalf of the Crown.

Insertionof sections 20G to 20N–introduces the unexplained wealth order, which is a form of civil confiscation order, used wherea person suspected of engaging in money laundering activity is unable to explain the source of his wealth. Section 20M gives the Director power to make application to the court after a confiscation order has been made to deal with property that was hidden by the defendant during confiscation proceedings. It allows for the court to make a further order for payment to the Government to the value of the hidden asset. This is based on precedents from UK since 2017, Australia since 1990 and Trinidad and Tobago.

Insertion of section 23A is proposed in light of recent setbacks in the court, to empower the Director of the ONDCP in consultation with the Attorney General to directly apply for the registration of a foreign order under an MLAT Request from a foreign country. It also provides at section 23F for the making of a restraint order based directly on an MLAT Request, thereby avoiding the conditions set when a freeze order is obtained in respect of local investigation under section 19(1).

Insertion of section 24A makes provision for dealing with forfeited property where there are no other statutory provisions that relateto the property, such as when property is forfeited under the Misuse of Drugs Act.

Amendment to section 28 removes the limitation on the bringing of criminal charges for money laundering activity, which does not exist in the UK or other jurisdictions, and substantially handicaps investigations of financial crime which, because of their complexity, have the potential to take extended periodsto establish the crime and obtain evidence to the criminal standard.

Amendment to section 28A inserts a subsection for the Director of the ONDCP to certify that a specified person was an authorized officer at a certain time. This allows for clarification of such an issue should challenges be brought in relation to court proceedings.

Amendments to the First Schedule inserts a clearer definition of a number of business activities, and address requirements of FATF criterion 22.1 and CFATF findings relating to FATF Immediate Outcome –1and Intermediate Outcome - 5 to expand the coverage of lawyers, accountants and notaries and provide a legal framework for escrow agents. It also addresses the new area of FATF Recommendation 15 concerning virtual assets service providers. Para. 177 of the MER states:

"177.**Criterion 22.1** *(R.10)* **–** The MLPA, MLPR and the MLPG all apply to the DNFBPs therefore the requirements outlined in Recommendation 10 all apply to this sector. The deficiencies identified at 10.20 also apply. Additionally, coverage of lawyers, notaries and accountants is limited to only when they conduct financial activity as a business."