

ANTIGUA AND BARBUDA



THE MONEY LAUNDERING (PREVENTION) (AMENDMENT) ACT, 2021

No. 9 of 2021

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ARRANGEMENT

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[L.S.]



I Assent,

Rodney Williams,
Governor-General.

28th June, 2021.

ANTIGUA AND BARBUDA

THE MONEY LAUNDERING (PREVENTION) (AMENDMENT) ACT, 2021

No. 9 of 2021

AN ACT to amend The Money Laundering (Prevention) Act, 1996 (No. 9 of 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, 2021.

2. Interpretation

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

3. Amendment of Section 2

Section 2(1) of the principal Act is amended—

(a) in the definition of “money laundering offence”, paragraph (a)—

(i) by repealing sub-paragraph (xiv) and substituting the following—

“(xiv) offences under Part X and sections 79, 80, 81, 82, 83, 84, 85, 86, 87, 89 of the Tax Administration Act 2018;”

(ii) by inserting at the end of paragraph (a) the following—

“(xvi) any offence under the Criminal Partnership (Prohibition) Act 2017.”

(b) by inserting in the appropriate alphabetical order the following definitions—

“officer” means—

- (a) a chief executive officer, chief operating officer, president, vice-president, corporate secretary, treasurer, chief financial officer, chief accountant, chief auditor, chief investment officer, chief compliance officer or chief risk officer;
- (b) any individual designated as an officer by articles of incorporation; or
- (c) any other individual who performs functions similar to those performed by a person referred to in paragraph (a) whether or not the individual is formally designated as an officer.’

“registrable” means any business activity listed in the First Schedule of the Act which is not subject to a licensing regime;

“registration regulations” means The Money Laundering (Prevention) (Registration) Regulations.”.

4. Amendment of Section 11-Powers of the Supervisory Authority

The principal Act is amended in section 11 as follows—

(a) Section 11(1)(i) of the principal Act is repealed and substituted with the following—

“(i) may use administrative or civil measures for breach or to compel compliance with the provisions of the Act, its regulations and directives. These may include financial penalties.”

(b) By inserting after section 11(4) the following—

“(5) Financial penalties imposed by the Director of the ONDCP in his capacity as Supervisory Authority, pursuant to subsection 11(1)(i) for various breaches as prescribed in regulations includes the following—

(a) for individuals a maximum penalty of fifty thousand dollars (\$50,000);

(b) for legal persons a maximum penalty of five hundred thousand dollars (\$500,000);

(6) For continued non-compliance, the penalties provided for in subsection 11(5) may be imposed at the end of each new fixed period for which the breach continues as provided in regulations;

(7) Each continued breach for which penalties under 11(5) may be imposed is to be treated as a fresh breach.”.

5. Amendment of Section 17-Other measures to avoid money laundering

Section 17 of the principal Act is amended by repealing subsection 17(1) and substituting the following—

“(1) A natural person who has been convicted of an offence, whether in Antigua and Barbuda or elsewhere, and sentenced to a term of imprisonment of twelve (12) months or more may not be eligible or licensed to be the beneficial owner or ultimate beneficiary of or to control or manage the business of a financial institution.”

6. Insertion of Section 18E – Registration of Financial Institutions for AML/CFT purposes and 18F – Fit and Proper Requirements for Registrable Financial Institutions

The principal Act is amended by inserting after section 18D the following—

“18E. – Registration of Financial Institutions for AML/CFT purposes

(1) The Supervisory Authority for purposes of AML/CFT supervision shall register financial institutions not subject to a licensing regime. Registration shall be pursuant to the Money Laundering (Prevention) (Registration) Regulations 2021.

(2) A person who intends to carry on or who at the commencement of this Act is carrying on a First Schedule business activity that is not subject to a licensing regime shall apply for registration with the Supervisory Authority for purposes of AML/CFT supervision.

(3) An application pursuant to subsection (2) shall be accompanied by the information and prescribed application fee required by the registration regulations.

(4) Where an applicant is approved as being eligible for registration, then the applicant, in order to be registered, shall pay—

(a) a registration fee in the amount prescribed by the registration regulations; and

(b) thereafter, by the 31st day of January of each subsequent year, an annual re-registration fee in the amount prescribed in the registration regulations.

(5) The application and registration fees under the registration regulations may be an amount not exceeding five thousand dollars (\$5,000).

(6) A person who fails to apply for registration as required under subsection (2) or re-registration under subsection (4) commits an offence and is liable on summary conviction to a fine

of not less than one thousand dollars (\$1,000) and not more than fifty thousand dollars (\$50,000) or to imprisonment for six months or to both.

(7) A person who, at the commencement of this Act, was already engaged in a First Schedule business activity not subject to a licensing regime shall apply for registration and comply with this section within thirty (30) days of the commencement of this Act.

(8) The Supervisory Authority may impose an administrative penalty for failure to register, late payment of fees, failure to file required reports, or a civil penalty for conducting relevant First Schedule business activity after being refused registration or being de-registered or for other breach of requirements of the registration regulations. It shall consist of an initial penalty not exceeding ten thousand dollars (\$10,000) upon notification of the breach and a recurring fixed penalty not exceeding half of the initial penalty for every week or greater fixed period provided by the registration regulations that the breach continues thereafter. The registration regulations may provide for the Supervisory Authority to set the fixed period of recurring breach.

(9) The Supervisory Authority shall have the authority to revoke or suspend the registration of a financial institution required to be registered for failure to comply with its obligations under the registration regulations and the Money Laundering (Prevention) (Regulations) 2007.

(10) Where a registrable financial institution has not been registered under the registration regulations but nonetheless engages in the business activity of a registrable financial institution, the Supervisory Authority may issue a cease and desist directive, requiring the business and persons concerned to immediately refrain from engaging in the activity.

(11) Where a financial institution fails to comply with a cease and desist directive under subsection (9), an offence is committed by its officers and on summary conviction each officer of the financial institution shall be individually liable to a maximum fine of one hundred thousand (100,000) dollars.”

“18F – Fit and Proper Requirements for Registrable Financial Institutions

(1) The Supervisory Authority in determining an applicant for registration under the registration regulations shall satisfy himself that the owners, directors and senior officers of the financial institution are fit and proper persons to own or manage a financial institution.

(2) The *Supervisory* Authority by himself or through a qualified assessor, shall conduct fit and proper assessments of the owners (including beneficial owners), directors, managers and senior officers of financial institutions registered under the registration regulations prior to their appointment and throughout their tenure at such intervals as shall be deemed necessary or appropriate.

(3) Where a financial institution has conducted its own fit and proper assessment, the records of the assessment shall be made available to the Supervisory Authority for review upon request.

(4) In determining whether a person is fit and proper to hold the position of owner, director or officer, regard shall be had to:

- (i) the person's probity and competence for fulfilling the responsibilities;
- (ii) the person's academic and professional qualifications or effective experience;
- (iii) the diligence with which the person fulfils or is likely to fulfil the responsibilities of the position;
- (iv) whether the interest of customers are likely in any way to be threatened by the person holding the position;
- (v) whether the person is a major shareholder (holding 10% or more of all shares) or director or officer of any other financial institution locally or elsewhere whose licence has been revoked or which has been compulsorily wound up;
- (vi) whether the person has failed to satisfy an order of a court for the payment of debt.
- (vii) whether the person is an undischarged bankrupt or has been declared a bankrupt;
- (viii) whether the person has been removed or suspended by a regulatory authority from serving as a director or officer of a corporate body either locally or abroad.

(5) Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities in business or financial matters of the person in question.

(6) It shall be an offence for any person not approved by the Supervisory Authority under subsection (1) to act as a director or senior officer of a registrable financial institution.

(7) It shall be an offence for a registrable financial institution to knowingly allow any person not approved by the Supervisory Authority under subsection (1) to act as a director or officer of the financial institution.

(8) The penalty for an offence under subsections (6) or (7) shall on summary conviction, if an individual be a fine not exceeding twenty thousand (\$20,000) dollars; if a legal person be a fine not exceeding fifty thousand dollars (\$50,000).

(9) Where a registrable financial institution has not been registered under the Money Laundering (Prevention) (Registration) Regulation 2021 but nonetheless engages in the business activity of a registrable financial institution, the Supervisory Authority may issue a cease and desist directive, requiring the business to immediately desist from engaging in the activity.

(10) Where the Supervisory Authority under this section finds a person not to be fit and proper for a position, if the financial institution nonetheless retains the person or fails to remove the person

from the position, it commits an offence and on summary conviction shall be liable to a maximum

Passed the House of Representatives on
the 25th day of May, 2021.

Passed the Senate on the 3rd day of
June, 2021.

Gerald Watt, Q. C.,
Speaker.

Alicia Williams Grant,
President.

Rosemarie Smith-Weston,
Acting Clerk to the House of Representatives.
penalty of fifty thousand (50,000).”.

Rosemarie Smith-Weston,
Acting Clerk to the Senate.