ANTIGUA AND BARBUDA



THE MONEY LAUNDERING (PREVENTION) (AMENDMENT) REGULATIONS, 2009

STATUTORY INSTRUMENT

2009, No. 67

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THE MONEY LAUNDERING (PREVENTION) (AMENDMENT) REGULATIONS, 2009

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ANTIGUA AND BARBUDA

THE MONEY LAUNDERING (PREVENTION) (AMENDMENT) REGULATIONS, 2009

2009, No. 67

The Money Laundering (Prevention) (Amendment) Regulations 2009 made by the Minister in exercise of the powers conferred on him by section 29 of the Money Laundering (Prevention) Act, 1996 No. 9 of 1996.

1. Short title

These Regulations may be cited as the Money Laundering (Prevention) (Amendment) Regulations, 2009.

2. Amendment to Regulation 2

Regulation 2 is amended by inserting the following definitions:

"correspondent banking" is the provision of a banking service by one bank (the correspondent bank) to another bank (the respondent bank);

"negotiable instrument" includes travellers' cheques, drafts, postal orders;

"physical presence" means meaningful mind and management located within a country and does not include mere presence of a local agent or low level staff;

"shell bank" means a bank that has no physical presence in the country in which it is incorporated and licensed and which is unaffiliated with a regulated financial services group that is subject to effective supervision;

3. Amendment to Part II

Part II is amended to insert in the heading after 'RELEVANT BUSINESS, 'AND ENFORCEMENT'.

4. Amendment to Regulation 3

(1) Regulation 3(1)*(a)* is amended—

(a) in subparagraph (i), by repealing 'Identification Procedures' and substituting 'Customer Due Diligence'

(b) by inserting after subparagraph (iii), the following—

"(iv) regulation 6A: Hiring Procedures;

(v) regulation 15: Annual Review and Audit Report;

(vi) Directives and guidelines issued by the Supervisory Authority."

(2) Regulation 3(1)*(b)* is repealed and substituted with the following—

"establish—

(i) procedures and controls to address any specific risks associated with non face-to-face business relationships and transactions. These procedures and controls shall include specific and effective customer due diligence in respect of non-face-to-face customers;

(ii) procedures to evaluate any new or developing technologies to identify any risks that may arise from them including, but not limited to, any technological development that might allow or facilitate customer or beneficiary anonymity;

(iii) and implement measures to prevent the use of new or developing technologies in or in connection with money laundering and the financing of terrorism;

(iv) maintain and communicate to its employees, policies, controls and procedures of internal control and communication as may be appropriate for the purposes of forestalling and preventing money laundering and the financing of terrorism."

(3) Regulation 3 is amended by inserting after 3(1)*(c)*, the following paragraph—

"*(d)* ensure that—

(i) domestic branches and majority owned subsidiaries observe the provisions of these regulations and the Act;

(ii) foreign branches and majority owned subsidiaries observe the provisions of these regulations, the Act or foreign measures consistent with them to the extent permitted by the laws of the foreign jurisdiction;

(iii) where the standards of a foreign jurisdiction differ to those set out in these regulations or the Act, then the higher standard should be applied, to the extent permitted by the laws of the foreign jurisdiction; and

(iv) where the laws, regulations or other measures of a foreign jurisdiction do not permit the application of the measures set out in these regulations or the Act, the Supervisory Authority and the regulator are informed of that fact."

(4) Regulation 3(2) is repealed and substituted with the following—

"Criminal Offences

(2) *(a)* A person who contravenes these Regulations, commits an offence and is liable—

(i) on summary conviction, to a fine of $300,000.00

(ii) on conviction on indictment, to a fine of $500,000.00, or to imprisonment for a term not exceeding 2 years, or to both.

(b) Where a person is convicted of an offence under subparagraph *(a)*, he shall not be liable to a penalty under regulation 3(2)*(d)*."

(5) Regulation 3 is amended by inserting after paragraph (7), the following—

"Regulatory Civil Penalties

(8)(i) The Supervisory Authority may impose an administrative penalty of an amount that he considers appropriate but not exceeding one hundred thousand dollars ($100,000.00) on a person who fails to comply with the requirements of these regulations, directives, or guidelines issued by the Supervisory Authority. For the purpose of this paragraph, "appropriate" means dissuasive and proportionate.

(ii) If the Supervisory Authority serves a notice of non-compliance on a person for breach of these Regulations, directives or guidelines then failure to remedy the breach by the time specified in the notice shall constitute a fresh breach and each day that the breach continues thereafter shall constitute a new and separate breach. For each breach resulting from failure to remedy the original breach the Supervisory Authority may impose a penalty not exceeding $15,000 per day.

(iii) The Supervisory Authority shall not impose an administrative penalty on a person under paragraphs *(d)*(i) or *(d)*(ii) where that person produces information or evidence to satisfy the Supervisory Authority that he took all reasonable steps and exercised all due diligence to ensure compliance with the regulation, directive or guideline.

(iv) In deciding whether a person has breached these Regulations, the Supervisory Authority must consider whether that person followed any relevant directives of the Supervisory Authority or guidelines issued by the Supervisory Authority or

any other appropriate body and **published** in a manner likely to have brought the guidance to the attention of that person.

(v) In paragraph (iv), an "appropriate body" means any body which regulates or is representative of any trade, profession, business or employment carried on by the person alleged to have breached the regulation

(v) Where the Supervisory Authority decides to impose a penalty under this regulation, he must give the person, on whom the penalty would be imposed, written notice of—

(a) the decision to impose the penalty and the amount;

(b) the reasons for imposing the penalty;

(c) the right to a request a review of the decision under regulation 3(9); and

(d) the right to an appeal against the decision under regulation 3(10).

(vi) A penalty imposed under this regulation is a debt due to the Crown payable to the Supervisory Authority.

REVIEW PROCEDURE

(9)(i) A person who is the subject of a decision by the Supervisory Authority to impose a penalty may, by written notice to the Supervisory Authority, request a review of the decision.

(ii) A request for review of a decision shall be made and delivered to the Supervisory Authority within 45 days, beginning with the day on which the Supervisory Authority first gave notice of the decision to impose the penalty.

(iii) The Supervisory Authority need not consider requests made otherwise than in accordance with subparagraphs (i) and (ii).

(iv) After reviewing a decision, the Supervisory Authority shall either—

(a) confirm the decision; or

(b) withdraw or vary the decision and take any further steps as may be necessary in consequence of the withdrawal or variation, as he considers appropriate.

(v) Where the Supervisory Authority does not, within 45 days, beginning with the day on which the review was requested by a person, give notice to that person of the

determination of the review, the Supervisory Authority is to be taken for the purposes of these Regulations to have confirmed the decision.

APPEALS

(10)(i) After requesting a review of a decision, a person may appeal, to a Magistrate, against a decision by the Supervisory Authority made under regulation 3(8)(i).

(ii) An appeal shall be filed within (14) days of the expiration of the time period in subparagraph (9)(v) or within 14 days of receipt of the Supervisory Authority's determination upon review.

(g) For the purposes of paragraphs *(a), (d)*(i) and (d)(ii), fines and penalties may be assessed and imposed on the directors or senior management of a person who carries on relevant business."

5. Amendment to Regulation 4

(1) Regulation 4 is amended—

(a) in the heading by repealing 'Identification' and substituting 'Customer Due Diligence'

(b) by repealing paragraphs (1) and (2) and substituting the following—

"(1) In this regulation and in regulations 5 to 7A

(a) "A" means a person who carries on relevant business; and

(b) "B" means a customer.

(2) This regulation applies —

(a) if A and B agree to form a business relationship;

(b) if, in respect of one-off transactions—

(i) payment of or equivalent to twenty five thousand dollars ($25,000) or more is to be made by A to B; or B to A; or

(ii) where two or more one-off transactions are concerned, it appears to A, whether at the outset or subsequently, that the transactions are linked and involve, in total, payment of or equivalent to twenty five thousand dollars ($25,000) or more by A to B or by B to A.

(c) if A sends or receives a wire transfer for or on behalf of B;

(d) in respect of existing business relationships between A and B, but on the basis of risk and materiality and at appropriate times. Appropriate times in respect of existing business relationships include where—

(i) a transaction of significance takes place;

(ii) customer documentation standards change substantially;

(iii) there is a material change in the way that an account is operated;

(iv) A becomes aware that it lacks sufficient information about B.

(e) if in respect of any transaction, A knows or suspects the transaction to involve money laundering or the financing of terrorism, regardless of any thresholds or exemptions stated in the law."

(2) Regulations 4(3) is amended—

(a) by repealing 'identification' where it first occurs and substituting 'customer due diligence'

(b) in paragraph *(a),* by inserting after 'A and B', 'or in respect of an existing business relationship, at an appropriate time'

(c) by inserting after paragraph 4(3)*(a)*(iii) the following paragraphs—

"(aa) require the procedures of regulation 4(3)*(a)* to be completed before or in the course of establishing a business relationship or conducting a one-off transaction.

(ab)(i) prohibit the opening or maintaining of an account in a fictitious name or for an anonymous customer.

(ii) require that numbered accounts must be established in full compliance with customer due diligence requirements, and require that the customer identification records must be available for the money laundering compliance officer, appropriate members of staff, the Supervisory Authority, regulators, and for law enforcement purposes."

(3) Regulation 4(3)*(c)* is repealed and substituted with the following—

"*(c)* require that where satisfactory evidence of identity is not obtained—

(i) A shall not open an account for B, otherwise commence business relations with B or perform the one-off transaction for B;

(ii) but the business relationship or the one-off transaction had commenced, A must not proceed any further with the business relationship or the one-off transaction, or shall proceed only in accordance with a direction from the Supervisory Authority;

(iii) an existing or established business relationship must be terminated;

(iv) A should consider making a suspicious activity report."

(4) Regulation 4(3)*(d)* is repealed and substituted with the following—

"(d) require that where B is or becomes a high risk customer or politically exposed person enhanced due diligence procedures must be taken. Without limiting the generality of the foregoing, A shall—

(i) establish appropriate risk management systems to determine whether a customer, a potential customer, or the beneficial owner is a PEP;

(ii) require that senior management approval be obtained for establishing a business relationship with a PEP;

(iii) require that senior management approval be obtained to continue a business relationship when a customer or beneficial owner is subsequently found to be or subsequently becomes a PEP;

(iv) conduct ongoing and enhanced monitoring of a business relationship with a PEP.

(5) Regulation 4(3)*(h)* is repealed and substituted with the following—

"*(h)* require that where B is a legal person or trust, measures must be taken to determine who are the natural persons that ultimately own or control B, and reasonable measures must be taken to understand the ownership and control structure of B."

(6) Regulation 4(3) is amended by inserting after subparagraph (i), the following subparagraph—

"(ia) require that reasonable measures must be taken to obtain information on the purpose and intended nature of the business relationship."

(7) Regulation 4(3) is amended by inserting after subparagraph (3)(l) the following subparagraph—

"4(3)*(m)* require that wire transfers be accompanied by accurate and meaningful originator information that must include the name and address of the originator and where an account exists, the number of that account, or in the absence of an account, a unique reference number."

(8) Regulation 4 is amended by inserting after paragraph (3), the following paragraph—

"4(3a) The requirements of regulation 4(3) must be implemented, but depending on the type of customer, business relationship or transaction, may be implemented on a risk sensitive basis which must be consistent with guidelines issued by the Supervisory Authority. The Supervisory Authority must be notified that risk sensitive procedures are being employed and may deny permission to use such procedures to a sector or to a financial institution that has breached the regulations."

(9) Regulation 4(5) is repealed and substituted with the following—

"(5) Where A relies upon a third party to perform elements of the customer due diligence process, including but not limited to, identifying or verifying the identity of the customer, identifying or verifying the identity of the beneficial owner, obtaining information on the purpose and intended nature of the business relationship, and conducting ongoing due diligence, then A shall—

(a) immediately obtain from the third party the necessary information concerning the elements of the customer due diligence;

(b) satisfy itself that, upon request, copies of identification data and other relevant documentation will be made available, without delay, from the third party;

(c) satisfy itself that the third party is regulated and supervised to standards established in this jurisdiction or that of the foreign jurisdiction if higher, relating to customer identification, record keeping, regulation and supervision;

(d) satisfy itself that the third party has measures in place to comply with the requirements of customer due diligence;

(e) not rely on a third party based in a country named by the Supervisory Authority as inadequately applying FATF Recommendations;

(f) retain ultimate responsibility for ensuring compliance with customer due diligence requirements, particularly the identification and verification of customers."

(10) Regulation 4(6) is repealed and substituted with the following—

"(6) (1) In relation to cross-border correspondent banking, in addition to normal due diligence, where A acts as a correspondent bank, A shall—

(a) gather sufficient information about a respondent bank to understand fully the nature of the respondent bank's business and to determine from publicly available information the reputation of the respondent bank and the quality of its supervision, including whether it has been subject to a money laundering or terrorist financing investigation or regulatory action;

(b) assess the respondent bank's anti-money laundering and terrorist financing controls;

(c) obtain approval from senior management before establishing new correspondent relationships;

(d) document the respective AML/CFT responsibilities of each institution in the correspondent banking relationship;

(e) with respect to "payable-through accounts", satisfy itself—

(i) that the respondent bank has verified the identity of and performed normal customer due diligence in respect of those of the respondent's customers having direct access to accounts of the correspondent bank; and

(ii) that, upon request, the respondent bank is able to provide relevant customer identification data to the correspondent bank.

(6) (2) The provisions of regulation (6)(1) apply to relationships established for securities transactions, fund transfers, whether for the respondent bank as principal or for the respondent bank's customer."

(11) Regulation 4 is amended by inserting after paragraph (6), the following—

"(7) The requirements set out in this regulation are part of customer due diligence."

6. Amendment to Regulation 5

(1) Regulation 5(1) is repealed and substituted with the following—

"5(1) A must maintain procedures which require the retention of the records prescribed in paragraph (2) for the period prescribed in the Act, and which enable A to, upon request and in

a timely manner, provide the records or other information to the Supervisory Authority or other competent and authorised domestic authorities;

(1a) Records retained must be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity. Records must include the amounts and types of currency involved and sufficient customer and beneficiary identification information; and

(1b) A must ensure that documents, data or information collected under the customer due diligence process are kept up-to-date and relevant by undertaking reviews of existing records. An appropriate time to review records is when a transaction of significance takes place, when customer documentation standards change substantially, or when there is a material change in the way that the account is operated. If a financial institution becomes aware at any time that it lacks sufficient information about an existing customer, it should take steps to ensure that all relevant information is obtained as soon as possible;

(2) Regulation 5 is amended by inserting after subparagraph 5(2)*(a)* the following subparagraph—

"(aa) records of business correspondence following the termination of an account or business relationship."

(3) Regulation 5(2) is amended by inserting after 'records' where it first occurs, the words 'referred to in paragraph (1)'.

(4) Regulation 5(2)*(b)* is amended by deleting 'the business person' and substituting 'or for B'.

7. Amendment to Regulation 6

(1) Regulation 6(1)*(a)* is amended—

(a) by inserting after the word 'organisation', 'at management level';

(b) by repealing the words 'money laundering' and substituting 'AML/CFT'

(2) Regulation 6 is amended by inserting after subparagraph 6(1)*(a)*, the following subparagraph—

"(aa) the compliance officer and other appropriate staff should have timely access to customer identification data and other customer due diligence information, transaction records, and other relevant systems and information."

(3) Regulation 6 is amended by inserting after subparagraph 6(1)*(b)* the following subparagraphs—

"(ba) where an employee of A handling relevant business, determines that though a transaction

does not, in itself, appear to be suspicious, in relation to the customer it constitutes an unusual transaction or is part of an unusual pattern of transactions, then that determination should be reported to the compliance officer;

(bc) where the compliance officer receives a report under subparagraph (ba), the compliance officer must make a record of the report which is to be kept as part of the financial transaction record;"

(4) Regulation 6(1)*(d)* is repealed and substituted with the following—

"*(d)* where the compliance officer determines that the report does give rise to the knowledge or suspicion of money laundering or the financing of terrorism, then A shall report the matter to the Supervisory Authority pursuant to section 13 of the Act. Reports should be made on the standardized reporting form issued by the Supervisory Authority. Initial reports made orally shall be followed by a written report. Where A acquires or becomes aware of significant new information after making a report then A shall make a further written report updating the previous report. Where there is need to correct information in a previously made report A shall also do this by way of a written report."

(5) Regulation 6(1) is amended by inserting after paragraph *(d)*, the following paragraph—

"*(e)* where the compliance officer determines that an internal report does not warrant the making of a suspicious activity report to the Supervisory Authority, a record should be made of the internal report and the reasons why it did not generate a suspicious activity report. This record should be reviewed as part of the preparation of the annual review and audit report required to be made under regulation 15 and should be retained as a financial transaction document."

(6) Regulation 6 (1) is amended by inserting at the end, the following paragraphs—

"(1a) (1) A must pay special attention to business relationships and transactions with persons from or in countries which A knows or has reason to believe insufficiently apply international standards against money laundering or the financing of terrorism.

(2) If the Supervisory Authority notifies A that a country has weaknesses in its AML/CFT systems, then A must pay special attention to business relationships and transactions from or in that country.

(1b) Where transactions have no apparent economic or visible lawful purpose, A should examine as far as possible, the background and purpose of such transactions, and written findings should be kept as a financial transaction document.

(1c) A should adhere to any countermeasures that the Supervisory Authority or the regulator advises should be implemented."

8. Insertion of Regulation 6A

Regulation 6 is amended by inserting at the end, the following regulation—

"6A. Hiring Procedures

A must put in place screening procedures to ensure high standards when hiring employees."

9. Insertion of Regulation 7A

The following is inserted after Regulation 7—

"7A. Shell Banks

(1) A should not enter into, or continue, correspondent banking relationships with a shell bank.

(2) A should satisfy itself that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks."

10. Amendment of Regulation 15

Regulation 15 is amended by inserting after paragraph 15(2) the following paragraph—

"(3) A financial institution shall maintain an adequately resourced and independent audit function to test compliance (including sample testing) with AML/CFT procedures, policies and controls."

11. Amendment of Schedule II

Schedule II is amended by inserting after 'Casinos', 'Trust business'.

12. Amendment of Part III

Part III is amending in the heading by repealing 'section 18' and substituting, 'sections18, 18A and 18B'.

13. Insertion of Regulation 10A

After regulation 10, the following regulation is inserted—

"10A **Forms for notice or applications for continued detention or Forfeiture**

(1) An application for the continued detention of seized currency under section 18A of the Act is to be made on Form 3a in Schedule I.

(2) Notice of an Order for continued detention, to the respondent and affected persons is to be filed on Form 3b in Schedule I.

(3) An application for the forfeiture of detained currency under section 18B of the Act is to be made on Form 4a in Schedule I."

(4) Forms 3a, 3b and 4a shall be used from the commencement of these regulations but are deemed to have been valid as of the 1st day of July, 2009.

14. Amendment of Schedule I

Schedule I of the Regulations is amended by inserting after Form 2, the following forms—

Form 3a — Application for Continued Detention of Seized Currency

Form 3b — Notice of Order for Continued Detention of Seized Currency

Form 4a — Application for Forfeiture of Seized Currency

Form 3a —Application for Continued Detention of Seized Currency

ANTIGUA AND BARBUDA

DISTRICT

IN THE MAGISTRATES' COURT

(CIVIL SIDE)

Suit No. of

The Supervisory Authority

Applicant

and

AB

Respondent

Money Laundering (Prevention) Act 1996
Application for Continued Detention of Seized Currency
Section 18A(3) of the Money Laundering (Prevention) Act

Continued Detention Application No.: ……..

The Supervisory Authority, hereby applies under section 18A(3) of the Money Laundering (Prevention) Act 1996 for an order authorising the continued detention of the following currency—

OR

I, [name and rank/position of officer making application]……

of [official address]…… acting with the authority and on behalf of the Supervisory Authority, hereby apply under section 18A(3) of the Money Laundering (Prevention) Act 1996 for an order authorising the continued detention of the following currency—

[description and estimate of currency seized]……,

seized from* [name of person from whom currency was seized]……

of [address of person from whom currency was seized]……..

The above currency was seized on the…….day of……20…

at……..am/pm, at ……[place of seizure].

The following persons may be affected by an order for detention of the currency [give names and addresses of persons, if known]:

.....

.....

.....

OR There is no one known to the Supervisory Authority, [apart from the person from whom the currency was seized], who may be affected by an order for the continued detention of the currency.

GROUNDS OF APPLICATION:

[Specify details of applicable ground(s) pursuant to section 18A (1) and (3)]

The Supervisory authority will give or provide evidence on oath or in other manner, sufficient to satisfy the magistrate of the ground(s) set out above.

OR

I, [name of officer], state that I will give or provide evidence on oath or in other manner sufficient to satisfy the magistrate of the ground(s) set out above.

Dated:

Signed:.....

[Supervisory Authority/Officer making application on behalf of Supervisory Authority]

IMPORTANT NOTICE:

This application will be heard at the .....Magistrate's Court,

[address].....
on: [date of hearing].....at:
[time of hearing].....
when the Magistrate's Court will decide if the grounds for detention of the currency are met.
If you do not attend this hearing, an order may be made in your absence.

Note to the applicant — You must, as quickly as possible, serve a copy of this application and any order made, on the person from whom the currency was seized and to any person listed on the application as likely to be affected by an order for continued detention of the currency.**

Note to recipients— If you are the person from whom the currency was seized or you have an interest in the detained currency, you may apply to the court under section 18A(7) of the Money Laundering (Prevention) Act for the currency, in whole or in part, to be released to you. However, the court will not be able to release the currency to you if—

(a) a criminal prosecution, whether in Antigua and Barbuda or elsewhere, including any appeal against a conviction arising from such a prosecution, to which the seizure of the currency is related is pending; or

(b) an application for forfeiture of the currency, including any appeal, is pending.

* In the case where the currency was dispatched unattended such as a letter, parcel or container, insert name(s) and address(es), if known, of sender and intended recipient. In the case of any other unattended currency, state that you believe the currency was unattended and explain your grounds for believing that the currency was unattended.**In the case where the currency was dispatched unattended such as a letter, parcel or container, a copy of the Application and the Notice to Affected Persons should be given to the sender and the intended recipient (if known), rather than the person from whom the currency was seized. In the case of any other unattended currency there is no requirement to serve a copy of the Application and Notice to Affected Persons to the person from whom the currency was seized.

Form 3b —Notice to Persons Affected by an Order for Continued Detention of Seized Currency

MONEY LAUNDERING (PREVENTION) ACT 1996

Notice to Persons Affected by an Order for Continued Detention of Seized Currency

TAKE NOTICE that on the……day of……..20… an order was made by the Magistrate under section 18A(3) of the Money Laundering (Prevention) Act 1996 authorising the continued detention of the following currency—

[description and estimate of currency detained]

until the.....day of.....20.....

The currency was seized from*
[name of person from whom currency was seized].....

of [address of person from whom currency was seized].....

on the.....day of.....20.....

at.....am/pm, at.....[place of seizure].

A copy of the Order for the continued detention of the currency is attached to this notice.

Note to recipients— If you are the person from whom the currency was seized or you, to the satisfaction of the magistrate, have an interest in the detained currency, you may apply to the court under section 18A(7) of the Money Laundering (Prevention) Act for the currency, in whole or in part, to be released to you. However, the court will not be able to release the currency to you if—

(a) a criminal prosecution, whether in Antigua and Barbuda or elsewhere, including any appeal against a conviction arising from such a prosecution, to which the seizure of the currency is related is pending; or

(b) an application for forfeiture of the currency, including any appeal, is pending.

At the end of the abovementioned period of detention an application may be made for the further detention of the currency. An application may also be made to forfeit the currency.

If you intend to consult a solicitor about these proceedings you should do so at once and hand this notice and the copy of the order to him.

Dated:.....20.....

.....

Supervisory Authority

*In the case where the currency was dispatched unattended such as a letter, parcel or container, insert name(s) and address(es), if known, of sender and intended recipient. In the case of any other unattended currency, state that you believe the currency was unattended and explain your grounds for believing that the currency was unattended.

Form 4a —Application for Forfeiture of Seized Currency

ANTIGUA AND BARBUDA

DISTRICT

IN THE MAGISTRATES' COURT
(CIVIL SIDE)

Suit No. of

The Supervisory Authority

Applicant

and

AB

Respondent

Money Laundering (Prevention) Act 1996
Application for Forfeiture of Seized Currency
Section 18B(1) of the Money Laundering (Prevention) Act

Suit No. of Order for Continued Detention of Seized Currency: .....

Date of Latest Order for Continued Detention of seized Currency.....

IMPORTANT NOTICE:

This application will be heard at the .....Magistrate's Court,

[address].....

on: [date of hearing] .....

at: [time of hearing].....

when the Magistrate's Court will decide if the grounds for detention of the currency are met.

If you do not attend this hearing, an order may be made in your absence.

The Supervisory Authority, hereby applies under section 18B (1) of the Money Laundering (Prevention) Act 1996 for forfeiture of the following currency—

OR

I, [name of officer] of [official address] acting with the authority and on behalf of the Supervisory Authority hereby apply under section 18B(1) of the Money Laundering (Prevention) Act for forfeiture of the following currency—

[description and amount of currency]

The currency was seized from*:.....
[name of person from whom currency seized] on the.....day of.....20... at [place of seizure].

Amount seized:[include description].....
Amount detained under latest order for continued detention of seized currency:

.....

Total amount released since seizure of the currency: .....

The following person(s) may be affected by this application: [names and addresses of persons having an interest in the currency seized or otherwise likely to be affected by an order for forfeiture]

.....

.....

.....

OR There is no one known to the Supervisory Authority, apart from the person from whom the currency was seized, who may be affected by an order for forfeiture of the currency.

GROUNDS OF APPLICATION:

The said currency is the proceeds of unlawful activity, is an instrumentality of an offence or is intended for use in unlawful activity.

The Supervisory Authority will give or provide evidence on oath or in other manner sufficient to satisfy the magistrate that of one or more of the grounds in section 18B(4) of the Money Laundering (Prevention) Act 1996.

OR

I [name and rank of officer], of [official address] state that I will give or provide evidence on oath or in other manner sufficient to satisfy the magistrate of one or more of the grounds in section 18B(4) of the Money Laundering (Prevention) Act 1996.

Dated: .....

Signed: .....
[Supervisory Authority
or Officer acting with the Authority
of the Supervisory Authority]

Note to applicant — You must serve a copy of this application on the person from whom the currency was seized, any other person who may be affected by the Order, and any person specified in any order made under section 18A of the Money Laundering (Prevention) Act.**

Note to recipients — If you are the person from whom the currency was seized or you have an interest in the currency, you are entitled to appear and give evidence at the hearing of the application for forfeiture.

If you do not appear, the court may make a forfeiture order in your absence.

The following documents must be served with this notice:

A copy of the Application for Forfeiture of the currency

A copy of the Application for Continued Detention of the currency

A copy of the Order for continued detention of the currency

The person from whom the currency was seized, or any person who, to the satisfaction of the magistrate, has an interest in the currency, may apply for the release of the detained currency or any part of it under section 18A(7) of the Money Laundering (Prevention) Act but the currency cannot be released if—

(a) a criminal prosecution, whether in Antigua and Barbuda or elsewhere, including any appeal against a conviction arising from such a prosecution, to which the seizure of the currency is related is pending; or

(b) an application for forfeiture of the currency, including any appeal, is pending

If the currency was in a letter, parcel, container or other means of unattended dispatch, the sender or intended recipient may make the application under section 18A(7).
An application under section 18A(7) should be in writing to the Magistrate's Court which made the order for the continued detention of the seized currency.

The application should state the grounds relied on and identify as clearly as possible the currency referred to.

You will be notified if an application is made to the court for the release of the detained currency.

If you intend to consult a solicitor about these proceedings, you should do so at once and hand this notice and the accompanying documents to him.

If the court decides not to make a forfeiture order, you may apply to the court under Section 18A(7) of the Money Laundering (Prevention) Act for the currency to be released to you. You may make an application before the court makes its decision on forfeiture, but the court will not be able to release the currency to you until forfeiture proceedings are concluded.

Made the 31st day of December 2009

Hon. Dr. L. Errol Cort.
Minister of National Security,