

ANTIGUA AND BARBUDA

**MONEY LAUNDERING (PREVENTION)
(AMENDMENT) ACT 2001**

ARRANGEMENT OF SECTIONS

Sections

1. Short title.
2. Amendment of section 2.
3. Insertion of section 2A, 2B, 2C, 2D, 2E, 2F.
4. Section 10 repealed and replaced.
5. Section 11 amended.
6. Amendment of section 13.
7. Amendment of section 17.
8. Section 18 repealed and replaced.
9. Seizure and detention of suspected currency.
10. Application to Magistrate to forfeit seized currency.
11. Reportable details and currency defined.
12. Section 19 repealed and replaced.
13. Conditions for making freezing order.
14. High Court to make ancillary orders.
15. Section 20 repealed and replaced.
16. Section 21 repealed and replaced.
17. Section 22 repealed and replaced.
18. Amendment of section 23.
19. Amendment of section 27.
20. Amendment of section 28.
21. Section 30 repealed and replaced.
22. Amendment of First Schedule.
23. Repeal of Second Schedule.



[L.S.]

I Assent,

James B. Carlisle,
Governor-General.

27th April, 2001.

ANTIGUA AND BARBUDA

No. 6 of 2001

AN ACT to provide for the amendment of the Money Laundering
(Prevention) Act 1996.

[27th April, 2001]

1. This Act may be cited as the Money Laundering (Prevention) (Amendment) Act, 2001. Short title.

2. The Money Laundering (Prevention) Act, 1996, in this Act referred to as the principal Act, is amended in section 2 as follows — Amendment of section.

(a) by inserting the following definitions in their proper alphabetical order —

“authorised officer” means a person authorised by the Supervisory Authority to perform certain acts or functions under this Act.

“gift” in relation to property, includes a transfer for a consideration significantly less than the greater of —

- (a) the prevailing market value of the property; or
- (b) the consideration paid by the defendant.

“money laundering offence” means –

- (i) an offence against:
 - (a) section 3 of this Act; or
 - (b) section 18 of this Act; or
 - (c) section 61 of the Proceeds of Crime Act, 1993; or
 - (d) sections 4,5,6(3), 7 and 8 of the Misuse of Drugs Act, Cap. 283; or
- (ii) an offence against:
 - (a) any foreign law specified by regulation under this Act; or
 - (b) any foreign law, whether or not it is specified by regulation under this Act which prescribes dealings in property which is the proceeds of crime, which, if it was committed in Antigua and Barbuda, would be an offence against this Act or any other law of Antigua and Barbuda.

In deciding whether an offence against any foreign law is a money laundering offence within the meaning of this definition, due regard should be given to differences in the form and usages of foreign laws and the meaning of any language used in such law should be construed broadly and not strictly.

“unlawful activity” means – an act or omission that constitutes an offence against a law in force in Antigua and Barbuda or against a law in force in a foreign country that would, if it was committed in Antigua and Barbuda, be an offence against a law of Antigua and Barbuda;

- (b) by repealing the definitions of “forfeiture”, “prescribed offence” and “Competent Authority”;

- (c) by repealing the definition of “instrumentality”, “money laundering”, “proceeds of crime” and substituting therefor the following —

“instrumentality” means property that is used in or in connection with or is intended to be used in any manner in or in connection with the commission of —

- (i) a money laundering offence; or
- (ii) an offence against subsection 18(1) or subsection 18(4) of this Act.

“money laundering” means —

- (a) engaging directly or indirectly, in a transaction that involves money, or other property, or
- (b) receiving, possessing, managing, investing, concealing, disguising, disposing of or bringing into Antigua and Barbuda any money, or other property,

knowing, or having reasonable grounds to suspect that the money, or other property, is derived, obtained or realised, directly or indirectly, from some form of unlawful activity.

“proceeds” in relation to an offence, means any property that is derived or realised, directly or indirectly by any person from the commission of the offence.

“proceeds of crime” — means:

- (a) proceeds of a criminal offence against the laws of Antigua and Barbuda; or
- (b) any property that is derived or realised, directly or indirectly by any person from acts or omissions that:
 - (i) occurred outside Antigua and Barbuda; and
 - (ii) would, if they had occurred in Antigua and Barbuda, have constituted an offence against the laws of Antigua and Barbuda.

Insertion of
Sections 2A, 2B,
2C 2D, 2E, 2F.

3. The principal Act is amended by inserting after section 2 the following —

2A (1) For the purposes of Part IV of this Act a person is convicted of an offence if:

- (i) he is convicted of the offence by a court either in Antigua and Barbuda or elsewhere;
- (ii) a court, with the consent of the person, takes the offence, of which the person has not been found guilty, into account in passing sentence on the person for another offence;
- (iii) a declaration is made by the High Court pursuant to section 2B that the person has absconded in relation to the offence.

(2) In any proceeding related to the operation of this Act if the conviction of a person of a money laundering offence is in issue a certified copy or copy with an official stamp, of a certificate of conviction or judgement together with any translation of the said documents into English by a person fluent in the language used in the country in which the person was convicted shall be regarded as conclusive proof of the conviction of the person of the money laundering offence concerned and prima facie proof of any facts asserted and relied upon in the document.

2B (1) For the purposes of Part IV of this Act a person shall be taken to abscond in connection to a money laundering offence with which he has been charged in Antigua and Barbuda if:

- (a) an information is laid alleging the commission of the offence by the person;
- (b) a warrant for the arrest of the person is issued in relation to that information; and
- (c) one of the following occurs:

- (i) the person dies without the warrant being executed;
- (ii) at the end of the period of 6 months commencing on the day on which the warrant is issued:
 - (a) the person cannot be found; or
 - (b) the person is, for any other reason, not amenable to justice and, if the person is outside Antigua and Barbuda, extradition proceedings have not commenced;
- (iii) at the end of the period of 6 months commencing on the day on which the warrant is issued:
 - (a) the person is, by reason of being outside Antigua and Barbuda, not amenable to justice; and
 - (b) extradition proceedings have been commenced;

and subsequently those proceedings terminate without an order for the person's extradition being made.

(2) Upon application being made by the Supervisory Authority, and upon being satisfied that the provisions of subsection (1) are satisfied in respect of a person the High Court shall declare that the person has absconded and, for the purposes of Part IV of this Act only, is convicted of any money laundering offence of which the person has been charged in Antigua and Barbuda.

(3) For the purposes of Part IV of this Act a person shall be taken to abscond in connection with a money laundering offence with which he has been charged in a country other than Antigua and Barbuda if an affidavit is filed in the High Court that has been sworn by an authorised officer which deposes to the following - that:

- (a) a charge has been laid against the person for a money laundering offence;

- (b) a warrant for the arrest of the person has been issued in relation to that charge; and either
- (i) the person has died without the warrant being executed; or
 - (ii) at the end of the period of 6 months commencing on the day on which the warrant was issued the person cannot be found or is, for any other reason, not amenable to justice and no extradition proceedings have been commenced; or
 - (iii) at the end of the period of 6 months commencing on the day on which the warrant is issued the person is, by reason of being outside the country concerned, not amenable to justice; and that extradition proceedings have taken place which terminated without an order for the person's extradition being made.

(4) Upon application being made by the Supervisory Authority, and upon being satisfied that the provisions of subsection (3) are satisfied in respect of a person the High Court shall declare that the person has absconded and, for the purposes of Part IV of this Act only, is convicted of any money laundering offence of which the person has been charged in any foreign country.

(5) any affidavit filed in support of an application made pursuant to subsection (2) or (4) together with any document exhibited to it shall be accepted as proof of the contents thereof unless the court has strong grounds for declining to accept any assertion that is made in the affidavit or any document exhibited to it.

2C (1) "Property, or an interest in property, may be subject to the effective control of a person within the meaning of this Act whether or not the person has:

- (a) a legal or equitable estate or interest in the property; or

- (b) a right, power or privilege in connection with the property.

(2) Without limiting the generality of any other provision in this Act, in determining:

- (a) whether or not property, or an interest in property, is subject to the effective control of a person; or
- (b) whether or not there are reasonable grounds to suspect that property, or an interest in property, is subject to the effective control of a person;

regard may be had to:

- (c) shareholdings in, debentures over or directorships of a company that has an interest (whether direct or indirect) in the property;
- (d) a trust that has a relationship to the property; and
- (e) family, domestic and business relationships between persons having an interest in the property, or in companies of the kind referred to in paragraph (c) or trusts of the kind referred to in paragraph (d), and other persons.

(3) In determining whether property, or an interest in property is subject to the effective control of a person the court may lift the corporate veil of any company whether it is registered under the laws of Antigua and Barbuda or elsewhere.

2D For the purpose of an application under this Act, property in which the defendant has an interest includes –

- (1) any property that is, on the day when the first application is made under this Act in respect of that offence, subject to the effective control of the defendant; and
- (2) any property that was the subject of a gift from the defendant to another person within the

period of 6 years before the first application was made under this Act in respect of that offence.

- 2E For the purpose of this Act, two offences are related to one another if the elements of the two offences are substantially the same acts or omissions.
- 2F A person may be appointed as a trustee for the purposes of this Act if they are qualified to be appointed as a receiver/manager or liquidator of a foreign corporation pursuant to the Business Corporation Act, Cap. 222 (as amended).
- 2G For the purposes of any application under this Act -
- (a) any affidavit or statement of a relevant foreign authority which is relevant to an application under this Act shall be accepted as proof of the contents thereof;
 - (b) any document which is or purports to be a copy of a business record kept by a person, corporation or other entity in the ordinary course of business shall be accepted as proof of the contents thereof unless the court is satisfied that the contents of the document are false;
 - (c) any affidavit filed in support of an application made pursuant to this together with any document exhibited to it shall not be objected to or ruled inadmissible solely on the ground that it contains hearsay evidence;
 - (d) a court may take into account in determining the application any material that it thinks fit, including evidence given in any proceeding relating to the offence in reliance on the charging or conviction of which the application is made or any related offence, or other offence arising from the same facts, and for this purpose, the whole or any part of the record of evidence of those proceedings is admissible in evidence as if it were a record of evidence given on the hearing of the application;

4. Section 10 of the principal Act is repealed and substituted by the following —

Section 10
repealed and
repealed.

“The Minister shall appoint a person or persons to be known as the Supervisory Authority to supervise financial institutions and to carry out the function of the Supervisory Authority in accordance with this Act.”

5. Section 11 of the principal Act is amended by the addition of the following —

Section 11
Amended.

“(xi) shall exercise the powers and functions conferred on the Supervisory Authority by this Act to trace property that is the proceeds of offences against the laws of Antigua and Barbuda and elsewhere and to make application for the freezing and forfeiture of such property in accordance with the provisions of this Act.”

Section 13 of the principal Act is amended as follows —

- (a) by deleting from subsection (3) thereof the words “competent authority”;
- (b) by deleting from subsection (6) thereof the words “competent authority” and substituting the words “the relevant authority appointed under the International Business Corporation Act.”

Cap. 222

7. Section 17 of the principal Act is amended as follows —

Amendment of
section 17.

- (a) by deleting the words “a prescribed offence” and substituting therefor the words “an offence for which a person may be sentenced to a term of imprisonment for twelve months or more”;
- (b) by deleting the words “or of an offence under this Act”.

8. Section 18 of the principal Act is repealed and substituted by the following —

Section 18
repealed and
replaced.

Currency reporting. 18 (1)Where:

- (a) a person:

- (i) transfers currency of Antigua and Barbuda or foreign currency out of Antigua and Barbuda; or
 - (ii) transfers currency of Antigua and Barbuda or foreign currency into Antigua and Barbuda; and
- (b) the amount of the currency involved in the transfer is not less than US\$10,000 in value;

the person, subject to subsections (2), (3) and (4), commits an offence against this subsection unless a report in respect of the transfer has been made in accordance with this section.

(2) Where:

- (a) a person receives currency of Antigua and Barbuda or foreign currency transferred to the person from outside Antigua and Barbuda; and
- (b) the amount of currency is not less than US\$10,000 in value;

the person commits an offence against this subsection unless:

- (i) a report in respect of the transfer of the currency into Antigua and Barbuda has been made in accordance with subsection (1) before the transfer; or
- (ii) a report in respect of the receipt of the currency is given in accordance with this section before the period of 30 days commencing on the day of the receipt of the currency.

(3) A person who commits an offence against subsection (1) or (2) is liable, upon conviction, to a fine of fifty thousand dollars (\$50,000) or to imprisonment for not more than 2 years, or both.

(4) A report under this section shall:

- (a) be on the form approved in the regulations;

- (b) contain the reportable details in relation to the matter being reported;
- (c) be signed by the person making the report; and
- (d) be given to:
 - (i) if the transfer is effected by a person taking the currency out of, or bringing it into, Antigua and Barbuda with the person – a Customs Officer; and
 - (ii) in any other case – the Supervisory Authority or a customs officer.

(5) A report under this section, other than a report mentioned in subsection (2)(b)(i) or (ii), must be given:

- (a) if subsection (4)(d)(i) applies – at the time the currency concerned is brought into, or taken out of, Antigua and Barbuda; and
- (b) in any other case – at any time before the transfer takes place.

(6) For the purposes of subsection (5), if currency is taken out of Antigua and Barbuda by a person who sends or consigns the currency:

- (a) through the post to a place outside Antigua and Barbuda; or
- (b) to another person for carriage to a place outside Antigua and Barbuda by that other person or by a third person;

the time when the currency is taken out of Antigua and Barbuda is the time when it is irrevocably committed by the first mentioned person to the Post Office or to the other person, as the case may be.

(7) For the purposes of subsection (5)(a), the time at which currency is brought into Antigua and Barbuda by a person is:

(a) if the person:

- (i) transfers the currency into Antigua and Barbuda when a passenger on an aircraft, vessel or ship; and
- (ii) after disembarking, goes through an area set apart for customs officers to examine the passports and personal baggage of, and perform other duties in respect of, disembarking passengers and for such passengers to collect personal baggage;

as soon as the person reaches the place in that area at which customs officers examine personal baggage or, if the person does not go to that place, when the person leaves that area; or

(b) in any other case – the first opportunity after arrival in Antigua and Barbuda that the person has to make the report under this section.

(8) For the purposes of subsection (5)(a), the time at which currency is taken out of Antigua and Barbuda by a person is:

(a) if the person:

- (i) transfers the currency out of Antigua and Barbuda when a passenger on an aircraft, vessel or ship; and
- (ii) before embarking, goes through an area set apart for the examination of the passports and baggage of embarking passengers;

when the person is at the place in that area in which passports are examined; or

(b) in any other case – as soon as the person reaches the person who is to examine the person's passport in relation to the person leaving Antigua and Barbuda or, if there is no such examination, the last opportunity before leaving Antigua and Barbuda

that the person has to make the report under this section.

(9) Where a report under this section is made, the person to whom it is made shall, after receipt of the report, forward the report to the Supervisory Authority within 48 hours.

(10) For the purpose of this section, if a person:

- (a) arranges to leave Antigua and Barbuda on an aircraft, vessel or ship; and
- (b) for the purpose of leaving Antigua and Barbuda, goes towards an aircraft, vessel or ship through an area described in subsection (8)(a)(ii); and
- (c) either:
 - (i) takes currency into that area; or
 - (ii) has currency in his or her personal baggage; and
- (d) does not give a report about the currency when at the place described in that subsection;

the person is taken to have transferred the currency out of Antigua and Barbuda.

9. 18A (1)A Customs Officer, Police Officer or officer in the Coast Guard may seize and detain any currency if he or she has reason to suspect that it is an instrumentality of an offence against subsection 18(1) or 18(2) of this Act or is the proceeds of crime. Seizure and Detention of suspected currency.
- (2) Currency seized by virtue of this section shall not be detained for more than 7 days unless an order is made for its continued detention pursuant to subsection (3).
 - (3) An application may be made to a magistrate for an order authorising the continued detention of the seized currency for additional periods, not exceeding 6 months on each occasion, providing that the magistrate is satisfied that:

- (a) there are reasonable grounds for the suspicion referred to in subsection (1); and
- (b) that continued detention of the currency is justified while its origin or derivation is further investigated or consideration is given to the institution, whether in Antigua and Barbuda or elsewhere, of criminal proceedings against any person for an offence with which the currency is connected and provided that, in total, the currency is not detained for a period in excess of two years from the date of seizure, save that where a criminal proceeding against any person for an offence with which the currency is connected has commenced, the continuing detention of the currency may be ordered until the proceeding is completed .

(4) An application pursuant to subsection (3) may be made to a magistrate by the Supervisory Authority.

(5) Any currency subject to continued detention under subsection (3) shall, unless required as evidence of an offence, be delivered forthwith into the care of the Supervisory Authority who shall deposit it into a separate interest bearing account.

(6) An order made under subsection (3) shall remain in force until:

- (a) the expiration of the order;
- (b) the order is vacated by order of a court.

(7) Currency which is detained pursuant to an order made under subsection (3) may be released in whole or in part upon the order of a magistrate provided that the magistrate is satisfied that:

- (a) the grounds under which the currency was originally seized or continued to be detained no longer exist; or
- (b) the continued detention of the currency is no longer justified.

(8) An application under subsection (7) may be made by:

- (a) the person from whom the currency was seized; or
- (b) a person who, to the satisfaction of the magistrate, has an interest in the currency; or
- (c) the person, or one of the persons upon whose application the currency was detained; or
- (d) the Supervisory Authority.

(9) An order under subsection (7) may not be made while:

- (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 pursuant to section 18B of this Act, including any appeal therefrom, is pending.

10. 18B (1) An application for the forfeiture of any currency seized pursuant to section 18A(1) may be made to the Magistrates' Court upon the application of the Supervisory Authority.

Application to Magistrate to forfeit seized currency.

(2) Notice of an application pursuant to subsection (1) should be served upon the person from whom the currency was seized or any person that the applicant believes may have an interest in the currency by any one of the following means:

- (a) personal service upon the person;
- (b) service at the business address of counsel (if any) acting on behalf of the person;
- (c) service at the last known address, or place of business within the jurisdiction of the person;

- (d) in the case of a body corporate by service upon the registered or principal office of the body corporate;
 - (e) publication in the Gazette in Antigua and Barbuda; or
 - (f) publication in two consecutive issues of a local newspaper circulating in Antigua and Barbuda
- (3) Any person notified under subsection (2) and any other person who claims to have an interest in the seized currency are entitled to appear and to give evidence at the hearing of the application, but the absence of a person does not prevent the court from making a forfeiture order.
- (4) Upon hearing an application pursuant to subsection (1) and upon being satisfied that the seized currency is:
- (a) the proceeds of some form of unlawful activity; or
 - (b) an instrumentality of any offence (whether or not a person has been convicted of any offence);

the Court may, subject to subsection (5) order that all or part of the currency be forfeited to the Government of Antigua and Barbuda.

(5) In considering whether to make an order under subsection (4) in respect of all or part of the seized currency, the court may have regard to –

- (i) the use ordinarily made, or intended to be made of the currency; and
- (ii) the claim of any third party to an interest in the currency who shows to the satisfaction of the court that they were not involved or aware of any unlawful use or purpose with which the currency may have been associated.

(6) Any party to an application for forfeiture under subsection (1) may appeal to

the High Court by way of rehearing within 30 days of any order pursuant to subsection (4) being made.

11. 18C In sections 18, 18A and 18B:

Reportable details
and currency.

“reportable details” in relation to a matter being reported, means the details of the matter that are required to be reported that are prescribed in the regulations.

“currency” means cash or bearer negotiable financial instruments.

12. Section 19 of the principal Act is repealed and replaced by the following:

Section 19 repealed
and repealed.

Power to restrain
property

19 (1) Where a person (referred to in this Part as “the defendant”) –

- (a) has been convicted of a money laundering offence;
or
- (b) has been, or is about to be charged with a money laundering offence.

the Supervisory Authority may apply to the High Court for an order freezing property in which there is a reasonable suspicion that the defendant has an interest.

(2) Subject to subsection (3) an application referred to in subsection (1) may be made against one or more of the following:

- (a) specified property of the defendant;
- (b) all the property of or in the name of the defendant (including property acquired after the making of the order);
- (c) all the property of or in the name of the defendant (including property acquired after the making of the order) other than specified property;

- (d) specified property of a person other than the defendant.

(3) Where:

- (a) the money laundering offence of which the defendant has been convicted or charged falls within the definition of subparagraph (i) of the definition of money laundering offence the property in respect of which an application for a freezing order may be made pursuant to subsection (2) may be located in Antigua and Barbuda or anywhere else in the world;
- (b) the money laundering offence of which the defendant has been convicted or charged falls within the definition of subparagraph (ii) of the definition of money laundering offence the property in respect of which an application for a freezing order may be made pursuant to subsection (2) may only be located in Antigua and Barbuda.

(4) Where the Supervisory Authority applies to the High Court for an order under this section, the High Court may, subject to section 19A, by order:

- (a) direct that the property, or such part of the property as is specified in the order, is not to be disposed of, or otherwise dealt with, by any person, except in such manner and in such circumstances (if any) as are specified in the order; and
- (b) if the High Court is satisfied that the circumstances so require – direct a trustee to take custody and control of the property, or of such part of the property as is specified in the order.

(5) The High Court may, without limiting the generality of its power under this section to impose such conditions upon a freeze order as it sees fit, make provision for meeting, out of property or a specified part of the property, all or any of the following:

- (a) the defendant's reasonable living expenses (including the reasonable living expenses of the defendant's dependants (if any) and reasonable business expenses;
- (b) the defendant's reasonable expenses in defending a proceeding under this Act or the criminal charge to which this proceeding relates.

(6) The following restrictions apply to orders making provision for the payment of expenses of the defendant or dependants of the defendant pursuant to subsection (5):

- (a) no provision is to be made for expenses except to the extent (if any) that the High Court is satisfied that the defendant cannot meet the expenses concerned out of the defendant's unfrozen property;
- (b) no provision is to be made in relation to any particular interest in frozen property if a reasonable suspicion exists that the interest is unlawfully acquired property;
- (c) no provision is to be made unless a statement pursuant to section 19B(1)(e) has been filed in the High Court;
- (d) no provision is to be made unless the High Court is satisfied that the defendant has taken all reasonable steps to bring all of his or her interests in property within the jurisdiction of the Court;
- (e) any provision for the payment of expenses must specify the particular interest in property out of which the expenses concerned may be met.

(7) For the purpose of this section a defendant's unfrozen property is any interest in property of the defendant:

- (a) that is not subject to a freeze order under this Act;
or

- (b) that the High Court is satisfied is not within the Court's jurisdiction (whether or not it is subject to a freeze order under this Act).

(8) Where a trustee is given a direction under subsection (4)(b) in relation to property, the trustee may do anything that is reasonably necessary for the purpose of preserving the property including, without limiting the generality of this:

- (a) becoming a party to a civil proceeding affecting the property;
- (b) ensuring that the property is insured;
- (c) if the property consists, wholly or partly, of securities or investments – realising or otherwise dealing with the securities or investments; and
- (d) if the property consists wholly or partly of a business:
- (i) employing, or terminating the employment of, persons in the business; and
- (ii) doing any other thing that is necessary or convenient for carrying on the business on a sound commercial basis.
- (c) if the property consists wholly or partly of shares the trustee may exercise the rights attaching to the shares as if he or she were the registered holder of the shares to the exclusion of any rights held by the registered holder.

Conditions for
making freezing
order.

13. 19A (1) If the defendant has not been convicted of the money laundering offence the High Court shall not make a freeze order unless:

- (a) the application for the order is supported by an affidavit of an authorised officer stating that he suspects that the defendant committed the offence; and

- (b) the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for holding that suspicion.

(2) where the application is made in reliance on the proposed charging of the defendant with the offence concerned, the court shall not make a freeze order unless it is satisfied that the defendant will be charged with the offence or a related offence within 30 days.

(3) Where the application seeks a freeze order against the specified property of a person other than the defendant the court shall not make a freeze order against the property unless:

- (a) the application is supported by an affidavit of an authorised officer stating that
- (i) the officer suspects that the property is an instrument of the offence; or
 - (ii) the officer suspects that defendant has an interest in the property; and
- (b) the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for holding that suspicion.

(4) The High Court may make a freeze order in respect of property whether or not there is any risk of the property being disposed of, or otherwise dealt with, in such manner as would defeat the operation of this Act.

(5) The defendant or any person who is believed by the Supervisory Authority to have an interest in property the subject of an order under subsection 19(4) shall be notified by the Supervisory Authority of an order made pursuant to section 19(4) by one or more of the following methods:

- (a) personal service upon him;

- (b) service at the business address of counsel (if any) acting on his behalf;
- (c) service at his last known address, or place of business within the jurisdiction;
- (d) in the case of a body corporate by service upon the registered or principal office of the body corporate;
- (e) publication in the Gazette in Antigua and Barbuda; or
- (f) publication in two consecutive issues of a local newspaper circulating in Antigua and Barbuda; or
- (g) without limiting the generality of paragraph (a), by effecting service upon him in a foreign jurisdiction by or through a foreign authority.

within 14 days of the order, or such further time that is allowed at the discretion of the High Court.

High Court to
make ancillary
orders.

14. 19B (1) Where the High Court makes a freeze order, the Court may, at any time when it makes the freeze order or at any later time, make any ancillary orders that the Court considers appropriate and, without limiting the generality of the Court's power, the Court may make any one or more of the following orders:

- (a) an order varying the property to which the freeze order relates;
- (b) an order varying a condition to which the freeze order is subject;
- (c) an order for the examination on oath before the Court of any person, including:
 - (i) a person whose property is the subject of the restraining order (in this section called the "owner"); or
 - (ii) a person who is the defendant within the meaning of section 19 in relation to the of-

fence to which the freeze order relates (in this subsection called the “defendant”);

about the affairs (including the nature and location of any property) of:

- (iii) anyone else who is either the owner or the defendant or both; and
 - (iv) if the person to be examined is either the owner or the defendant or both – that person;
- (d) an order directing
- (i) the owner; or
 - (ii) if the owner is not the defendant – the defendant; or
 - (iii) if the owner or the defendant is a body corporate – a director of the body corporate specified by the court:
- to give to:
- (iv) where the freeze order is, or includes, an order made under section 19(4)(b) – the trustee; and
 - (v) in any other case – the applicant for the ancillary order or such other person as the court directs;

within a period specified in the ancillary order, a statement sworn on oath setting out such particulars of the property, or dealings with the property, of the owner or the defendant, as the case may be, and as the court thinks proper;

- (e) where the freeze order directed a trustee to take custody and control of property:
- (i) an order regulating the manner in which the trustee may exercise his or her powers or perform duties under the freeze order;

(ii) an order determining any question relating to the property to which the freeze order relates, including any question relating to:

- (a) the liabilities of the owner; or
- (b) the exercise of the powers, or the performance of the duties, of the trustee with respect to the property to which the restraining order relates;

(2) An order under subsection (1) may be made on application by:

- (a) the Supervisory Authority;
- (b) the owner;
- (c) where the freeze order directed a trustee to take custody and control of property – the trustee; or
- (d) with the leave of the court – any other person.

(3) An ancillary order made in relation to a freeze order does not cease to have effect merely because the freeze order, or part of it, ceases to be in force.

(4) Where:

- (a) a person (in this subsection called the “defendant”) has been convicted of, or has been charged or is about to be charged with, a money laundering offence;
- (b) the High Court, in reliance on the conviction, charging or proposed charging makes a freeze order against property; and
- (c) a person having an interest in the property applies to the court for a variation of the order to exclude the person’s interest from the order;

the High Court shall grant the application if:

- (d) where the applicant is not the defendant and the freeze order was not made by virtue of section 19A(3) - the High Court is satisfied that:
- (i) the applicant was not, in any way, involved directly or indirectly in the commission of the offence; and
 - (ii) the applicant had no knowledge of the commission of the offence or of any illegal use to which instrumentalities the subject of the application may have been put (providing that this lack of knowledge was not the result of wilful blindness); and
 - (iii) the applicant's interest in the property was not acquired by means of a gift from the defendant or any person or entity under the effective control of the defendant; and
 - (iv) where the applicant acquired the interest at the time or after the commission, or alleged commission, of the offence - the applicant acquired the interest without knowing, or in circumstances such as not to arouse a reasonable suspicion, that the property was an instrumentality of the offence;
- (e) where the applicant is not the defendant and the freeze order was made by virtue of section 19A(3) - the High Court is satisfied that:
- (i) the applicant was not, in any way, involved in the commission of the offence; and
 - (ii) the applicant's interest in the property is not subject to the effective control of the defendant; and
 - (iii) the applicant had no knowledge of the commission of the offence or of any illegal use to which instrumentalities the subject of the application may have been put (providing that this lack of knowledge was not the result of wilful blindness); and

- (iv) the applicant's interest in the property was not acquired by means of a gift from the defendant or any person or entity under the effective control of the defendant; and
- (v) where the applicant acquired the interest at the time or after the commission, or alleged commission, of the offence – the applicant acquired the interest without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was an instrumentality of the offence.

(5) Where:

- (a) a person (in this subsection called the "defendant") has been convicted of, or has been charged with or is about to be charged with, a money laundering offence;
- (b) the High Court, in reliance on the conviction, the charging or proposed charging, makes a freeze order against the property;
- (c) the defendant has an interest in the property;
- (d) the defendant applies to the High Court for an order under this subsection in relation to the interest; and
- (e) the court is satisfied that:
 - (i) the property was not used in, or in connection with, any unlawful activity and was not derived, directly or indirectly, by any person from any unlawful activity; and
 - (ii) the property was not related in any way, directly or indirectly, to any unlawful activity including (and without limiting the generality of the foregoing) any money laundering scheme established in Antigua and Barbuda or elsewhere.

the High Court may order that the freeze order, to the extent to which it relates to the interest in property the subject of the application, be discharged.

(6) The onus of proof in an application made pursuant to subsections (4) or (5) lies upon the person seeking relief under those subsections.

(7) Where a person is examined before the High Court pursuant to an order under paragraph (1)(c), the person is not excused from answering a question when required to do so by the court on the ground that the answer to the question might tend to incriminate the person or make the person liable to forfeiture or a penalty.

(8) Where a person is examined before the High Court pursuant to an order under paragraph (1)(c), a statement or disclosure made by the person in answer to a question put in the course of the examination, and any information, document or thing obtained as a direct or indirect consequence of the statement or disclosure, is not admissible against the person in any criminal proceedings except a proceeding for giving false testimony in the course of the examination.

(9) A person whom an order under subsection (1)(d) directs to give a statement is not excused from giving the statement, or from setting out particulars in the statement, on the ground that the statement or particulars, as the case may be, might tend to incriminate the person or make the person liable to a forfeiture or penalty.

(10) Where a person gives a statement under an order made under paragraph (1)(d), neither the statement, nor any information, document or thing obtained as a direct or indirect consequence of the statement is ad-

missible against the person in any criminal proceedings except a proceeding in respect of the falsity of the statement.

Section 20
repealed and
replaced.

15. Section 20 of the principal Act is repealed and substituted by the following —

20(1) If:

- (a) a person (in this section called the “defendant”) is convicted of a money laundering offence;
- (b) a freeze order is or was granted in respect of property (whether property of the defendant or of some other person) in reliance on:
 - (i) the defendant’s conviction of that offence; or
 - (ii) the charging or proposed charging of the defendant with that offence or a related offence;
- (c) the freeze order, to the extent to which it relates to the property, is not the subject of a discharging order under section 19B(5);

subject to subsection (2) the frozen property is forfeited to the Crown upon the expiry of 90 days after

- (i) the making of the freeze order; or
- (ii) the conviction of the defendant,

whichever is later.

(2) If, within the period of 90 days referred to in subsection (1), an application has been made for an order under section 19B(5) in respect of frozen property, the property is forfeited to the Crown —

- (a) if the application is refused or dismissed, at the end of the period during which the person may appeal against the refusal or dismissal or, if such an appeal is lodged, when the appeal is abandoned or finally determined without the order having been made;

- (b) if the application is withdrawn or struck out, on that withdrawal or striking out.

16. Sections 21 of the principal Act is repealed and substituted by the following -

Section 21
repealed and
replaced.

21(1) If property is forfeited to the Crown under section 20, a person (other than the defendant) who claims to have had an interest in the property immediately before it was forfeited may, subject to subsections (2) and (4), apply to the High Court for an order under section 22.

(2) The application must, subject to subsection (3), be made before the end of the period of 60 days when the property is forfeited to the Crown.

(3) The High Court may grant a person leave to apply after the end of the period referred to in subsection (2) if it is satisfied that the delay in making the application is not due to neglect on the part of the applicant.

(4) An application for an order under section 22 in relation to an interest in property must not be made by a person who was given notice of -

(a) proceedings on the application for the relevant freeze order; or

(b) the making of the relevant freeze order —

except with the leave of the court.

(5) The High Court may grant a person leave under subsection (4) to make an application if the court is satisfied that the person's failure to seek to have the property excluded from the relevant freeze order was not due to neglect on the part of the applicant.

(6) An applicant must give written notice of the application, and of the grounds on which it is made —

(a) to the Supervisory Authority; and

- (b) to any person whom the applicant has reason to believe had an interest in the property immediately before it was forfeited.

(7) Any person notified under subsection (6) is entitled to appear and give evidence at the hearing of the application but the absence of that person does not prevent the court from making an order under section 22.

Section 22
repealed and
replaced.

17. Section 22 of the principal Act is repealed and substituted by the following —

(1) On an application made under section 21, the High Court may make an order excluding property in which the applicant claims an interest from the operation of section 20 if the court is satisfied that —

- (a) the applicant was not, in any way, involved in the commission of the offence; and
- (b) the applicant's interest in the property is not subject to the effective control of the defendant; and
- (c) the applicant had no knowledge of the commission of the offence or of any illegal use to which instrumentalities the subject of the application may have been put (providing that this lack of knowledge was not the result of wilful blindness); and
- (d) the applicant's interest in the property was not acquired by means of a gift from the defendant or any person or entity under the effective control of the defendant; and
- (e) where the applicant acquired the interest at the time or after the commission, or alleged commission, of the offence — the applicant acquired the interest without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was an instrumentality of the offence.

Amendment of
section 23.

18. Section 23 of the principal Act is amended by deleting the words "competent authority" in subsections (1), (2), (4), (5)

and (5a) and the substitution therefor the words "Supervisory Authority in consultation with the central authority for Antigua and Barbuda under any mutual legal assistance treaty".

19. Section 27 of the principal Act is amended by deleting the words "competent authority" in subsection (1) and substituting therefor the words "Supervisory Authority".

Amendment of
section 27.

20. Section 28 of the principal Act is amended by inserting after section 28 the following—

Amendment of
section 28.

"Determination of
questions of fact.

28A Any question of fact to be decided by a court on an application under this Act is to be decided on the balance of probabilities."

Proceeding on
application to be
treated as civil.

28B (1) Proceedings on an application under this Act are civil in nature, except as otherwise provided in this Act.

(2) The fact that criminal proceedings may have been instituted or commenced is not a ground on which a court may stay proceedings under this Act.

Award of cost.

28C (1) Costs may only be awarded in accordance with this section.

(2) If —

(a) a person brings, or appears at, proceedings under this Act before a court in order to have property of the person excluded from

(i) a freezing order; or

(ii) a detention order; or

(iii) a forfeiture order pursuant to section 18B(4);
or

(iv) the operation of section 20; and

(b) the person is successful in those proceedings; and

- (c) the Court is satisfied that the person was not involved in any way in the commission of the offence in respect of which the freezing, detention or forfeiture order was made or in respect of which section 20 operated—

the Court may order the applicant for the forfeiture order or freezing order to pay the legal costs incurred by the person in connection with the proceedings or any part of those costs that is determined by the Court.

Section 30
repealed and
replaced.

21. Section 30 of the principal Act is repealed and the following substituted:

(1) Subject to subsection (2), the amendments to Part IV do not apply to a person's conviction of a money laundering offence if the person was convicted of the offence before the commencement of this Act;

(2) Subject to subsection (1), the amendments to Part IV apply to an offence committed or suspected to have been committed at any time (whether before or after the commencement of this Act);

(3) The amendments to Part III apply from the commencement of this Act.

Amendment of
First Schedule.

22. The First Schedule to the principal Act is amended by adding the following paragraphs after paragraph 15:

16. Casinos
17. Internet gambling
18. Sports betting

Repeal of Second
Schedule.

23. The Second Schedule to the principal Act is repealed.

No. 6 of 2001. *The Money Laundering (Prevention)
(Amendment) Act, 2001.*

33 ANTIGUA
AND
BARBUDA

Passed the House of Representatives
this 11th day of April, 2001.

Passed the Senate this 26th day
of April, 2001.

B. Harris
Speaker.

M. Percival
President.

S. Walker
Clerk to the House of Representatives.

S. Walker
Clerk to the Senate.

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