



[L.S.]

I Assent,

James B. Carlisle,
Governor-General.

16th December, 2002.

ANTIGUA AND BARBUDA

No. 17 of 2002

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

[27th December 2002]

ENACTED by the Parliament of Antigua and Barbuda as
follows —

1. This Act may be cited as the Money Laundering (Prevention) (Amendment) Act 2002. 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 — Interpretation.

(a) by inserting at the end of the definition of "money laundering" the following words —

"or is an instrumentality"

(b) by deleting paragraph (i)(a) and (b) of the definition of "money laundering offence" and substituting the following —

6. Section 2G of the principal Act is **amended** as follows — **Amendment of section 2G.**

- (a) by deleting **from** paragraph (d) the words "the charging or conviction of; and
- (b) by inserting of the words "or money laundering activity" after the word "offence" wherever it occurs in paragraph (d).

7. The principal Act is amended by inserting after section 2G the following — **Insertion of section 2H.**

"Money laundering activity explained.

2H. In this Act a reference to money laundering activity by a person is a reference to anything done by the person that at the time was a money laundering offence whether or not the person has been charged with the offence and, if charged —

- (a) has been tried; or
- (b) has been tried and acquitted; or
- (c) has been convicted (even if the conviction has been quashed or set aside)."

8. Section 11 of the principal Act is amended as follows — **Amendment of section 11.**

- (a) by deleting from paragraph (iii) the words "section 12(i)" and substituting the words "section 12(1)."
- (b) by repealing paragraph (v).

9. The principal Act is amended by inserting after section 11 the following — **Insertion of section 11A.**

"Opening or Operating an account in a false name prohibited.

11A. (1) A person shall not open an account with a financial institution in a false name.

(2) A person shall not operate an account with a financial institution in a false name.

- (b) a person operates an account in a false name if the person does any act or thing in relation to the account (whether by way of making a deposit or withdrawal or by way of communication with the financial institution concerned or otherwise) and, in doing so, uses a name other than a name by which the person is commonly known; and
- (c) an account is in a false name if it was opened in a false name, whether before or after the commencement of this paragraph.

10. Section 12 of the principal Act is repealed and substituted by the following —

Repeal and replacement of section 12.

"Retention of financial records.

12. (1) A financial institution shall, subject to section 12A, retain each customer generated financial transaction document in its original form for the minimum retention period applicable to the document.

(2) Subject to subsection (3), a financial institution shall retain, or retain a copy of, each financial transaction document that is not a customer generated financial transaction document the retention of which is necessary to preserve a record of the financial transaction concerned for the minimum retention period applicable to the document.

(3) Subsection (2) does not apply to a financial transaction document that relates to a single deposit, credit, withdrawal, debit or transfer of an amount of money that does not exceed \$1,000 or such higher amount as is prescribed by the regulations for the purposes of this subsection.

- (vi) an application by a person for a loan from the institution, that is given to the institution by or on behalf of the person whether or not the document is signed by or on behalf of the person.

"financial transaction document" in relation to a financial institution, means any document that relates to a financial transaction carried out by the institution in its capacity as a financial institution and, without limiting the generality of this, includes a document relating to —

- (a) the opening, operating or closing of an account held with the institution; and
- (b) the opening or use of a deposit box held by the institution.

"minimum retention period in relation to a financial transaction document or a customer generated financial transaction document means —

- (a) if the document relates to the opening of an account with the institution - the period of six years after the day on which the account is closed;
- (b) if the document relates to the opening by a person of a deposit box held by the institution — the period of six years after the day on which the deposit box ceases to be used by the person; or
- (c) in any other case the period of six (6) years after the day on which the transaction takes place."

12. Section 13 of the principal Act is amended as follows — Amendment of section 13.

(a) by inserting after subsection (2) the following —

“(2A) The question whether a reasonable suspicion for the purpose of subsection (2) should have been formed, shall be determined objectively, having regard to all the facts and surrounding circumstances;”

(b) by repealing subsection (6) and substituting the following —

“(6) A **financial** institution or any director or employee of a financial institution who fails to comply with this section commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars (\$50,000.00) or to a term of imprisonment not exceeding six months or both and in addition the licence may be suspended or revoked by the appropriate Regulatory Authority.”

(c) by repealing subsection (7).

13. The principal Act is amended by repealing section 15 and substituting the following — Amendment of section 15.

"Property tracking and monitoring orders.

15. Upon the application by the Supervisory Authority, a Judge of the High Court, upon being satisfied that there are reasonable grounds for believing that a person (referred to in this section as "the defendant") is committing, has committed or is about to commit a money laundering offence or has engaged or is about to engage in money laundering activity, may make an order —

(i) that any person reasonably believed to be in possession or control of any document relevant to —

(a) identifying, locating or quantifying any property of the defendant; or

"(9) The Supervisory Authority may direct a **financial** institution in writing to freeze property for a period of **up to 7** days whilst it makes application pursuant to subsection (1) for a freeze order."

Amendment of
section 19A.

18. Section 19A of the principal Act is amended as follows —

- (a) by repealing subsections (1) and (2) and substituting the following—

"Procedure for
dealing with freeze
order application.

"(1) Where an application is made pursuant to paragraph 19(1)(a), the High Court shall make a freeze order.

(1A) Where an application is made pursuant to paragraph 19(1)(b) 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.

(1B) Where an application is made pursuant to paragraph 19(1)(c) 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 has engaged in money laundering activity; 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 a freeze order is made upon the basis that —

- (a) the defendant has been charged or is about to be charged with a money laundering offence; or
- (b) the defendant is suspected of having engaged in money laundering activity;

the freeze order will cease to have effect thirty (30) days after it is made unless by that time the defendant has been charged with a money laundering offence, or an application for a civil forfeiture order or civil proceeds assessment order has been filed.

- (c) in paragraph (a)(i) of subsection (3), by deleting the words "instrument of the offence" and substituting the word "instrumentality".
- (d) by repealing subsection (5) and substituting the following —

"(5) The Supervisory Authority shall, in accordance with the manner prescribed in section 28D, give at least fourteen days notice of an order made pursuant to subsection 19(4) to the defendant and to any other person the Supervisory Authority has reason to believe may have an interest in the property."

Amendment of
section 19B.

19. Section 19B of the principal Act is amended as follows —

- (a) in paragraph (1)(c)(i) by deleting the words "restraining order" and substituting the words "freeze order;"
- (b) in subsection (4), by repealing paragraphs (a) and (b) and substituting the following —
 - "(a) a person (in this subsection called the defendant) has been —
 - (i) convicted of a money laundering offence; or
 - (ii) charged with a money laundering offence or is about to be charged with a money laundering offence; or
 - (iii) joined as a defendant in an application pursuant to section 20A or 20B or is about to be joined as a defendant in such an application;
 - (b) the High Court has made a freeze order against any property under section 19; and"
- (c) in subsection (4) by deleting the words "of the offence" after the word "instrumentality" in subparagraphs (d)(iv) and (e)(v) and inserting the words "or money laundering activity" after the word "offence" wherever it occurs.
- (d) in subsection (5), by repealing paragraphs (a) and (b) and substituting the following:
 - "(a) a person (in this subsection called the defendant) has been —
 - (i) convicted of a money laundering offence; or
 - (ii) charged with a money laundering offence or is about to be charged

(3) A finding of the High Court for the purposes of subsection (2) need not be based on a finding as to the commission of a particular offence, and can be based on a **finding** that some offence or other constituting a money laundering activity was committed.

(4) When a civil forfeiture order is made pursuant to this section it must be made in respect of specified interests in property.

(5) The reference in subsection (2) to a period of six (6) years includes a reference to a period that began before the commencement of this section.

(6) The quashing or setting aside of a conviction for a money laundering offence does not affect the validity of a civil forfeiture order based on the same conduct that was made before or after the conviction was quashed or set aside.

(7) The making of a civil forfeiture order under this section does not prevent the making of a civil proceeds assessment order which assesses the value of the proceeds of the money laundering activity on which the civil forfeiture order is based.

(8) The Supervisory Authority shall, in accordance with the manner prescribed in section 28D, give at least fourteen days notice of an application made under this section to the defendant and to any other person he has reason to believe may have interest in the property subject to the application.

(9) Any person notified of an application pursuant to this section is entitled to appear and give evidence at the hearing of the application, but the failure or absence of that person to appear and give evidence does not prevent the court from making an order under subsection (2).

upon which the civil proceeds assessment order was made.

(8) The Supervisory Authority shall, in accordance with the manner prescribed in section 28D, give at least fourteen days notice of an application made pursuant to this section to the defendant and to any other person the Supervisory Authority has reason to believe may have interest in the property.

(9) Any person notified of an application pursuant to this section is entitled to appear and give evidence at the hearing of the application, but the failure or absence of that person to appear and give evidence does not prevent the court from making an order under subsection (2).

(10) A civil proceeds assessment order is a debt payable by the defendant to the Crown and is recoverable as such.

(11) If an order under this section is made against a dead person, subsection (10) has effect before the final distribution of the estate as if the person had died the day after the making of the order.

(12) The amount recovered under a civil proceeds assessment order is to be processed in accordance with section 20D.

(13) The High Court may, at the time it makes a civil proceeds assessment order or at any later time, make any ancillary orders that the Court may consider appropriate.

**Matters to be
considered in
making an order
under section
20B.**

20C. (1) For the purpose of making a civil proceeds assessment order under section 20B in relation to a person in this section referred to as ("the defendant"), the High Court shall have regard to the following matters —

- (a) the money, or the value of any interest in property other than money, directly or indirectly acquired by —
 - (i) the defendant; or
 - (ii) another person at the request, or by the direction, of the defendant,as a result of the money laundering activity;
- (b) the value of any service, benefit or advantage provided for —
 - (i) the defendant; or
 - (ii) another person at the request, or by the direction, of the defendant,as a result of the money laundering activity;
- (c) the value of the defendant's property before and after the money laundering activity;
- (d) the defendant's income and expenditure before and after the money laundering activity.

(2) If evidence is given at the hearing of an application for a civil proceeds assessment order that the value of the defendant's property after a money laundering activity or money laundering activities exceeded the value of the defendant's property before the activity or activities, the High Court is to treat the excess as proceeds derived by the defendant **from** the money laundering activity or activities, except to the extent (if any) that the

High Court is satisfied the excess was due to causes unrelated to the money laundering activity or activities.

(3) If evidence is given at the hearing of an application for a civil proceeds assessment order of the amount of the defendant's expenditure during the period of six years before the making of the application for the order, the High Court is to treat any such amount as proceeds derived by the defendant from the money laundering activity or activities, except to the extent (if any) that the High Court is satisfied the expenditure was from income, or money from other sources, unrelated to any money laundering activity or activities.

(4) The High Court is not to take expenditure into account under subsection (3) to the extent that the Court is satisfied that it resulted in the acquisition of property the value of **which** is taken into account under subsection (2).

(5) In making **an** assessment as provided by this section **the** High Court shall **make** no allowance for **the** following —

- (a) expenses or outgoings incurred by the defendant in relation to the money laundering activity or activities;
- (b) the value of any proceeds derived as agent for or otherwise on behalf of some other person (whether or not any proceeds are received by that other person).

(6) This section applies to, and in relation to —

- (a) property in **which** the defendant has **an** interest, either within or outside Antigua and Barbuda;

\$100,000 or to a term of imprisonment not exceeding two (2) years or both.

(3) It is a defence to a charge under subsection (1) if the defendant can prove, that he or she had no notice that the interest was forfeited to the Crown and no reason to suspect that it was forfeited.

(4) If an interest in property is disposed of or otherwise dealt with in contravention of this section and the disposition or dealing was either not for sufficient consideration or not in favour of a person at arms length, acting in good faith, the disposition is void.

(5) It is not a contravention of this section if an interest in property is disposed of or dealt with in accordance with an order of the High Court or the written directions of the **Supervisory Authority**.

Property in effective control of a person subject to civil proceeds assessment order.

20F. (1) Upon the application of the **Supervisory Authority, the High Court** shall, if it is of the opinion that an interest in property **is** the subject of the effective control of a person in relation to whom the court has made a civil proceeds assessment order, make an order declaring that the interest is available to satisfy the order to the extent that other property is not readily available for that purpose.

(2) The Supervisory Authority shall, in accordance with the manner prescribed in section **28D**, give at least fourteen days notice of **an** application made pursuant to subsection (1) to the defendant and to any other person that the Supervisory Authority believes may have an interest in the property."

24. The principal Act is amended by inserting the following Part at the head of section 21 — **Insertion of Part IV E.**

"PART IV E PROTECTION OF THIRD PARTIES"

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Amendment of section 21. 25. Section 21 of the principal Act is amended by deleting the words "section 20" and substituting the words "sections 20 and 20A".

Amendment of section 22. 26. Section 22(1) of the principal Act is amended by inserting after the word "offence" wherever it occurs, the words "or money laundering activity".

Amendment of section 23. 27. Section 23(2) of the principal Act is amended by deleting the words "sections 19 and 20" and substituting the words "Parts IVA or IVB".

Amendment of section 28. 28. Section 28 of the principal Act is amended by deleting therefrom the words "penalties or forfeitures" and "or the cause of action accrued".

Amendment of section 28C. 29. Section 28C of the principal Act is amended as follows—

(a) in subparagraph (iii) of subsection (2)(a) by inserting after the words "18B(4)" the words "or section 20A";

(b) in paragraph (iv) of subsection (2)(a), by deleting the word "and" and substituting the word "or" and by inserting the following paragraph —

"(v) a declaration pursuant to section 20F;
and"

(c) by deleting paragraph (2)(c) and substituting of the following —

"(c) the Court is satisfied that the person was not involved in any way in the commission of the offence or money laundering activity in respect of which the freezing, detention, civil proceeds assessment order, civil forfeiture order or forfeiture order was made or in respect of which section 20 operated —"

Insertion of section 28D.

30. The principal Act is amended by inserting after section 28C the following —

“Procedure for giving notice of certain applications and orders.

28D. Notice to any person —

- (a) of an application made pursuant to sections 2B, 18B(2), 19(1A), 20(A), 20B(1) or 20F(3); or
- (b) of an order pursuant to section 19A(5),

shall be given by the Supervisory Authority by one or more of the following methods:

- (a) personal service on 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;
- (f) publication in two consecutive issues of a local newspaper circulating in Antigua and Barbuda;
- (g) without limiting the generality of paragraph (a), by effecting service upon him in a foreign jurisdiction by or through a foreign authority.

31. Section 30 of the principal Act is amended by deleting the words "PART IV" and substituting the words "PART IVA".

**Amendment of
Section 30.**

