

## Anti-Terrorism Act, 2002

### PART I Preliminary

1. This Act may be cited as the Anti-Terrorism Act, 2002.

2. (1) In this Act,

"Convention" means the International Convention for the Suppression of the Financing of Terrorism adopted by the General Assembly of the United Nations on 9th December, 1999 set out in the First Schedule;

"Commissioner" means the Commissioner of Police;

"Court" means the High Court;

"entity" means an incorporated or unincorporated body;

"freeze" means to restrain any funds or dealing in funds;

"funds" means

(a) assets of every kind, whether tangible or intangible, movable or immovable, however acquired; and

(b) legal documents or instruments in any form, including electronic or digital, evidencing title to or interest in such assets as bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit;

"proceeds" means any funds derived from or obtained, directly or indirectly, through the commission of an offence set out in section 3 or 4;

"State or government facility" means any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.

### PART II Terrorism

3. (1) A person who in or outside Barbados carries out

(a) an act that constitutes an offence under or defined in any of the Treaties listed in the Third Schedule; or

Offence of terrorism.

(b) any other act

(i) that has the purpose by its nature or context, to intimidate the public or to compel a government or an international

organization to do or to refrain from doing any act; and

(ii) that is intended to cause

(A) death or serious bodily harm to a civilian or in a situation of armed conflict, to any other person not taking an active part in the hostilities;

(B) serious risk to the health or safety of the public or any segment of the public;

(C) substantial property damage, whether to public or private property, where the damage involves a risk of the kind mentioned in sub-paragraph (B) or an interference or disruption of the kind mentioned in subparagraph

(D); or

(D) serious interference with or serious disruption of an essential service, facility or system, whether public or private, not being an interference or disruption resulting from lawful advocacy, or from protest, dissent or stoppage of work and not involving a risk of the kind mentioned in sub-paragraph (B),

is guilty of the offence of terrorism and on conviction on indictment

(c) where death ensues and where that act would have constituted the offence of murder or treason prior to the commencement of this Act, shall be sentenced to death; or

(d) in any other case, is liable to imprisonment for life.

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(2) A person who

(a) aids, abets, counsels, procures, incites or solicits the commission of an offence; or

(b) conspires with another or others to commit an offence under subsection (1) is liable on conviction on indictment to be punished as a principal offender under that subsection.

(3) For the avoidance of doubt, section 12(1) of the Constitution is amended by paragraph (c) of subsection (1) to the extent necessary to give effect to that sub-paragraph.

Financing of Terrorism

4. (1) A person who in or outside Barbados directly or indirectly, unlawfully and wilfully,

(a) provides or collects funds; or

(b) provides financial services or makes such services available to persons

with the intention that the funds or services are to be used or with the knowledge that the funds or services are to be used in full or in part, in order to carry out

(i) an act that constitutes an offence under or defined in any of the Treaties listed in the Third Schedule; or

(ii) any other act

(A) that has the purpose by its nature or context, to intimidate the public or to compel a government or an international organization to do or to refrain from doing any act; and

(B) that is intended to cause

(aa) death or serious bodily harm to a civilian or in a situation of armed conflict, to any other person not taking an active part in the hostilities;

(bb) the risk, damage, interference or disruption of the kind mentioned in sub-paragraph (B), (C) or (D) of section 3(1) as the case may be,

is guilty of an offence and is liable on conviction on indictment to imprisonment for a term of 25 years.

(2) For an act to constitute an offence under subsection (1), it is not necessary to prove that the funds or the financial services were actually used to carry out the offence.

(3) A person who

(a) aids, abets, counsels, procures, incites or solicits the commission of an offence; or

(b) conspires with another or others to commit an offence under subsection (1) is liable on conviction on indictment to be punished as a principal offender under that subsection.

5. Where an offence referred to under section 3 or 4 is committed by a person responsible for the management or control of an entity located or registered in Barbados or in any other way organized under the laws of Barbados, that entity, in circumstances where the person committed the offence while acting in that capacity, is guilty of an offence and is liable on conviction on indictment to a fine of \$2 000 000 notwithstanding

(a) any criminal liability that may have been incurred by an individual that was directly involved in the commission of the

(b) any civil or administrative sanction that may have been imposed by law.

### **PART III Investigatory Provisions**

6. (1) Where any person has reasonable grounds to suspect that funds or financial services are related to or are to be used to facilitate an offence under this Act, it shall be the duty of that person to report the matter to the Commissioner.

(2) Where information is received from any source in or outside Barbados that a person who has committed or who is alleged to have committed an offence under this Act may be present in Barbados, the Commissioner shall take such measures as may be necessary to investigate the facts contained in the information.

(3) Where on investigation it is found that the person referred to in subsection (2) is in Barbados, the Commissioner shall make a report to the Director of Public Prosecutions who shall take such measures as are necessary to prosecute the offender as the circumstances warrant.

(4) Where any person, referred to in subsection (1) fails to report as required under that subsection, that person is guilty of an offence and is liable on conviction on indictment to a fine of \$250 000 or to imprisonment for a term of 5 years.

7. A person against whom measures referred to in section 6(2) or 6(3) are taken is entitled to

(a) communicate without delay with the nearest appropriate representative of

(i) the State of which that person is a national;

(ii) the State which is otherwise entitled to protect that person's rights; or

Rights of an offender.

(iii) where that person is a stateless person, the State in which that person ordinarily resides;

(b) be visited by a representative of the relevant State referred to in paragraph (a); and

(c) be informed of his rights referred to in paragraphs (a) and (b).

#### **PART IV Freezing, or Forfeiture of Funds**

8. (1) Subject to subsection (4), the Court may, where it is satisfied on the application by the Director of Public Prosecutions that

(a) a person has been charged or is about to be charged with an offence under section 3 or 4; or

(b) a request has been made by the appropriate authority of another State in accordance with section 16, in respect of a person

(i) who has been charged or is about to be charged with an offence in respect of an act described in section 3 or 4; or

(ii) in respect of whom there is reasonable suspicion that the person has committed an offence referred to in sub-paragraph (i),

make an order, in this Part referred to as a "freezing order", freezing the funds in the possession of or under the control of that person.

Freezing of funds.

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(2) An application for a freezing order under subsection (1), may be made ex parte and shall be in writing and be accompanied by an affidavit stating

(a) where the person referred to in subsection (1) has been charged, the offence for which he is charged;



- (b) where the person has not been charged, the grounds for
    - (i) believing that the person committed the offence; or
    - (ii) having a reasonable suspicion that the person committed the offence;
  - (c) a description of the funds in respect of which the freezing order is sought;
  - (d) the name and address of the person who is believed to be in possession of the funds; and
  - (e) the grounds for believing that the funds are related to or are used to facilitate an offence referred to in subsection (1) and that the funds are subject to the effective control of the person.
- (3) Where the Court makes an order under subsection (1), the Court shall require that
- (a) the Order be published within such time and manner as the Court directs;
  - (b) the applicant, within 21 days of the making of the Order, serve notice of the Order together with a copy of the Order on any person whom, in the opinion of the Court, appears to have an interest in the funds referred to in subsection (2); and
  - (c) the person referred to in paragraph (b) or any other person that appears to have interest in the funds, be afforded an opportunity to be heard by the Court within such time as the Court determines, unless in respect of paragraph (b) the Court is of the opinion that giving such notice would result in the disappearance, dissipation or reduction in the value of the funds.
- (4) Where an application for a freezing order made under subsection (1) is made as a result of a request from another State, the Court shall not make the order unless it is satisfied that reciprocal arrangements exist between Barbados and that other State whereby that other State is empowered to make a similar order in respect of a request for a freezing order from Barbados.
- (5) The Court may, in making an order under subsection (1), give directions with regard to
- (a) the duration of the freezing order; or
  - (b) the disposal of the funds for the purpose of
    - (i) determining any dispute relating to the ownership of or other interest in the funds or any part thereof;
    - (ii) its proper administration during the period of the freezing order;
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- (iii) the payment of debts incurred in good faith prior to the making of the order;
  - (iv) the payment of moneys to the person referred to in subsection (1) for the reasonable subsistence of that person and his family; or

(v) the payment of the costs of the person referred to in subparagraph (iv) to defend criminal proceedings against him.

(6) Notwithstanding subsection (5), a freezing order made under this section shall cease to have effect at the end of the period of 6 months after the order was made where the person against whom the order was made has not been charged with an offence under this Act within that period.

(7) An order made under subsection (1) may be renewed for a period not exceeding 6 months in each particular case but in no case shall the entire period of the order exceed 18 months.

(8) A freezing order granted by the Court under this section shall not prejudice the rights of any third party acting in good faith.

(9) Where the Court makes an order for the administration of frozen funds the person charged with the administration of the funds is not liable for any loss or damage to the funds or for the costs of proceedings taken to establish a claim to the funds or to an interest in the funds unless the court in

which the claim is made is of the opinion that the person has been guilty of negligence in respect of the taking of custody and control of the funds.

9. (1) Where a person is convicted of an offence under section 3 or 4, the Director of Public Prosecutions may apply to the Court for a forfeiture order against the funds that are the subject of the offence.

(2) The court may upon application by the Director of Public Prosecutions, forfeit any funds of or in the possession or under the control of any person who is convicted of an offence of terrorism or any funds of that person that are the subject of a freezing order, unless it is proved that the funds did not derive from the commission by that person of an offence under section 3 or 4.

(3) For the purposes of subsection (2) the burden of proof lies on the person who owns, or is in possession or control of, the funds.

(4) In determining whether or not any funds are derived from an offence under section 3 or 4, the standard of proof required for the purposes of subsection (2) is the same as in criminal proceedings and for the purposes of subsection (3) is the same as in civil proceedings.

(5) In making a forfeiture order the Court may give directions

(a) for the purpose of determining any dispute as to the ownership of or other interest in the funds or any part thereof; and

(b) as to the disposal of the funds.

(6) Upon application to the Court by a person against whom a forfeiture order has been made under this section, the Court may order that an amount deemed by the Court to be the value of the funds so ordered to be forfeited, be paid by that person to the Court and upon satisfactory payment of that sum by that person the funds ordered to be forfeited shall be returned to him.

10. (1) The Government of Barbados may, pursuant to any

agreement with any other State, share with that State on a reciprocal basis, the funds derived from forfeiture pursuant to this Act.

(2) Funds referred to under subsection (1) may be utilized by the Government of Barbados to compensate victims of the offences referred to under this Act.

## **PART V Extradition**

11. (1) Where a person who has committed or is alleged to have committed an offence under this Act is present in Barbados and it is not intended to extradite that person, the Director of Public Prosecutions shall prosecute the offender for the offence on the direction of the Attorney-General given under paragraph (b) of section 79A(2) of the Constitution.

(2) Notwithstanding the provisions of this Act, no person shall be extradited pursuant to this Act where the Government of Barbados has substantial grounds for believing that a request for extradition for an offence under this Act has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would be prejudicial to that person's rank or status for any of these reasons.

## **PART VI Miscellaneous**

12. Where a person is alleged to have committed an offence under this Act, proceedings in respect of that offence may be commenced in Barbados where the alleged offence

- (a) is committed by a national of Barbados;
- (b) was directed towards or resulted in the carrying out of an offence under this Act in Barbados or against a national of Barbados;
- (c) was directed towards or resulted in the carrying out of an offence under this Act against a State or government facility of Barbados outside Barbados;
- (d) was directed towards or resulted in the carrying out of an offence under this Act committed in an attempt to compel Barbados to do or refrain from doing any act;
- (e) was committed by a stateless person who is ordinarily resident in Barbados;
- (f) was committed on board an aircraft that
  - (i) is operated by the Government of Barbados or a national of Barbados; or
  - (ii) is registered in Barbados;
- (g) was committed on board a vessel that is flying the flag of Barbados or is registered in Barbados; or
- (h) threatens the national security of Barbados.

13. Where a person is taken into custody as a result of an investigation undertaken under section 6, the Director of Public Prosecutions shall inform the Attorney-General who shall

- (a) notify, through the Secretary General of the United Nations, the State which established jurisdiction in respect of an application brought under section 8 or 9, of the detention of that person and of the circumstances that warranted the detention; and
- (b) communicate the final outcome of the proceedings to the Secretary-General for transmission of the information to the other State.

14. (1) Where a person who is being detained or who is serving a sentence of imprisonment in the territory of one State whose presence in another State is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences for the purposes of this Act, that person may be transferred if the following conditions are met:

- (a) the person freely gives his informed consent; and
- (b) the competent authorities of both States agree, subject to such conditions as those States may deem appropriate.

(2) Unless the State from which a person is to be transferred pursuant to subsection (1) so agrees, that person shall not be prosecuted, detained or subjected to any other restriction of his personal liberty in the territory of the State to which the person is transferred in respect of any acts done or convictions received prior to his departure from the State from which that person was transferred.

(3) Where a person is transferred under subsection (1) from Barbados, the person transferred shall receive credit for service of the sentence being served in Barbados for the time spent in the custody of the State to which that person was transferred.

(4) Unless the Attorney-General otherwise directs, all expenses incurred in respect of any requests made under this section, must be paid by the State making the request.

15. The Attorney-General is the competent Authority in Barbados for the exchange of information relating to criminal investigations or extradition proceedings in respect of an offence under this Act.

16. Section 27 of the Mutual Assistance in Criminal Matters Act applies to the procedure to be adopted in respect of a request made from another State for mutual assistance in obtaining a freezing or forfeiture order under this Act with such modifications as are necessary to give effect to such requests.

17. (1) The Attorney-General may, subject to affirmative resolution, make Regulations to give effect to this Act.

(2) The Attorney-General may by Order amend



(a) the Annex to the Convention in accordance with the terms of Article 23 of the Convention; or

(b) the Third Schedule.

18. The enactments specified in the Second Schedule are amended to the extent so specified in that Schedule.

