

ANTIGUA AND BARBUDA



LAW (MISCELLANEOUS AMENDMENTS) BILL, 2016

NO. OF 2016

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ARRANGEMENT OF CLAUSES

CLAUSES

1. Short title and Commencement
2. Amendment to the Money Laundering (Prevention) Act, 1996
3. Amendment to the Insurance Act, 2007
4. Amendment to the International Trust Act, 2007
5. Amendment to the International Foundations Act, 2007
6. Amendment to the International Limited Liability Companies Act, 2007
7. Amendment to the Corporate Management and Trust Service Providers Act, 2008
8. Amendment to the Co-operative Societies Act, 2010
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10. Amendment to the Financial Services Regulatory Commission Act, 2013
11. Amendment to the International Banking Act, 2016

LAW (MISCELLANEOUS AMENDMENTS) BILL, 2016

NO. OF 2016

AN ACT to amend the provisions of certain Acts of Parliament to strengthen the effectiveness of laws in matters against money laundering and counter-terrorism financing and for related matters.

ENACTED by the Parliament of Antigua and Barbuda as follows-

1. Short title and Commencement

This Act may be cited as the Law (Miscellaneous Amendments) Act, 2016 and shall come into effect on a day appointed by the Minister and published by Notice in the *Gazette*.

2. Amendment of the Money Laundering (Prevention) Act, 1996

The First Schedule to the Money Laundering (Prevention) Act, 1996 No. 9 of 1996 is repealed and replaced by the following new schedule –

“FIRST SCHEDULE

(Section 2)

ACTIVITIES OF FINANCIAL INSTITUTIONS

1. “Banking business” and “financial business” as defined in the Banking Act and the Financial Institutions (Non-Banking) Act;
2. “International Offshore Banking Business” as defined in the International Banking Act;

3. Venture risk capital;
4. Money transmission services;
5. Issuing and administering means of payment bankers' drafts;
6. Guarantees and commitments: (e.g. credit cards, travellers' cheques and bankers' drafts);
7. Trading for own account or for the account of customers in –
 - (a) Money market instruments (e.g. cheques, bills, certificates of deposits, commercial paper, etc.)
 - (b) Foreign exchange;
 - (c) Financial and commodity based derivative instruments (e.g. futures, options, interest rate and foreign exchange instruments etc.)
 - (d) Transferable or negotiable instruments;
8. Money broking
9. Money lending and pawning;
10. Money exchange (e.g. casa de cambio)
11. Real property business
12. Credit unions;
13. Building societies;
14. Trust business;
15. Insurance business;
16. Dealers in precious metals, art of jewellery;
17. Casinos as defined in the Gambling Act 2016;
18. Internet Gambling as defined in the Gambling Act, 2016;
19. Sports betting as defined in the Gambling Act, 2016;
20. Car dealerships;
21. Travel agents;

22. Dealerships in high value and luxury goods;
23. Company service providers;
24. Attorneys-at-Law (who conduct financial activity as a business);
25. Notaries (who conduct financial activity as a business);
26. Accountants (who conduct financial activity as a business);
27. International Trust as defined in the International Trust Act, 2007;
28. International Foundations as defined by the International Foundations Act, 2007;
29. International Limited Liability Companies as defined by the International Limited Liability Companies Act, 2007;
30. The Unincorporated Business Act, 2016;
31. The Industrial Societies”

3. Amendment to the Insurance Act, 2007

The Insurance Act, 2007 No. 13 of 2007 is amended as follows –

- (1) at section 2
 - (a) by repealing the definition of the words “Board” and “Commission” and substituting the following definitions therefor in the correct alphabetical order:

“Board” means the Board of Directors established under section 8 of the Financial Services Regulatory Commission Act, 2013 No. 5 of 2013;

“Commission” means the Financial Services Regulatory Commission as preserved and continued under section 4 of the Financial Services Regulatory Commission Act, 2013 No. 5 of 2013;
 - (b) by inserting in the correct alphabetical order the following words and their meaning –

“beneficiary” means for the purposes of life insurance or other investment linked insurance policy, the beneficiary is the beneficial owner of the policy who is a natural person, legal entity or category of persons, who will be

paid the policy proceeds when or if an insured event occurs, which is covered by the policy;

“beneficial owner” means the natural person or persons who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or legal arrangement; the term “beneficial ownership” shall carry like meaning in the particular circumstance;

- (2) at section 7 by repealing the word “Superintendent” and replacing it with the word “Commission”
- (3) at section 15 by repealing the word “Superintendent” and replacing it with the word “Commission”;

4. Amendment to the International Trust Act, 2007

Section 2 of the International Trust Act, 2007 No. 18 of 2007 is amended as follows –

- (1) by repealing the definition of the words “Board” and “Commission” and substituting them with the following definitions:

“Board” means the Board of Directors established under section 8 of the Financial Services Regulatory Commission Act, 2013 No. 5 of 2013;

“Commission” means the Financial Services Regulatory Commission as reserved and continued under section 4 of the Financial Services Regulatory Commission Act, 2013 No. 4 of 2013;”

- (2) by repealing the word “trust company” and substituting the following –
“ “trust” means an entity licensed or regulated under the Corporate Management and /trust Service Providers Act, 2008, No. 20 of 2008”;
- (3) by inserting in the definition of “beneficiary” –
 - (a) after paragraph marked (b) the following new paragraph (c) to read as follows –

“(c) the person or persons who are entitled to the benefit of any trust arrangement, whether a natural person, legal person or legal arrangement.”

- (b) by inserting the word “beneficial owner” and its meaning in its correct alphabetical position as follows –

“beneficial owner” means the natural person or persons who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or legal arrangement;”

5. Amendment to the International Foundations Act, 2007

(1) Section 2 of the International Foundations Act, 2007 No. 19 of 2007 is amended as follows –

- (a) by repealing the definition of the words “Board” and “Commission” and substituting therefor the following definitions:

“Board” means the Board of Directors established under section 8 of the Financial Services Regulatory Commission Act, 2013 No. 5 of 2013;

“Commission” means the Financial Services Regulatory Commission as reserved and continued under section 4 of the Financial Services Regulatory Commission Act, 2013 No. 4 of 2013;”

- (b) by inserting the word “beneficial owner” and its meaning in its correct alphabetical position as follows –

“beneficial owner” means the natural person or persons who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or legal arrangement; the term “beneficial ownership” shall carry like meaning in the particular circumstance;”

- (2) The International Foundations Act, 2007 No. 19 of 2007 is amended by repealing the words “Corporate Management and Trust Service Providers Act, 2007” wherever it appears in the Act and substituting therefor the words “Corporate Management and Trust Service Providers Act, 2008;”

6. Amendment to the International Limited Liability Companies Act, 2007

Section 2 of the International Limited Liability Companies Act, 2007 No. 20 of 2007 is amended by repealing the words “beneficial owner” and “Commission” and substituting therefor the following definitions:

“beneficial owner” means the natural person or persons who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or legal arrangement; the term “beneficial ownership” shall carry like meaning in the particular circumstance;”

“Commission” means the Financial Services Regulatory Commission as reserved and continued under section 4 of the Financial Services Regulatory Commission Act, 2013 No. 4 of 2013;”

7. Amendment to the Corporate Management and Trust Service Providers Act, 2008

(1) Section 2 of the Corporate Management and Trust Service Providers Act, 2008 No. 20 of 2008 is amended –

(a) by repealing the word “Administrator” and replacing it with the following:

“Chief Executive Officer” means the person appointed under section 10 of the Financial Services Regulatory Commission Act, 2013 No. 5 of 2013”

(b) by repealing the definition of the words, “beneficial owner”, “Board”, and “Commission” and substituting therefor the following definitions in their correct alphabetical position –

“ “beneficial owner” means the natural person or persons who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or legal arrangement; the term “beneficial ownership” shall carry like meaning in the particular circumstance;

“Board” means the Board of Directors established under section 8 of the Financial Services Regulatory Commission Act, 2013 No. 5 of 2013;

“Commission” means the Financial Services Regulatory Commission as reserved and continued under section 4 of the Financial Services Regulatory Commission Act, 2013 No. 4 of 2013;”

(2) Section 18 of the Corporate Management and Trust Service Providers Act, 2008 No. 20 of 2008 is amended –

(a) by repealing subsection 3(b) and replacing it with the following:

“(b) the name and addresses of the basic and beneficial owner of entities for which it provides corporate management and trust services which must be accurate and updated on a timely basis;”

(b) by inserting the following new subsection (5) to read as follows:

“(5) A licensee shall maintain and hold the records required by this section in Antigua and Barbuda.”

8. Amendment to the Co-operative Societies Act, 2010

The Co-operative Societies Act, 2010 No. 9 of 2010 is amended as follows –

(1) at section 2 –

(a) by repealing the definition of the words “Commission” and “equity shares” and substituting therefor the following definitions –

“ “Commission” means the Financial Services Regulatory Commission as reserved and continued under section 4 of the Financial Services Regulatory Commission Act, 2013 No. 4 of 2013;

“equity shares” constitutes the common stock or risk capital in addition to qualify shares purchased by individual and institutional members as their beneficial ownership in the safety, soundness and competitiveness of their cooperative society;”

(b) by inserting the word “beneficial ownership” and its meaning in its correct alphabetical position as follows –

“ “beneficial ownership” means the natural person or persons who ultimately owns or controls a customer, or, the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or legal arrangement;”

(2) at section 6 by repealing the word “Supervisor” and substituting therefor the word “Commission”.

(3) at section 9 by repealing the word “Supervisor” and replacing it with the word “Commission”.

9. Amendment to the Money Services Business Act, 2011

The Money Services Business Act, 2011 No. 7 of 2011 is amended as follows –

(1) at section 2 –

(a) by repealing the definition of the word “Commission” and substituting therefor:

“Commission” means the Financial Services Regulatory Commission as preserved and continued under section 4 of the Financial Services Regulatory Commission Act, 2013 No. 5 of 2013”

(b) by inserting the following words and their definition in the correct alphabetical order within the section:

“ “beneficial owner” means the natural person or persons who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or legal arrangement; the term “beneficial ownership” shall carry like meaning in the particular circumstance;

“pay day advances” means any advances made prior to the payment of a person’s salary, where the salary to be paid is used as collateral for the advance;

“Microfinance” means the provision of deposit accounts, loans, insurance, money transfers and other banking services to customers that lack access to traditional financial services;”

(2) at section 5 in subsection (2), by inserting after paragraph (e) a new paragraph marked ‘(f)’ to read as follows –

““(f) a “Class F” license permits the holder to carry on microfinance or payday advances including lending by financial institutions to include National Mortgage and Trusts Ltd and the National Development Foundation;”

10. Amendment to the Financial Services Regulatory Commission Act, 2013

Section 2 of the Financial Services Regulatory Commission Act, 2013 No. 5 of 2013 is amended in the definition of “regulatory law” by –

- (a) repealing paragraph (c) marked, “The Money Services Business Act, 2007” and replacing it with “The Money Services Business Act, 2011”;
- (b) by inserting a new paragraph (h) to read as follows:

“(h) Antigua and Barbuda Development Bank, Cap. 24.”

11. Amendment to the International Banking Act, 2016

The International Banking Act, 2016 No. of 2016 is amended at section 2 by inserting the word “beneficial owner” and its meaning in the correct alphabetical order to read as follows –

“beneficial owner” means the natural person or persons who ultimately owns or controls a customer’ or, the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or legal arrangement;”

NO. OF 2016

Law (Miscellaneous Amendments) Bill, 2016

Passed the House of Representatives on the
2016.

Passed the Senate on the
2016

.....
Speaker.

.....
President.

.....
Clerk to the House of Representatives.

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Clerk to the Senate.

EXPLANATORY MEMORANDUM

Herein, the laws to be amended are those which are within the mandate of the Financial Services Regulatory Commission (FSRC) (both the international and domestic financial services sector), and The Office of National Drug and Money Laundering Control Policy (ONDCP), the Supervisory Authority for anti-money laundering and counter financing of terrorism (AML/CFT) in Antigua and Barbuda, the respective laws to be amended are as follows:

1. The Money Laundering (Prevention) Act;
2. The Financial Services Regulatory Commission Act;
3. The International Banking Act;
4. The Co-Operatives Societies Act;
5. Insurance Act;
6. The Corporate Management And Trust Services Providers Act;
7. The Money Services Business Act;
8. The International Trust Act Act;
9. The International Foundations Act;
10. The International Limited Liability Companies Act;

All the aforementioned laws have been amended in strategic areas to address the various elements of the Financial Action Task Force (FATF) Recommendations including the issue of beneficial ownership. In other instances, the amendment facilitates bringing all financial institutions within the AML/CFT regime which were not previously captured.

The FATF is an inter-governmental body established to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats against the integrity of the international financial system. The FATF has developed a series of 40 Recommendations and Eleven immediate Outcomes that are recognised as the international standard for combating of money laundering and the financing of terrorism and proliferation of weapons of mass destruction; the Recommendations were revised 2012.

The FATF monitors the progress of its members internationally through the FATF Styled Regional Bodies (FSRBs). Within the Caribbean, the FSRB is known as the Caribbean Financial Action Task Force (CFATF) which is tasked with implementing necessary

measures, reviews money laundering and terrorist financing techniques and counter-measures, and promotes the adoption and implementation of appropriate measures of the FATF.

The FATF through the CFATF has conducted several mutual evaluations of countries within the Caribbean including Antigua and Barbuda. The last mutual evaluation of Antigua and Barbuda took place in 2008; this was the Third Round Mutual Evaluation where the CFATF reviewed the countries legal and regulatory framework to ensure the compliance with the FATF Recommendations at that material time. Presently, Antigua and Barbuda is now undergoing the Fourth Round Mutual Evaluation process. On this occasion the evaluation is two-fold, firstly the CFATF will review the legal and regulatory framework to ensure Technical Compliance with the international standards set by the FATF. Secondly, the evaluation would seek to ascertain the effective implementation of the laws and regulations to achieve the FATF established Eleven Immediate Outcomes.

As a result of the stated changes in the revised FATF Recommendations, the jurisdiction conducted a revision of its laws within the financial services sector and recognized that there were some legislative gaps, which if left without amendment would cause the jurisdiction to be downgraded in the present mutual evaluation. The amendments therefore are proposed to address many of the laws within the financial services sector which are noted to have gaps in the legislation; this will facilitate the Technical Compliance element of mutual evaluation which has a deadline of December 5, 2016.

The jurisdiction then will be required to submit the information to assert its effectiveness pursuant to the established Immediate Outcomes by February 3, 2017. Subsequently, to complete the entire Fourth Round of the mutual evaluation, the jurisdiction will be subject to an onsite visit by the CFATF in June 5 -17, 2017; thereafter the Mutual Evaluation Report would be finalized and published. The jurisdiction must therefore seek to do all it can to ensure that the final mutual evaluation report receives a good rating, otherwise the country may unwittingly be cited for gaps in the AML/CFT regime which may be deemed to affect the integrity of the international financial system.

*Honourable Gaston B. Browne
Prime Minister
Minister of Finance and Corporate Governance*