

ANTIGUA AND BARBUDA



MONEY LAUNDERING (PREVENTION) (AMENDMENT) BILL 2018

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AN ACT to amend the Money Laundering (Prevention) Act 1996, to appoint the Eastern Caribbean Central Bank as Supervisory Authority over Financial Institutions registered under the Banking Act 2015 and for connected and related purpose.

ENACTED by the Parliament of Antigua and Barbuda as follows:

1. Short Title

This Act may be cited as the Money Laundering (Prevention) (Amendment) Act. 2018

2. Interpretation

In this Act “the principal Act” means the Money Laundering (Prevention) Act 1996.

3. Amendment of section 2 of the principal Act

Section 2 of the principal Act is amended by inserting in the appropriate alphabetical order the following definition –

“Central Bank” means the Eastern Caribbean Central Bank established under Article 3 of the Eastern Caribbean Central Bank Agreement set out as a Schedule to the Eastern Caribbean Central Bank Agreement Act, Cap. 142;

4. Amendment of sections 2B, 9, 13, 14, 15, 18, 18A, 19, 19A, 19B, 20A, 20B, 20D, 20E, 20F, 21, 23, 26, 27, 28D of the principal Act

Sections 2B, 9, 13, 14, 15, 18, 18A, 19, 19A, 19B, 20A, 20B, 20D, 20E, 20F, 21, 23, 26, 27, 28D of the principal Act are amended by deleting “Supervisory Authority” wherever it occurs and substituting therefor the words “The Director of the ONDCP”.

5. Insertion of new section 5C into the principal Act

The principal Act is amended by inserting immediately after section 5B a new section 5C to read as follows –

“5C. Opening or operating an account in a false name prohibited

- (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.
- (3) A person shall not authorise the operation of an account with a financial institution if the account is in a false name.
- (4) Where a person is commonly known by two or more different names, the person shall not use one of those names in opening an account with a financial institution unless the person has previously disclosed the other name or names to the financial institution.
- (5) Where a person is commonly known by two or more different names, the person shall not use one of those names in operating an account with a financial institution unless the person has previously disclosed the other name or names to the financial institution.
- (6) Where a person using a particular name in dealings with a financial institution discloses to the financial institution a different name or different names by which the person is commonly known, the financial institution shall make a record of the disclosure and shall, upon request in writing from the Supervisory Authority, give the Supervisory Authority a copy of that record.
- (7) A person who contravenes subsection (1), (2), (3), (4), (5) or (6) commits an offence and is liable on summary conviction to a fine not exceeding five hundred thousand dollars (\$500,000) or to a term of imprisonment not exceeding two years or to both.
- (8) For the purposes of this section—
 - (a) a person opens an account in a false name if the person, in opening the account, or becoming a signatory to the account, uses a name other than a name by which the person is commonly known; and
 - (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.

6. Amendment of section 10 of the principal Act

Section 10 of the principal Act is repealed and replaced by a new section 10 as follows –

“10. Appointment of Supervisory authority

- (1) The Director of the Office of National Drug and Money Laundering Control Policy shall be the Supervisory Authority for all financial institutions except financial institutions licensed to carry on banking business under the Banking Act 2015.
- (2) The Central Bank shall be the Supervisory Authority for financial institutions licensed to carry on banking business under the Banking Act 2015.

7. Repeal and replacement of section 11 of the principal Act

Section 11 of the principal Act is repealed and replaced by a new section 11 to read as follows –

“11. Powers of the Supervisory Authority

(1) The Supervisory Authority –

- (a) or a person authorized by the Supervisory Authority, may enter into the premises of any financial institution during normal working hours to inspect any business transaction record kept by that financial institution pursuant to section 12(1) and ask any questions relevant to such record and to make any notes or take any copies of the whole or any part of any such record;
- (b) shall send to the Financial Intelligence Unit of Antigua and Barbuda any information derived from an inspection carried out pursuant to paragraph (i) of this section if it gives the Central Bank reasonable grounds to believe that a money laundering offence is being, has been, or is about to be committed;
- (c) may compile statistics and records, disseminate information within or without Antigua and Barbuda, make recommendation arising out of any information received, issue guidelines to financial institutions and advise the Minister with regard to any matter relating to money laundering;
- (d) shall create training requirements and provide such training for any financial institution in respect of the business transaction record-keeping and reporting obligations as provided under section 12(1) and 13(2) respectively;
- (e) may consult with any person, institution or organization within or without Antigua and Barbuda for the purposes of the exercise of its powers or duties under the Act;
- (f) may serve a notice of non-compliance on a person for failure to comply with the provisions of this Act or the regulations;

- (g) may issue directives to a financial institution for the purpose of achieving proper and adequate compliance with the provisions of this Act, the regulations , guidelines or directives;
- (h) may order regular reports from a financial institution on the anti-money laundering or combating of terrorism measures it is taking;
- (i) may use administrative measures as the supervisory Authority deems appropriate or as may be prescribed.

(2) The notice of non-compliance under subsection (1) (k) shall –

(a) state which provision of the Act, the regulations, guidelines or directives, has not been complied with; and

(b) specify the action required to achieve compliance and the time within which the action is required to be taken.

(3) Where a person fails to remedy the identified non-compliance within the time specified within the notice, the Supervisory Authority shall assess and impose such administrative civil sanctions as may be prescribed.

(4) A customer, owner or account holder shall not be notified by the financial institution of an inquiry under this section.

8. Repeal and replacement of section 11A of the principal Act

Section 11A of the principal Act is repealed and replaced as follows –

“11A. Powers of the Director of the ONDCP

The Director of the ONDCP –

- (a) shall receive the reports issued by the financial institutions pursuant to the provisions of section 13(2);
- (b) shall send any such report to the law enforcement authority if, having considered the report, the Director of the ONDCP also has reasonable grounds to believe that a money laundering offence is being, has been or is about to be committed;
- (c) may instruct any financial institution to seek the assistance of any government department, statutory body, or other public body to take such steps as may be appropriate to facilitate any investigation anticipated by the

Director of the ONDCP following a report or investigation made under this section;

- (d) may compile statistics and records, disseminate information within or without Antigua and Barbuda, make recommendation arising out of any information received, issue guidelines to financial institutions and advise the Minister with regard to any matter relating to money laundering;
- (e) may consult with any person, institution or organization within or without Antigua and Barbuda for the purposes of the exercise of its powers or duties under the Act;
- (f) may send a copy of the report received under paragraph (a) and any other information obtained pursuant to this section to the person, institution or organisation it is consulting with under paragraph (e);
- (g) shall exercise the powers and functions conferred on the Director of the ONDCP 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;
- (h) may in support of an investigation of money laundering or the financing of terrorism by directive –
 - (i) require a financial institution to disclose in a timely manner
 - (A) whether a person holds or controls accounts or does business with the institution, and
 - (B) to identify those accounts and assets represented by those accounts or involved in business activity,
 - (ii) require any person providing telecommunications or other electronic communications service to disclose in a timely manner –
 - (A) the name and address of a subscriber to any of its services
 - (B) whether a person is a subscriber to its telecommunications service, and if so,
 - (C) Identify the number used by the subscriber to access its services and the address of the subscriber;

- (D) The name and number of any person with whom he has made contact using those services.

8. Amendment of section 16 of the principal Act

Section 16 of the principal Act is amended, in subsection (1) thereof, by replacing the reference to section 11 (h) and (n) in the last line thereof with a reference to section 11 (d) and (e).

9. Amendment of section 17B of the principal Act

Section 17B of the principal Act is amended as follows –

(a) in subsection (1) by inserting after the word “onsite” the words “and offsite”;

(b) in subsection (2) by repealing subsection (2) and replacing it with the following –

“(2) A financial institution that fails to comply with the requests made pursuant to subsection (1) commits an offence punishable by a fine of up to \$500,000.00 per day until such time as the request is complied with or with imprisonment for 6 months, but may, before the deadline for producing the documents requested, apply to the High Court for an Order exempting it from producing the documents.”

(c) in subsection (8) by repealing subsection (8) and replacing it with the following –

“(8) The Supervisory Authority shall report any evidence of money laundering, terrorism financing, the facilitation of those offences and any inchoate offences relating thereto which they come across in the course of their examination to the Financial Intelligence unit of Antigua and Barbuda.”

10. Amendment of section 18B of the principal Act

The principal Act is amended in section 18B as follows –

(a) by replacing the words “Supervisory Authority” wherever it occurs within the section and replacing it with the words “Director of the ONDCP”;

(b) in subsection 1, by repealing and replacing subsection (1) as follows –

“(1) An application for forfeiture of any currency seized pursuant to section 18A(1) may be made to the Magistrate’ Court upon the application of the Director of the ONDCP or any police officer or officer of the ONDCP authorized by the Director of the ONDCP”.

(c) in subsection (6) by repealing subsection (6) and replacing it with the following –

“(6) Any party to proceedings for an Order for forfeiture who is aggrieved by the Order of the Magistrate may appeal the Order to the High Court.”

Passed by the House of Representatives
on the day of 2018.

Passed by the Senate on the
day of 2018.

Speaker

President

Clerk to the House of Representative

Clerk to the Senate

EXPLANATORY MEMORANDUM

These amendments to the Money Laundering (Prevention) Act 1996 are the result of consultations between the Eastern Caribbean Central Bank and the Office of the National Drug and Money Laundering Control Policy. The primary purpose is to shift supervisory responsibility for Banking Institutions licensed under the Banking Act 2015 from the Director of the ONDCP to the ECCB who will also be responsible for AML/CFT reporting.