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ANTIGUA AND BARBUDA



**OFFICE OF NATIONAL DRUG AND MONEY LAUNDERING CONTROL
POLICY (AMENDMENT) BILL 2017**

NO. OF 2017

ANTIGUA AND BABUDA

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ANTIGUA AND BARBUDA

A BILL FOR

**OFFICE OF NATIONAL DRUG AND MONEY LAUNDERING CONTROL
POLICY (AMENDMENT) BILL 2017**

AN ACT to amend the Office of National Drug and Money Laundering Control Policy Act 2003 in order, inter alia, to permit the Director of the ONDCP to use controlled delivery in seeking to achieve the purposes of the said Act.

ENACTED by the Parliament of Antigua and Barbuda as follows-

1. Short Title

This Act may be cited as the Office of National Drug and Money Laundering Control Policy (Amendment) Act, 2017.

2. Interpretation

In this Act “principal Act” means the Office of National Drug and Money laundering Control Policy Act 2003.

3. Amendment of section 2 of the principal Act

Section 2 of the principal Act is amended by inserting, in its appropriate alphabetical order, the following new definition:

“controlled delivery” means the technique of allowing illicit or suspicious engagements of narcotic drugs, psychotropic substances, their procedures or substances for them or other contraband, to pass out of through or into the territory of one or more countries, with the knowledge and under the supervision of the competent authorities in such countries, for the purpose of identifying persons involved in the commission of a specified offence;”.

4. Amendment of section 7 of the principal Act

Section 7 of the principal Act is amended by adding a new subsection (4):

“(4) The provisions of the Statutory Corporations (General Provisions) Act 2016 shall not apply to this Act.”

5. Amendment of section 10 of the principal Act

Section 10 of the principal Act is amended -

- (a) by repealing paragraph (1)(c) thereof and substituting the following:
“(c) to collect, receive, collate, analyse and act upon suspicious transactions, reports of suspicious activity and threshold –based declarations or reports, relevant information collected or obtained, relevant information collected on maintained by or on behalf of other authorities, relevant commercially held data;”;
- (b) by adding semicolon after paragraph (1)(g) thereof and adding the following new paragraph (h):
“(h) to bring charges with respect to the commission of specified offences and to prosecute such offences in the Magistrate’s Court;”;
- (c) by inserting after subsection (1) the following new subsections as subsection (1A) and (1B):

“(1A) The ONDCP shall serve as the national agency for receipt and analysis of suspicious transaction reports and disclosures from reporting entities and other financial, administrative and law enforcement information from other authorities and sources, relevant money laundering, associated predicate offences, terrorist financing and the financing of proliferation of weapons of mass destruction, and for dissemination of the results of such analysis to competent authorities.
(1B) In the functions detailed in subsection (1A), the ONDCP must be referred to as the Financial Intelligence Unit (FIU) of Antigua and Barbuda”.

6. Amendment of section 11 of the principal Act

Section 11 of the principal Act is amended-

- (a) by renumbering the existing provision as subsection (1);
- (b) by adding after subsection(1) the following new subsections as subsections (2) to (7):

“(2) The Director and other officers of the ONDCP are hereby vested with the authority to conduct undercover operations in the performance of their duties under this Act.

(3) The Director and other officers of the ONDCP are hereby vested with authority in investigating a specified offence, to postpone or waive the arrest of a person reasonably suspected of involvement in the offence or seizure of money or other property involved, for the purpose of identifying other persons who may be involved in the offence or for evidence gathering; and evidence gathered as a result of such waiver or postponement shall be admissible as evidence in criminal proceedings.

(4) The Director and other officers of the ONDCP may, in the exercise of their duties under this Act, employ the investigative technique known as controlled delivery in order to-

- (a) identify, arrest and seek the conviction of persons reasonably suspected of committing or being involved in the commission of specified offences;
- (b) dismantle organizations reasonably suspected of being involved smuggling or trafficking in controlled drugs and money laundering;
- (c) identify additional and higher-level offenders;
- (d) find out and establish knowledge on transporters, receivers and managers who may knowingly be in possession of controlled drugs, to identify assets for seizure or forfeiture.

(5) For the purposes of controlled delivery

- (a) consignments of a controlled drugs may be allowed passage through ports of the jurisdiction;
- (b) consignment must be reasonably suspected of being controlled drugs;
- (c) controlled drugs may be detained, removed from their original container or storage and substituted with substances that are inert or non-prohibited;
- (d) passage of the consignment may be allowed out of, through or into the territory of one or more countries;
- (e) where passage out of, through or into the territory of one or more countries is allowed, it must be with the knowledge and under the supervision of the competent authorities of those other countries.

(6) Where controlled drugs are removed and substituted with inert or non-prohibited substances, such substances may be adduced as evidence in criminal proceedings against persons charged with the illegal possession, control or knowledge, of controlled drugs.

(7) The Director and officers of the ONDCP who, in the course of their duties become involved in the execution of a controlled delivery, shall not be deemed to be

complicit in the criminal allegations under investigation; or that give rise to the employment of the technique.”.

7. Insertion of new sections 11A and 11B in the principal Act

The principal Act is amended by inserting the following new sections as section 11A and 11B-

“11.A Uses of controlled delivery

(1) The Director or officers of the ONDCP may engage in controlled delivery for the purpose of carrying out the functions of the ONDCP.

(2) Controlled delivery may be employed by the Director or officers of the ONDCP for any or all of the following purposes:

- (a) to identify any person reasonably suspected of having committed or being involved in the commission of a specified offences;
- (b) to dismantle organisation of person involved in drug trafficking or money laundering within the meaning, of the Money Laundering (Prevention) Act 1996;
- (c) to gather knowledge of persons reasonably suspected of being involved in money laundering or drug trafficking;
- (d) to identify additional and higher level persons reasonably suspected of being engaged in money laundering or drug trafficking as transporters, informees, receives, manages or paymasters.

11.B Power to prosecute offences

(1) The Director may bring a complaint or charge in a Magistrate’s Court against anyone who is alleged to have committed a specified offence.

(2) The Director may delegate the power to prosecute specified offence to officers of the ONDCP, if they have standing as attorneys-at-law, or if they are former police officers with training and experience as prosecutors, on officers with training in prosecuting criminal offences;

(3) The Director or an officer of the ONDCP in the prosecution of an offence before a Magistrates’ Court is entitled to adduce evidence by way of witnesses and through such witness to tender documents and exhibits, to cross-examine witness tendered by the defence, to re-examine witnesses who gave evidence on behalf of the prosecution, to address the Court at any stage of the duration of the case being prosecuted.”.

8. Insertion of New PART IVA in the principal Act

The principal Act is amended by inserting after PART IV the following as PART IVA:

“PART IVA

DISPOSAL OF MOVEABLE PROPERTY IN POSSESSION OF THE ONDCP

30A (1) Where any moveable property, other than money, has come into the possession of the ONDCP in connection with its investigation of a specified offence which-

- (a) is discontinued by the prosecution ; or
- (b) the accused is found not guilty,

upon an application to the Magistrate by an officer of the ONDCP or the person who claims to be the owner of the property, the Magistrate may make such order as is appropriate, having regard to all the circumstances.

(2) Where the owner of moveable property cannot be ascertained, the Magistrate may make such order as is appropriate having regard to all the evidence before the court and the nature of the property.

(3) Where the property is of a perishable nature, the Magistrate after hearing an application filed under subsection (1), may order that the property be detained in the custody of the ONDCP to be dealt in accordance with the order of the Magistrate.

(4) Where the property is not of a perishable nature, the Magistrate in ruling on an application under subsection (1), may order that the property be detained in the custody of the ONDCP to be dealt in accordance with the order of the court.

(5) A person aggrieved by a decision of the Magistrate under this Part, may, within 14 days after the date of the order of a Magistrate appeal to the High Court against the decision of the Magistrate.”.

30B. Power to detain and sell property

(1) Where any moveable property-

- (a) is found or otherwise taken charge of by an ONDCP officer; or
- (b) has come into the possession of an ONDCP officer in relation to an investigation of a specified offence; or
- (c) no person has filed any application seeking possession of such property,

the Director of the ONDCP may, after a period of three months after any property come into possession, apply to a Magistrate court for sale or other disposal of the property, as ordered.

(2) Subject to section 30D, the proceeds of any sale of property under this Part shall be paid into the Forfeiture Fund.

(3) If after a period of 12 months following the sale of property under this section, a person, claiming to be the personal representative of the deceased owner, the Director may apply to a Magistrate to pay over such person the residue of the proceeds of sale less any amount reasonably incurred in storing and selling the property.

(4) If, on the application of any person not later than 12 months after the sale or disposal of property pursuant to subsection (1), the Director is satisfied that that person was the owner of , or was entitled, as the personal representative of the owner, to such property then the Director of the ONDCP shall authorise payment to that person of the amount (if any) paid to the account of the Director in respect of that property, less the costs incurred in keeping and selling or otherwise disposing of the property.

30. C. Sale of property

(1) All property ordered to be sold shall be sold by public auction at such time as the Director determines.

(2) The person employed to sell the property by auction, shall cause the same to be exposed to the public view and published in a giving notice of such sale, shall be notified in the *Gazette* or a local newspaper .

(3) Where the property remains unsold after advertisement for sale at a public auction, the Director may, if he thinks fit, sell that property by private sale or cause it to be destroyed or otherwise disposed of, as he thinks fit.

(4) Where the property is a perishable article or its custody involves unreasonable expense or inconvenience, such property may be sold at any time, but the proceeds of sale shall not be disposed of until they have remained in the possession of the ONDCP for a 12 months.

30D. Application of the Proceeds of sale of property or any money of which the owner cannot be ascertained

(1) The proceeds of the sale of property and any money of which the owner cannot be ascertained may be applied to all or any of the following purposes-

- (a) the expenses of executing the provisions of this Act;
- (b) the payment of reasonable compensation to any person by whom the property has been delivered into the possession of the ONDCP; or
- (c) with the authorisation of the Minister responsible for the ONDCP, such other purposes as the Director of the ONDCP may consider expedient.

30E. Approval of sale or other disposal

No property held by the Director may be sold or otherwise disposed of without the permission of a Magistrate for the particular Magisterial District.

30F. A person aggrieved by the sale of property pursuant to this Act may seek judicial review within 14 days after the date of the sale or such further time as a Judge of the High Court may grant.”

EXPLANATORY MEMORANDUM

The proposed amendment to the principal Act, being the office of National Drug and Money Laundering Policy Act 2017, are contained 8 amending clauses.

Clause 1: This contains the citation.

Clause 2: This provides for the interpretation of the principal Act.

Clause 3: This seeks to amend section 2 of the principal Act by adding the new concept of “controlled delivery”.

Clause 4: This seeks to amend section 7 of the principal Act by excluding the Statutory Corporations (General Provisions) Act 2016 to the principal Act.

Clause 5: This clause seeks to amend section 10 of the principal Act by with respect to the functions of the ONDCP.

Clause 6: This important provisions in that it vests the ONDCP with the power to engage in undercover operation in performance of its duties under the Act. Also to be granted to postpone or waiver the arrest of any person reasonably suspected of a specified

Clause 7: This is again an important clause in that it seeks to add to new provisions being clauses 11A and 11B. Clause 11A details purposes for which a controlled delivery may be utilised. Clause 11B, on the other hand, is concerned with the power to prosecute by the ONDCP. The provision makes it conditional for the officers of the ONDCP who are detailed to prosecute cases be either attorneys-at-law or former police officers with experience in prosecuting in the Magistrates’ Court. This reflects the current position in the Magistrates’ Court in Antigua and Barbuda and the wider Commonwealth Caribbean or the Caricom States.

Clause 8: This clause seeks to amend the principal Act by adding a new part. This is Part IVA. It consists of new clauses 30A to 30F. In summary, these clauses are concerned with severed dimensions of property that was frozen by the Court or seized by the ONDCP officers. The provisions seek to detail exactly what is to happen in the circumstances given the fundamental right to property guaranteed by the supreme law, being the Constitution of Antigua and Barbuda.