(5) An examiner shall not disclose any knowledge acquired about an account which identifies a customer directly or indirectly and other than for the purpose of reporting his findings to the Supervisory Authority and all records, documents and information provided to examiners shall remain confidential.

(6) If an examiner has reasonable suspicion that an account or transaction could constitute or relate to the proceeds of crime or the financing of terrorism, he shall file a written suspicious activity report in relation thereto with the Supervisory Authority, identifying the account by name and number and the basis for the suspicion.

(7) A report of a suspicious activity by an examiner shall have the same legal effect as a report under section 13.

(8) Examiners 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 Supervisory Authority.

(9) Examiners shall report in writing to the Supervisory Authority breaches of regulations and failures to comply with AML/CFT law.

(10) Examiners in their reports shall determine remedial measures that would be sufficient to bring the financial institution into compliance with the requirements of the law.

(11) A financial institution that fails to produce a record, document or information or that produces a record, document or information that is false commits an offence and is liable on summary conviction to a fine of $50,000 and in the case of a continuing offence a penalty of $1,000 for each day that the offence is continued commencing from the day on which the offence is first committed.

(12) A fee may be charged by the Supervisory Authority for examination in accordance with those prescribed by the Second Schedule.

17C. Sanctions.

(1) If an examination report issued by the Supervisory Authority concludes that a financial institution is non-compliant with a requirement of the Act or Regulations, and makes recommendations for remedial measures the Supervisory Authority may by directive take one or more of the following remedial measures—

(a) issue a written warning;

(b) conclude a written agreement with the financial institution on the steps to be taken for it to come into compliance, which shall be referred to as a Memorandum of Understanding;

ANTIGUA AND BARBUDA

MONEY LAUNDERING (PREVENTION) (AMENDMENT) ACT, 2013

No. 1 of 2013

[Published in the Official Gazette Vol. XXXIII No. 15
dated 21st March, 2013.]

_____

Printed at the Government Printing Office, Antigua and Barbuda,
by Ralph George, Government Printer
— By Authority, 2013.

600—03.13 *[Price $ 4.35]*

(1) The Supervisory Authority shall have authority to examine any financial institution to assess its compliance with AML/CFT legal and regulatory requirements, including both onshore and offshore institutions in Antigua and Barbuda.

(2) Examinations shall be from time to time or whenever in the determination of the Supervisory Authority such examination is necessary or expedient in order to make a determination as to whether a financial institution has an adequate AML/CFT system and that the system is being properly and effectively implemented as required by the Act, Regulations, Guidelines and Directives.

(3) In conducting an AML/CFT examination the Supervisory Authority shall—

(a) either appoint an appropriate person or persons to carry out the examination on behalf of the Supervisory Authority, or

(b) direct the Financial Compliance Unit of the ONDCP to carry out the examination.

(4) The Supervisory Authority shall submit to the Minister, an annual report on the examinations carried out by the Supervisory Authority.

17B. Powers and Authority.

(1) The Supervisory Authority may require a financial institution to produce for the examiner at such time as fixed by the Supervisory Authority—

(a) all records, documents and information relevant to its AML/CFT system, including policy documents or information; and

(b) procedures, customer identification, customer generated transaction documents, non-customer generated transaction documents, record keeping, staff training and any other relevant documents.

(2) Where an examiner is not granted access to all records, documentations and information he requires, the Supervisory Authority may apply to the court for an order for the production of the information necessary for the examination, and the court, may if satisfied that it is required in the public interest by the examiner for the proper performance of his duties under this Part, grant the order.

(3) The failure of a financial institution to comply with the order may be considered by the regulator a reason for the revocation of its licence or registration.

(4) An examiner shall not copy or otherwise record information relating to the name or details of an account by which a customer or beneficiary can be identified directly or indirectly, unless the examiner has reasonable grounds for believing that the information is necessary to his examination or for a report under section 13 of the Act.

(d) in the definition of "proceeds of crime" by inserting the following at the end—

"*(c)* any property or asset generated directly or indirectly or derived howsoever from or as a result of unlawful activity, including without limiting the generality any interest, dividend or benefit; and can include legitimately acquired property whose continuing ownership or maintenance is a direct result of a pecuniary advantage deriving from unlawful activity or is directly or indirectly dependent on the possession, management, investment, concealment of the proceeds of crime or transactions conducted with the proceeds of crime."

4. Insertion of section 12C.

The principal Act is amended by inserting the following after section 12B—

"**12C. Minister may specify time to keep records.**

The Minister, in relation to any business activity whose facilities or services are vulnerable to abuse by a customer so as to assist or enable the commission of a money laundering offence, may by order published in the Gazette, require any person conducting such business activity that does not come within the definition of "financial institution", to keep identification and transaction records of its customers, and shall by regulation specify details of records to be kept and require that such records be kept for as long as the person remains a customer and for any period not more than six years after the business relationship has concluded."

5. Amendment to section 13.

The principal Act is amended in section 13 by inserting at the end of subsection (2) the following—

"Notwithstanding any provision in any other Act or legal instrument, a financial institution in complying with this subsection shall make suspicious activity reports to the Supervisory Authority only."

6. Amendment to section 16.

The principal Act is amended in section 16 in subsection (1) by inserting the words "sections 11(xiii) and (xiv)," before the word "section".

7. Insertion of section 17A, 17B, 17C, 17D and 17E.

The principal Act is amended by inserting after section 17 the following—

"17A. Examinations of Financial Institutions for AML/CFT Compliance.

MONEY LAUNDERING (PREVENTION) (AMENDMENT) ACT, 2013

ARRANGEMENT

Sections

[L.S.]

I Assent,

Louise Lake-Tack,
Governor-General.

12th March, 2013.

ANTIGUA AND BARBUDA

MONEY LAUNDERING (PREVENTION) (AMENDMENT) ACT, 2013

No. 1 of 2013

AN ACT to amend the Money Laundering (Prevention) Act, 1996 (No. 9 of 1996) and for incidental and connected purposes.

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, 2013.

2. Interpretation.

In this Act "the principal Act" means the Money Laundering (Prevention) Act, 1996, No. 9 of 1996.

3. Amendment to Section 2.

(1) The principal Act is amended in section 2(1)—

(a) by alphabetically inserting the following definition—

""AML/CFT" means anti-money laundering and countering the financing of terrorism;

(b) in the definition of "financial institution" by inserting the following paragraph at the end—

"a person is deemed to be a financial institution if he engages in a business activity that is substantially the same as a business activity listed in the First Schedule to the Act or where the effect or end result of financial transactions carried out in the course of that business activity is the same as the end result or purpose of financial transactions carried out in the course of a business activity listed in the First Schedule to the Act, irrespective of the fact that the financial transactions do not have the outward form of a First Schedule activity, and regardless of whether the activity is labelled differently or inconsistently with the activities listed in the First Schedule or are done as part of or subsumed within another business activity which may not be a First Schedule activity or be labelled as such;"

(c) in the definition of "money laundering offence" by repealing paragraphs *(c)* and *(d)* and substituting the following paragraphs—

"(c) sections 61 and 62 of the Proceeds of Crime Act, 1993;

(d) sections 4, 5, 6(3), 7, 8 and 19A of The Misuse of Drugs Act, Cap. 283;

(e) sections 5, 6, 7, 8, 9, 10 and 12 of The Prevention of Terrorism Act 2005, conspiracy to commit those offences contrary to section 17 of the Act, and participation in those offences contrary to section 20 of the Act;

(f) sections 13, 14, 17, 18, 21, 22, 23, 24(1)*(a)*, 25, 26 of The Trafficking in Persons (Prevention) Act 2010;

(g) sections 7, 8, 10, 11, 12(1)*(a)*, 13, 14, 15 of The Migrant Smuggling (Prevention) Act 2010;

(h) offences under The Forgery Act, Chapter 181;

(i) offences under The Larceny Act, Chapter 241;

(j) sections 9, 10, 15 of The Firearms Act, Chapter 171; and

(k) any offence for which a charge has been brought alleging conduct from which proceeds of crime of $50,000 or more has been derived directly or indirectly." and

(c) issue directions to the financial institution to cease and desist conduct that results in the inadequacy of any aspect of the AML/CFT system in breach of the law, and may require that the financial institution take action to correct the breach of the law that has been identified;

(d) issue such directions as considered necessary in relation to any person or any member of the board or management concerning the development and implementation of the AML/CFT system of the financial institution; or

(e) assess administrative financial penalties in accordance with the Money Laundering (Prevention) Regulations 2007.

(2) Any remedial requirement issued by the Supervisory Authority under this subsection shall be deemed to take effect from the date specified therein.

(3) A financial institution, director or officer who fails to comply with a directive of the Supervisory Authority requiring remedial action commits an offence and is liable on summary conviction to a penalty of $50,000.

17D. Appeal.

(1) If a financial institution is dissatisfied with a report, recommendation, remedial measure or other result of examination, an appeal may be made in writing to the Supervisory Authority within ten days of receiving written notification of the report, recommendation, remedial measure or other result of examination.

(2) All actions relative to the report, recommendation, remedial measure or other result of examination shall be suspended from the date upon which an appeal is received by the Supervisory Authority and the Supervisory Authority shall render a decision on the appeal in writing within thirty days.

(3) If a financial institution is dissatisfied with a decision on an appeal rendered by the Supervisory Authority, an appeal may be made to the High Court within fourteen days of receiving written notification of that decision.

(4) A decision made by the High Court on an appeal under subsection (3) shall be final.

17E. General sanctions for non-compliance.

(1) Unless otherwise provided for, a financial institution or a director, manager or employee of a financial institution who fails to comply with the provisions of Part III of this Act, commits an offence and is liable—

(a) on summary conviction to a fine not exceeding five hundred thousand dollars or to a term of imprisonment not exceeding six months or both; or

(b) on conviction on indictment to a fine not exceeding one million dollars.

(2) A financial institution or a director, manager or employee of a financial institution is not liable under subsection (1) if he can prove that—

(a) an offence was committed without his consent or connivance; or

(b) he exercised reasonable diligence to prevent the commission of an offence.".

8. Amendment to section 20G.

The principal Act is amended in section 20G by inserting the following subsection at the end—

"(4) Forfeitures from all applications made pursuant to this Act shall be dealt with by the procedure in subsection (2) of this section.

9. Amendment to section 27.

The principal Act is amended in section 27 by inserting the following subsection at the end—

"(3) The prosecution of a money laundering offence may be instituted in writing by the Supervisory Authority.

10. Insertion of the Second Schedule.

The principal Act is amended in the Schedule by inserting after the First Schedule the following—

SECOND SCHEDULE

Section 17A(14)

EXAMINATION FEES SCHEDULE

Category A Financial Institutions	**Category B** Financial Institutions	**Category C** Financial Institutions	**Category D** Offshore Financial Institutions
(E.C. Dollars) Class 1 - $1,500 Class 2 - $2,000 Class 3 - $2,500	(E.C. Dollars) $5,000	(E.C. Dollars) $7,500	(U.S. Dollars) $7,500

Passed by the House of Representatives on the 31st th January, 2013.

D. Gisele Isaac-Arrindell,
Speaker.

Romana Small,
Clerk to the House of Representatives.

Passed by the Senate on the 13th February, 2013.

Hazlyn M. Francis,
President.

Romana Small,
Clerk to the Senate.