

ANTIGUA AND BARBUDA



**THE MIGRANT SMUGGLING (PREVENTION) ACT, 2010**

**No. 11 of 2010**

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**THE MIGRANT SMUGGLING (PREVENTION) ACT, 2010**

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[L.S.]



I Assent,

**Louise Lake-Tack,**  
*Governor-General.*

25th October, 2010.

**ANTIGUA AND BARBUDA**

**THE MIGRANT SMUGGLING (PREVENTION) ACT, 2010**

**No. 11 of 2010**

**AN ACT** to combat migrant smuggling; to provide for migrant smuggling and other offences associated with migrant smuggling and for incidental and connected purposes.

**ENACTED** by the Parliament of Antigua and Barbuda as follows:

**PART I**

**PRELIMINARY**

**1. Short title and commencement**

(1) This Act may be cited as the Migrant Smuggling (Prevention) Act, 2010.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*, and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

**2. Interpretation**

In this Act—

“commercial carrier” includes a company, or the owner, operator or master of a conveyance, that engages in the transportation of goods or people for commercial gain;

“conveyance” means a vehicle, vessel, ship, aircraft, or any other mode of transport whether by air, sea or land;

“customs officer” has the same meaning assigned to it by the Customs (Control and Management) Act, 1993, No. 7 of 1993;

“enforcement officer” means an officer specified in section 18;

“financial or other material benefit” includes any type of financial or non-financial inducement, payment, bribe, reward, advantage or service;

“fraudulent travel or identity document” means a travel or identity document that—

- (a) has been made, or altered in a material way, by a person other than a person or agency lawfully authorised to make or issue the travel or identity document on behalf of a country;
- (b) has been issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or
- (c) is being improperly used by a person other than the rightful holder;

“illegal entry” means crossing the border of Antigua and Barbuda, or any other country, without complying with the requirements for lawful entry into Antigua and Barbuda or that country, as the case may be;

“immigration officer” has the same meaning assigned to it by the Immigration and Passports Act, Cap. 208;

“migrant smuggling” means arranging or assisting a person’s illegal entry into any country, including Antigua and Barbuda, of which the person is not a citizen or permanent resident or is otherwise not entitled to reside, knowing or being reckless as to the fact that the person’s entry is illegal, in order to obtain a financial or other material benefit;

“Minister” means the Minister with the responsibility for immigration;

“receiving country” means the country into which the smuggled person’s entry is arranged;

“smuggled person” means a person who is a victim or the object of an act of migrant smuggling, regardless of whether that person participated in the migrant smuggling; and

“travel document” means any document, such as a passport, a visa, a tourist card, an airline ticket or a birth certificate or certificate of citizenship, that can be used for travel between countries and includes a document under the laws of a country to establish identity in that country.

### **3. Objects of Act**

The objects of this Act are—

- (a) to provide for the prosecution of persons involved in migrant smuggling and related offences and for appropriate penalties;
- (b) to provide for the prevention of migrant smuggling;
- (c) to provide for effective enforcement measures; and
- (d) generally to combat migrant smuggling.

### **4. Scope of application**

The offences under this Act apply whether or not the conduct constituting the offence took place inside or outside Antigua and Barbuda, if—

- (a) Antigua and Barbuda is the receiving country; or
- (b) the receiving country is not Antigua and Barbuda but the migrant smuggling starts in or transits, Antigua and Barbuda.

### **5. Extension of Act to extra territorial offences**

(1) An offence under this Act extends to and may be dealt with as if it had been committed within Antigua and Barbuda if it is committed by a citizen or a permanent resident of Antigua and Barbuda in any place outside and beyond the limits of Antigua and Barbuda.

(2) For the purposes of this Act, a court in Antigua and Barbuda has jurisdiction whether or not the act constituting an offence under this Act, constitutes an offence at the place of its commission.

### **6. Prevailing law**

(1) The provisions of this Act are in addition to, and not in derogation of, the provisions of any other written law relating to migrant smuggling.

(2) In the event of any conflict or inconsistency between the provisions of this Act and those of any other written law, the provisions of this Act shall prevail and the conflicting or inconsistent provisions of such other written law shall, to the extent of the conflict or inconsistency, be deemed to be superseded.

## **PART II**

### **MIGRANT SMUGGLING OFFENCES, IMMUNITY, ETC.**

#### **7. Offence of migrant smuggling**

A person who engages in migrant smuggling commits an offence and, subject to section 9, is liable on summary conviction to a fine not exceeding four hundred thousand dollars or to imprisonment for a term not exceeding twenty years or to both.

#### **8. Attempting, directing, conspiring, inciting etc., the commission of migrant smuggling**

A person who—

- (a) performs an act which is aimed at committing the offence of migrant smuggling or attempts to commit the offence of migrant smuggling;
- (b) incites, instigates, commands, directs, aids, advises, recruits, encourages or procures another person to commit the offence of migrant smuggling; or
- (c) conspires with another person to commit the offence of migrant smuggling or to aid in the commission thereof;

commits an offence and, subject to section 9, is liable on summary conviction to a fine not exceeding four hundred thousand dollars or to imprisonment for a term not exceeding twenty years or to both.

#### **9. Aggravating circumstances**

(1) A person convicted of an offence under section 7 or 8 is liable on summary conviction to a fine not exceeding one million dollars or to imprisonment for twenty-five years or to both if any of the following circumstances is present—

- (a) the smuggled person is or is intended to be subjected to exploitation;
- (b) the smuggled person is subjected to torture or to any other cruel, inhuman or degrading treatment;
- (c) the life of the smuggled person is or is likely to be endangered;



- (d) the offence was committed as part of the activity of an organised criminal group;
- (e) the offender has been previously convicted for the same or similar offences; or
- (f) the convicted person is a public officer and the offence was committed when the officer was purporting to act officially.

(2) In subsection (1)—

- (a) “exploitation” means all forms of sexual exploitation, forced labour, slavery or practices similar to slavery, servitude, any illegal activity or the removal of body parts; and
- (b) “organised criminal group” means a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more of the offences established under this Part, in order to obtain, directly or indirectly, a financial or other material benefit.

(3) In subsection (2)—

- (a) “forced labour” means labour or services obtained or maintained through threats, the use of force, intimidation or other forms of coercion, or physical restraint;
- (b) “removal of body parts” means the removal or trade in any organ or other body part from a living person or the body of a person who has been killed for the sole purpose of removing the organ;
- (c) “servitude” means a condition in which the labour or service of a person is provided or obtained through threats of harm to that person or another person, or through any scheme, plan or pattern intended to cause the person to believe that, if he does not perform the labour or provide the service in question, he or another person would suffer harm;
- (d) “sexual exploitation” means compelling the participation of a person in—
  - (i) prostitution;
  - (ii) the production of child pornography or other pornographic material;
  - (iii) any other sexual activity,

as a result of being subjected to threat, coercion, abduction, the effect of drugs, force, abuse of authority or fraud; and

- (e) “slavery” means reducing a person by any means to a state of submitting to the control of another person as if that other person were the owner of the first-mentioned person.

**10. Fraudulent travel or identity documents**

A person who makes, obtains, gives, sells or possesses a fraudulent travel or identity document for the purpose of facilitating migrant smuggling commits an offence and is liable on summary conviction to a fine not exceeding four hundred thousand dollars or to imprisonment for a term not exceeding twenty years or to both.

**11. Offence to facilitate stay of a smuggled person**

(1) A person who intentionally facilitates, by any unlawful means, the continued presence of a smuggled person in a receiving country in order to obtain a financial or other material benefit commits an offence and is liable on summary conviction to a fine not exceeding four hundred thousand dollars or to imprisonment for a term not exceeding twenty years or to both.

(2) For the purposes of subsection (1), “unlawful means” includes producing, providing or procuring false travel or identity documents in respect of the smuggled person.

**12. Providing facilities in support of migrant smuggling**

(1) A person who—

- (a) intentionally leases or subleases or allows to be used any room, house, building, establishment or conveyance he knows or ought reasonably to have known will be used for facilitating or promoting migrant smuggling; or
- (b) advertises, publishes, prints, broadcasts, distributes or causes the advertisement, publication, printing, broadcast or distribution of information that facilitates or promotes migrant smuggling by any means, including the use of the Internet or other information technology;

commits an offence and is liable on summary conviction to a fine not exceeding four hundred thousand dollars or to imprisonment for a term not exceeding twenty years.

(2) An Internet service provider operating in Antigua and Barbuda—

- (a) shall take all reasonable steps to prevent the use of its service for the hosting of information referred to in subsection (1)(b);
- (b) that has knowledge that an Internet address on its server contains information referred to in subsection (1)(b) shall—

- (i) without delay report that Internet address, as well as the particulars of the person maintaining or in any manner contributing to that Internet address, to the Commissioner of Police;
- (ii) take all reasonable steps to preserve any evidence for purposes of investigation and prosecution by the relevant authorities; and
- (iii) without delay take all reasonable steps to prevent access to that Internet address by any person.

(3) An Internet service provider who fails to comply with the provisions of subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding two years.

### **13. Providing financial services for purposes of migrant smuggling**

A person who, directly or indirectly, provides or makes available financial services or facilities—

- (a) intending that the services or facilities will be used, or knowing or having reasonable grounds to believe that the services or facilities will be used, in whole or in part, for the purpose of committing or facilitating the commission of migrant smuggling, or for the purpose of benefiting a person who is committing or facilitating the commission of migrant smuggling; or
- (b) knowing or having reasonable grounds to believe that, in whole or in any part, the services or facilities will be used by or will benefit a person involved in migrant smuggling;

commits an offence and is liable on summary conviction to a fine not exceeding four hundred thousand dollars or to imprisonment for a term not exceeding twenty years.

### **14. Harbouring persons**

(1) A person who—

- (a) harbours another person; or
- (b) prevents, hinders or interferes with the arrest of another person;

knowing or having reason to believe that such person has committed or is planning or is likely to commit the offence of migrant smuggling or any other offence under this Part, commits an offence and is liable on summary conviction to a fine not exceeding four hundred thousand dollars or to imprisonment for a term not exceeding twenty years.

(2) In this section, “harbour” means supplying a person with shelter, food, drink, money or clothes, arms, ammunition or means of conveyance, or assisting a person in any way to evade apprehension.

#### **15. Using services of a smuggled person**

A person who intentionally—

- (a) benefits, financially or otherwise, from the services of a smuggled person or of a person he knows or ought reasonably to have known is a smuggled person; or
- (b) uses or enables another person to use the services of a smuggled person or of a person he knows or ought reasonably to have known to be a smuggled person;

commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding four hundred thousand dollars or to imprisonment for a term not exceeding twenty years or to both.

#### **16. Immunity from criminal prosecution**

(1) A smuggled person shall not be liable under this Act to criminal prosecution in respect of—

- (a) his illegal entry into Antigua and Barbuda; or
- (b) his period of unlawful residence in Antigua and Barbuda.

(2) Nothing in subsection (1) limits the application of the provisions of the Immigration and Passports Act, Cap. 208, or any other law to a smuggled person.

#### **17. Obligation on commercial carriers**

(1) A commercial carrier shall ensure that every person travelling on board is in possession of all travel documents required for lawful entry into or exit from Antigua and Barbuda.

(2) A commercial carrier commits an offence if the commercial carrier knowingly permits a conveyance to be used for the purpose of—

- (a) bringing a person into Antigua and Barbuda without the travel documents required for the lawful entry of that person into Antigua and Barbuda;
- (b) taking a person out of Antigua and Barbuda without the travel documents required for the lawful departure of that person from Antigua and Barbuda; or
- (c) committing the offence of migrant smuggling.

(3) A commercial carrier commits an offence if, having reasonable grounds to believe that a conveyance is to be used for the purpose of—

- (a) bringing a person into Antigua and Barbuda without the travel documents required for the lawful entry of that person into Antigua and Barbuda;
- (b) taking a person out of Antigua and Barbuda without the travel documents required for the lawful departure of that person from Antigua and Barbuda; or
- (c) committing the offence of migrant smuggling,

the commercial carrier permits the conveyance to be so used.

(4) A person who commits an offence under subsection (2) or (3) is liable on summary conviction—

- (a) in the case of an individual, to a fine not exceeding four hundred thousand dollars or to imprisonment for a term not exceeding twenty years; and
- (b) in the case of a body corporate, to a fine not exceeding five hundred thousand dollars.

(5) In proceedings for an offence under this section, it shall be a defence for a person charged to prove that—

- (a) the person had reasonable grounds to believe that the travel documents of the person travelling on board were travel documents required for lawful entry into or lawful exit from Antigua and Barbuda by that person;
- (b) the person travelling on board possessed travel documents required for lawful entry into or lawful exit from Antigua and Barbuda when that person boarded, or last boarded, the conveyance to travel to or from Antigua or Barbuda; or
- (c) the entry of the person into Antigua and Barbuda occurred only because of illness or injury to that person, stress of weather or any other circumstances beyond the control of the person charged.

### **PART III ENFORCEMENT**

#### **18. Enforcement officers**

(1) The following persons shall be enforcement officers for the purposes of this Act and may exercise all powers of enforcement—

- (a) a police officer;
- (b) an immigration officer; and

(c) an officer of the Coast Guard.

(2) An enforcement officer when acting against a person under this Act shall declare his office and shall produce to the person against whom he is acting any authority card which has been issued to him.

### **19. Powers of investigation**

An enforcement officer shall have all the powers necessary to carry out an investigation for any offence under this Act.

### **20. Power of arrest**

(1) An enforcement officer may, without a warrant, arrest a person—

- (a) found committing or attempting to commit or abetting the commission of an offence under this Act; or
- (b) who the enforcement officer reasonably suspects of being engaged in committing or attempting to commit or abetting the commission of an offence under this Act.

(2) An enforcement officer making an arrest under subsection (1) shall, without delay, bring the person arrested to the nearest police station, and thereafter the person shall be dealt with in accordance with the law relating to criminal procedure for the time being in force.

### **21. Search and seizure with warrant**

(1) If it appears to a Magistrate, upon written information on oath and after such enquiry as the Magistrate considers necessary, that there is reasonable cause to believe that—

- (a) any premises or conveyance has been used or is about to be used for; or
- (b) there is in any premises or conveyance evidence necessary to the conduct of an investigation into,

the commission of an offence under this Act, the Magistrate may issue a warrant authorising the police officer named therein, at any reasonable time, by day or by night, to enter the premises or conveyance.

(2) A warrant issued under subsection (1) may authorise the police officer to—

- (a) enter and search the premises or conveyance for any evidence of or evidence relating to the commission of such offence;

(b) seize or remove from the premises or conveyance, any personal property, book, record, report or document or any other thing that is reasonably believed to be evidence of the commission of such offence; and

(c) make copies of, or take extracts from any book, record, report or document found in the premises or conveyance.

(3) A police officer entering any premises or conveyance under this section may take with him such other persons or equipment as may appear to him to be necessary.

(4) A police officer, in the exercise of his powers under this section, may if necessary—

(a) break open any outer or inner door of the premises or conveyance or any obstruction to the premises or conveyance in order to effect entry into the premises or conveyance;

(b) remove by force any obstruction to entry, search, seizure or removal as he is empowered to effect under this section; and

(c) detain a person found in the premises or conveyance until the search has been completed.

(5) A warrant issued under this section shall include—

(a) a statement of the purpose for which the warrant is issued, and a reference to the nature of the offence;

(b) a description of the kind of property to be seized; and

(c) the time, not being later than fourteen days from date of issue, when the warrant expires.

(6) Where, by reason of its nature, size or amount, it is not practicable to remove any thing seized under this section, the police officer may, by any means, seal such thing in the premises or conveyance in which it is found.

(7) A person who, without lawful authority, breaks, tampers with or damages the seal referred to in subsection (6) or removes the thing under seal, or attempts to do so, commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding two years.

(8) A warrant shall not be issued under this section unless the informant or some other person has given, on oath, such further information as the Magistrate may require concerning the grounds on which the of the warrant is sought.

## **22. Search and seizure without warrant**

(1) Where a police officer has reasonable grounds to believe that by reason of delay in obtaining a search warrant under section 21 an investigation into the commission of an offence under this Act would be adversely affected or evidence of the commission of an offence under this Act is likely to be tampered with, removed, damaged or destroyed, he may, without warrant and with such assistance and force as is necessary—

- (a) enter and search any premises;
- (b) stop and search any conveyance or person;
- (c) seize and detain such conveyance, personal property, book, record, report or document or any other thing found in the premises or conveyance; or
- (d) inspect, make copies of or take extracts from any book, record, report or document found in the premises or conveyance.

(2) In exercising his powers under this section, a police officer shall have all the powers conferred upon him under section 21 (3), (4) and (6).

### **23. Access to computerized data**

(1) A police officer conducting a search under this Act shall be given access to computerized data whether stored in a computer or otherwise.

(2) For the purpose of subsection (1), the police officer shall be provided with the necessary password, encryption code, decryption code, software or hardware or any other means required for his access to enable comprehension of the computerized data.

(3) A person who fails to give a police officer conducting a search under this Act access to computerized data commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding two years.

### **24. List of things seized**

(1) Except as provided in subsection (2), where any thing is seized under this Part, the police officer shall prepare a list of the things seized and immediately deliver a copy signed by him to the occupier of the premises or the owner of the conveyance which has been searched, or to his agent or servant, at the premises or conveyance.

(2) In the case of unoccupied premises, the police officer shall, whenever possible, post a list of the things seized conspicuously at the premises.



(3) Notwithstanding subsection (2), a person with an interest in any premises or conveyance searched pursuant to this Part is entitled, on request, to receive from the police officer a copy of the list prepared pursuant to subsection (1).

## **25. Power to examine persons**

(1) An enforcement officer may, by notice in writing, require a person who he believes to be acquainted with the facts and circumstances of an investigation under this Act to—

- (a) attend before him for examination;
- (b) produce to him any personal property, record, report or document; or
- (c) furnish him with a written statement made on oath or affirmation setting out such information as the enforcement officer may require.

(2) A person examined under subsection (1) shall be legally bound to answer all questions relating to the investigation put to him by the enforcement officer, but he may refuse to answer any question, produce any thing or furnish any written statement, the answer to which or the production or furnishing of which may expose him to a criminal charge, a penalty or forfeiture of property.

(3) An enforcement officer examining a person under subsection (1) shall first inform that person of the provisions of subsection (2).

## **26. Forfeiture of property on conviction**

(1) Subject to any other law restricting the detention or forfeiture of a conveyance, the property of a person convicted of an offence under this Act that was used or obtained in the course of the offence and any benefit gained from the proceeds of the offence is liable to be forfeited to the Crown.

(2) Where a person is convicted of an offence under this Act, the court may, on an application by the Director of Public Prosecutions, order that anything liable to forfeiture under subsection (1) be forfeited to the Crown.

(3) The court shall not make a forfeiture order under this section unless it is satisfied that—

- (a) the person convicted owns the property seized; or
- (b) the owner permitted the property to be used in the commission of the offence.

## **27. Application for forfeiture order**

(1) The Director of Public Prosecutions shall, before applying for an order of forfeiture under section 26(2), give to any person who, to his knowledge, is the owner of anything liable to forfeiture under section 26(1) notice of his intention to apply for a forfeiture order under section 26(2) and the grounds therefor.

(2) Where the Director of Public Prosecutions is unable to ascertain the owner of or any person having an interest in the property in relation to which he intends to apply for a forfeiture order, he shall, no less than 30 days before making the application for a forfeiture order, cause a notice to be published in a newspaper of general circulation in Antigua and Barbuda, regarding the intention to apply for a forfeiture order.

### **28. Disposal of forfeited property**

Anything forfeited under section 26 shall be disposed of in such manner as the Attorney-General deems fit.

### **29. Cost of holding thing seized**

Where any thing seized under this Act is held in the custody of the police pending completion of any proceedings in respect of an offence under this Act, the cost of holding that thing in custody shall, in the event that the person is convicted of the offence, be a civil debt due to the Crown by such person and shall be recoverable accordingly.

### **30. No costs or damages arising from entry, search or seizure to be recoverable**

A person shall not, in respect of any entry or search, or seizure of any thing in the exercise of any power conferred by this Act, be entitled to the costs of such entry, search, or seizure or to any damages or other relief unless such entry, search or seizure was made without reasonable cause.

### **31. Obstruction of enforcement officer**

A person who obstructs, impedes, interferes or fails to comply with any lawful demand of an enforcement officer in the performance of his functions under this Act commits an offence and is liable on summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding two years.

### **32. Tipping-off**

(1) A person who—

- (a) knows or has reasonable grounds to suspect that an enforcement officer is acting, or is proposing to act, in connection with an investigation which is being, or is about to be,

conducted under or for the purposes of this Act; and

- (b) discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation;

commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding two years.

(2) A person who—

- (a) knows or has reasonable grounds to suspect that a disclosure has been made to an enforcement officer under this Act; and
- (b) discloses to any other person information or any other matter which is likely to prejudice an investigation which might be conducted following the disclosure;

commits an offence and is liable on summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding two years.

(3) Nothing in subsection (1) or (2) makes it an offence for an attorney-at-law or his employee to disclose any information or other matter—

- (a) to his client in connection with the giving of advice to the client in the course and for the purpose of the professional employment of the attorney-at-law; or
- (b) to a person in contemplation of, or in connection with and for the purpose of, any legal proceedings.

(4) In proceedings against a person for an offence under this section, it is a defence to prove that—

- (a) he did not know or suspect that the disclosure made under subsection (2) was likely to prejudice the investigation; or
- (b) he had lawful authority or reasonable excuse for making the disclosure.

#### **PART IV**

#### **MISCELLANEOUS**

### **33. Institution of proceedings**

Notwithstanding any other written law prescribing the period within which summary proceedings

may be commenced, proceedings for an offence under this Act or the regulations may be commenced within five years from the date of the commission of the offence.

#### **34. Compensation to State**

(1) The Attorney-General may apply to the court for an order for a person convicted of migrant smuggling to pay to the Crown an amount in compensation for expenses incurred or reasonably expected to be incurred in connection with the detention in, and removal from Antigua and Barbuda of the smuggled person.

(2) An order for the payment of compensation under subsection (1) has the effect of a debt due to the Crown.

#### **35. Admissibility of documentary evidence**

A document or other evidence obtained by an enforcement officer in the exercise of his powers under this Act, or a copy of the document or other evidence, as the case may be, shall be admissible in evidence in any proceedings under this Act, notwithstanding anything to the contrary in any written law.

#### **36. Admissibility of translation of documents**

(1) Where a document which is to be used in any proceeding against a person for an offence under this Act is in a language other than English, a translation of that document into English shall be admissible in evidence where—

- (a) the translation is accompanied by a certificate of the person who translated the document setting out that it is an accurate, faithful and true translation; and
- (b) the translation had been done at the instance of an enforcement officer.

(2) Subsection (1) applies to a document which is translated, whether or not—

- (a) the document was made in or outside Antigua and Barbuda;
- (b) the translation was done in or outside Antigua and Barbuda; or
- (c) possession of the document was obtained by an enforcement officer in or outside Antigua and Barbuda.

#### **37. Offence by body corporate**

Where an offence against a provision of this Act has been committed by a body corporate, a person who at the time of the commission of the offence was—

- (a) a director or manager or other similar officer of the body corporate;
- (b) purporting to act in the capacity of a director or manager or other similar officer of the body corporate, or was in any manner responsible for the management of any of the affairs of the body corporate or was assisting in such management;

shall also be liable for that offence unless he proves that the offence was committed without his knowledge, consent or connivance, and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

### **38. Offence by employee or agent**

(1) In order to establish the liability of an employer or principal for an offence under Part II, the conduct of an employee or agent of or any other person acting on behalf of the employer or principal may be attributed to the employer or principal if that person was acting—

- (a) within the scope of his employment;
- (b) within the scope of his actual or apparent authority; or
- (c) with the consent, whether express or implied, of a director, member or partner of the employer or principal.

(2) Subsection (1) does not exclude the liability of an employee or agent of or any other person acting on behalf of the employer or principal for committing the offence of migrant smuggling.

(3) The court may, upon convicting an employer or principal of an offence under Part II, make an order revoking the licence or registration of the employer or principal to operate the business in the course of which the offence was committed.

### **39. Regulations**

(1) The Minister may make such regulations as are necessary or expedient to give full effect to, or for carrying out, the provisions of this Act.

(2) Regulations made under the Act shall be subject to a negative resolution of the House of Representatives and may prescribe in respect of any contravention of the regulations, a penalty not exceeding ten thousand dollars or eighteen months imprisonment or both.

*The Migrant Smuggling (Prevention) Act, 2010*

22

No. 11 of 2010

Passed by the House of Representatives on  
the 27th day of May, 2010.

Passed by the Senate on the 10th day  
of June, 2010.

**D. Gisele Isaac-Arrindell,**  
*Speaker.*

**Hazlyn M. Francis,**  
*President.*

**Thelma Thomas,**  
*Clerk to the House of Representatives.*

**Thelma Thomas,**  
*Clerk to the Senate.*