

2015-10-21

OBJECTS AND REASONS

This Bill would amend the *Anti-Terrorism Act*, Cap. 158.

Arrangement of Sections

1. Short title
2. Amendment of section 2 of Cap. 158
3. Repeal and replacement of Part IV of Cap. 158
4. Amendment of section 13 of Cap. 158
5. Repeal of section 16 of Cap. 158
6. Consequential amendments
7. Transitional provisions

SCHEDULE

CONSEQUENTIAL AMENDMENTS

BARBADOS

A Bill entitled

An Act to amend the Anti-Terrorism Act.

ENACTED by the Parliament of Barbados as follows:

Short title

- 1.** This Act may be cited as the *Anti-Terrorism (Amendment) Act, 2015*.

Amendment of section 2 of Cap. 158

2. *Section 2 of the Anti-Terrorism Act, Cap. 158, in this Act referred to as the principal Act, is amended*

- (a) in the definition of “State or government facility”, by deleting the full-stop and substituting a semi-colon; and*
- (b) by inserting in the appropriate alphabetical order, the following definition:*

““terrorist designation order” means an order of the Court designating a person as a terrorist or terrorist entity.”.

Repeal and replacement of Part IV of Cap. 158

3. *Part IV of the principal Act is repealed and the following is substituted:*

“PART IV

DESIGNATION OF PERSONS AS TERRORISTS OR TERRORIST ENTITIES

Designation of terrorists and terrorist entities

8.(1) The Director of Public Prosecutions may apply to a judge in Chambers for an order designating a person as a terrorist or terrorist entity, as the case may be, where

- (a) the person is included in a list of individuals and entities designated as terrorists or terrorist entities by the United Nations Security Council; or*

- (b) the Director of Public Prosecutions has reasonable grounds to believe that the person has committed or participated in the commission of an offence referred to in section 3, 3A or 4.
- (2) An application for a terrorist designation order shall be
 - (a) made *ex parte*; and
 - (b) supported by affidavit deposing to the matters set out in subsection (1)(a) or (b), as the case may be.
- (3) The judge shall make a terrorist designation order against a person where he is satisfied of the circumstances set out in subsection (1)(a) or (b) in relation to the person.
- (4) A person against whom a terrorist designation order is made may, within 60 days of the making of the order, appeal to the Court of Appeal against the decision of the judge to make the order and shall give the Director of Public Prosecutions at least 14 days' notice of the application.
- (5) The Director of Public Prosecutions may, within 30 days of the decision of a judge not to make a terrorist designation order against a person, appeal to the Court of Appeal against the decision and shall give such notice to the person as the court may require.
- (6) The Court of Appeal shall, upon an appeal under this section
 - (a) hear any evidence or other information that may be presented by the Director of Public Prosecutions and may, at the request of the Director of Public Prosecutions, hear all or part of that evidence or information in the absence of the person concerned or any attorney-at-law representing the person, where the court is of the opinion that the disclosure of the evidence or information would be prejudicial to national security or endanger the safety of any person;

- (b) provide the person concerned with a statement summarizing the evidence or information available to the court in order to reasonably inform the person of the reasons for the making of the terrorist designation order, without disclosing any evidence or information the disclosure of which would, in the opinion of the court, be prejudicial to national security or endanger the safety of any person;
 - (c) provide the person concerned with a reasonable opportunity to be heard; and
 - (d) direct the judge to make, confirm, vary or set aside the terrorist designation order, as the court considers appropriate.
- (7) Notwithstanding anything to the contrary in the *Evidence Act*, Cap. 121, evidence shall not be excluded on the ground that it is hearsay, of whatever degree, in proceedings for a terrorist designation order or on appeal under this section.

Review of terrorist designation orders

- 9.(1)** The Director of Public Prosecutions shall
- (a) every 6 months review every terrorist designation order made under section 8 in order to determine whether the circumstances referred to in section 8(1)(a) or (b) continue to exist in respect of the **person** against whom the order was made; and
 - (b) where he determines that such circumstances no longer exist in relation to a person, apply to a judge in Chambers for the variation or revocation of the terrorist designation order relating to that person.
- (2) Upon an application under subsection (1)(b), the judge shall, where he is satisfied that the circumstances leading to the designation

of a person as a terrorist or terrorist entity no longer exist, vary or revoke the terrorist designation order relating to the person.

Publication of terrorism designation orders

10.(1) The Director of Public Prosecutions shall, within 7 days of the decision of a judge in Chambers, whether at first instance or on the order of the Court of Appeal, to make, confirm, vary or set aside a terrorism designation order, cause notice of the decision to be published in the *Official Gazette* and at least 2 daily newspapers in circulation in Barbados, and may publish such notice electronically.

(2) A notice referred to in subsection (1) shall contain sufficient particulars to enable anyone who may be affected by the decision to be reliably and adequately informed of the decision.”.

Amendment of section 13 of Cap. 158

4. *Section 13(a) of the principal Act is amended by deleting the words “an application brought under section 8 or 9” and substituting the words “the person in accordance with the Convention”.*

Repeal of section 16 of Cap. 158

5. *Section 16 of the principal Act is repealed.*

Consequential amendments

6. *The enactments set out in Column 1 of the Schedule are amended to the extent set out opposite thereto in Column 2.*

Transitional provisions

7. *Proceedings commenced under this Act prior to the commencement of the Anti-Terrorism (Amendment) Act, 2015 (Act 2015-) shall, upon the commencement of the Anti-Terrorism (Amendment) Act, 2015 (Act 2015-)*

continue as if the Anti-Terrorism (Amendment) Act, 2015 (Act 2015-) had not commenced.

SCHEDULE

(Section 6)

CONSEQUENTIAL AMENDMENTS

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
<p>1. <i>Mutual Assistance in Criminal Matters</i>, Cap. 140A</p>	<p>Delete section 29 and substitute the following:</p> <p style="text-align: center;">“Mutual assistance between Barbados and non-Commonwealth countries</p> <p>29.(1) This Act shall apply <i>mutatis mutandis</i> to</p> <p style="padding-left: 40px;">(a) any country which has a bilateral treaty with Barbados in respect of mutual assistance in criminal matters;</p> <p style="padding-left: 40px;">(b) any country which is a party to the <i>United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988</i>; and</p> <p style="padding-left: 40px;">(c) any country which is a party to a Convention set out in the First or Second Schedule to the <i>Anti-Terrorism Act</i>, Cap. 158.</p> <p>(2) Unless the Minister otherwise directs, all expenses incurred in respect of any requests made under subsection (1)(b) or (c) shall be paid by the country making the request.</p> <p>(3) Any co-operation requested under subsection (1)(b) or (c) shall be rendered on the basis of reciprocity.</p> <p>(4) The Attorney-General may by Order prescribe any limitation, condition, exception or qualification to the application of this Act as it applies to any country to which subsection (1)(b) or (c) relates.”.</p>

Schedule - (Cont'd)

CONSEQUENTIAL AMENDMENTS - (Cont'd)

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
2. <i>Proceeds of Crime Act</i> , Cap. 143	<p>1. In section 12(<i>b</i>), substitute for the words “section 33”, the words “section 35”.</p> <p>2. In section 31,</p> <p style="padding-left: 2em;">(<i>a</i>) in subsection (1),</p> <p style="padding-left: 4em;">(<i>i</i>) delete paragraphs (<i>a</i>) and (<i>b</i>) and substitute the following:</p> <p style="padding-left: 6em;">“(a) has been convicted of a scheduled offence;</p> <p style="padding-left: 6em;">(b) has been, or is about to be, charged with a scheduled offence; or”; and</p> <p style="padding-left: 4em;">(<i>ii</i>) insert after paragraph (<i>b</i>), the following:</p> <p style="padding-left: 6em;">“(c) is reasonably suspected of having committed a scheduled offence,”; and</p> <p style="padding-left: 2em;">(<i>b</i>) delete subsection (2) and substitute the following:</p> <p style="padding-left: 4em;">“(2) An application for a restraining order may be made <i>ex parte</i> and shall be in writing and be accompanied by an affidavit stating</p> <p style="padding-left: 6em;">(<i>a</i>) where the defendant has been convicted of a scheduled offence, the scheduled offence for which the defendant was convicted, the date of the conviction, the court before which the conviction was obtained and whether an appeal has been lodged against the conviction;</p> <p style="padding-left: 6em;">(<i>b</i>) where the defendant has been charged with, but not convicted of, a scheduled offence, the offence with which he is charged and the grounds for believing that he committed the offence;</p>

*Schedule - (Cont'd)**CONSEQUENTIAL AMENDMENTS - (Cont'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
<p>2. <i>Proceeds of Crime Act</i>, Cap. 143 (Cont'd)</p>	<p>(c) where the defendant has been neither charged with nor convicted of a scheduled offence, the grounds for believing that he committed the offence or for having a reasonable suspicion that he committed the offence;</p> <p>(d) a description of the property in respect of which the restraining order is sought;</p> <p>(e) the name and address of the person who is believed to be in possession of the property;</p> <p>(f) the grounds for the belief that the property is tainted property in relation to a scheduled offence or that the defendant derived a benefit directly or indirectly from the commission of the offence, as the case may be; and</p> <p>(g) where the application seeks a restraining order against property of a person other than the defendant, the grounds for the belief that the property is tainted property in relation to the offence and is subject to the effective control of the defendant.</p> <p>(3) Where the defendant is a person against whom a terrorist designation order is in force, it shall not be necessary to submit the information specified in subsection (2)(c) but a copy of the terrorist designation order shall be submitted with the application for a restraining order.</p> <p>(4) In subsection (3), “terrorist designation order” has the meaning assigned to it in section 2 of the <i>Anti-Terrorism Act</i>, Cap. 158.”.</p>

*Schedule - (Cont'd)**CONSEQUENTIAL AMENDMENTS - (Cont'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
2. <i>Proceeds of Crime Act</i> , Cap. 143 (Cont'd)	<p>3. In section 32,</p> <p>(a) delete subsection (1) and substitute the following:</p> <p>“(1) Subject to this section, where the Director of Public Prosecutions applies to the Court for a restraining order against property and the Court is satisfied that</p> <p>(a) the defendant has been convicted of a scheduled offence;</p> <p>(b) where the defendant has not been convicted of a scheduled offence, there are reasonable grounds for believing or suspecting that the defendant committed a scheduled offence;</p> <p>(c) there are reasonable grounds for believing that the property is tainted property in relation to an offence or that the defendant derived a benefit directly or indirectly from the commission of the offence;</p> <p>(d) there are reasonable grounds for believing that the property is tainted property in relation to an offence and that the property is subject to the effective control of the defendant, where the application seeks a restraining order against property of a person other than the defendant,</p> <p>the Court may make an order described in subsection (1A).”;</p>

Schedule - (Cont'd)

CONSEQUENTIAL AMENDMENTS - (Cont'd)

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
<p>2. <i>Proceeds of Crime Act</i>, Cap. 143 (Cont'd)</p>	<p>(b) insert after subsection (1), the following:</p> <p>“(1A) The order referred to in subsection (1) is an order</p> <p style="padding-left: 2em;">(a) prohibiting the defendant or any other person from disposing of, or otherwise dealing with, the property or such part thereof or interest therein as is specified in the order, except in such manner as may be specified in the order; and</p> <p style="padding-left: 2em;">(b) at the request of the Director of Public Prosecutions, where the Court is satisfied that the circumstances so require</p> <p style="padding-left: 4em;">(i) directing the Public Trustee or such other person as the Court may appoint to take custody of the property or such part thereof as is specified in the order and to manage or otherwise deal with all or any part of the property in accordance with the directions of the Court; and</p> <p style="padding-left: 4em;">(ii) requiring any person having possession of the property to give possession thereof to the Public Trustee or to the person appointed under sub-paragraph (i) to take custody and control of the property.</p> <p>(1B) An order to be made by the Court under subsection (1) shall be made without delay.”;</p>

*Schedule - (Cont'd)**CONSEQUENTIAL AMENDMENTS - (Cont'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
2. <i>Proceeds of Crime Act</i> , Cap. 143 (Concl'd)	<p>(c) in subsection (2),</p> <p>(i) delete paragraph (b) and substitute the following:</p> <p style="padding-left: 40px;">“(b) the person’s reasonable legal expenses; and”;</p> <p>(ii) insert after paragraph (b), the following:</p> <p style="padding-left: 40px;">“(c) any reasonable expenses incurred in the proper administration of the property by the person appointed under subsection (1A)(b)(i) to take custody of the property.”;</p> <p>(d) delete subsection (4) and substitute the following:</p> <p style="padding-left: 40px;">“(4) Where the Public Trustee or other person appointed under subsection (1A)(b)(i) is given a direction in relation to any property, the Public Trustee or that other person may apply by summons to the Court for directions on any question respecting the management or preservation of the property under his control.”;</p> <p>(e) delete subsection (6) and substitute the following:</p> <p style="padding-left: 40px;">“(6) The Public Trustee or other person appointed under subsection (1A)(b)(i) in acting on the directions given by the Court is not liable to any other person in respect of any loss or damage resulting from the discharge of his duty except so far as the loss or damage is caused by his negligence.”.</p>

*Schedule - (Cont'd)**CONSEQUENTIAL AMENDMENTS - (Cont'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
<p>3. <i>Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011 (Act 2011-23)</i></p>	<p>1. In section 2, in the definition of “financial institution”,</p> <p style="padding-left: 2em;">(a) in paragraph (a)(ix), delete the word “and”; and</p> <p style="padding-left: 2em;">(b) insert after paragraph (a)(x), the following:</p> <p style="padding-left: 4em;">“(xi) a foundation within the meaning of the <i>Foundations Act, 2013 (Act 2013-2)</i>; and</p> <p style="padding-left: 4em;">(xii) a private trust company within the meaning of the <i>Private Trust Companies Act, 2012 (Act 2012-22)</i>.”</p> <p>2. Delete section 4(1) and substitute the following:</p> <p style="padding-left: 2em;">“(1) This Act applies to the non-financial business entities and professionals set out in the <i>Second Schedule</i>, as it applies to financial institutions; and a reference in this Act to a financial institution shall be construed to include a non-financial business entity or professional, as the case may be.”.</p> <p>3. Delete the heading of Part IV and substitute the following:</p> <p style="text-align: center;">“PART IV</p> <p style="text-align: center;">DUTIES OF FINANCIAL INSTITUTIONS AND OTHER PERSONS”.</p>

*Schedule - (Cont'd)**CONSEQUENTIAL AMENDMENTS - (Cont'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
<p>3. <i>Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011 (Act 2011-23) (Cont'd)</i></p>	<p>4. Delete section 18(4) and substitute the following:</p> <p style="padding-left: 40px;">“(4) A financial institution which does not maintain business transaction records as required by this section is guilty of an offence and is liable on conviction on indictment to a fine of \$100 000.”.</p> <p>5. In section 23,</p> <p style="padding-left: 20px;">(a) in subsection (1)(a),</p> <p style="padding-left: 40px;">(i) delete sub-paragraphs (ii) and (iii) and substitute the following:</p> <p style="padding-left: 60px;">“(ii) involves the financing of terrorism;</p> <p style="padding-left: 60px;">(iii) is of a suspicious or an unusual nature; or”; and</p> <p style="padding-left: 40px;">(ii) insert after sub-paragraph (iii), the following:</p> <p style="padding-left: 60px;">“(iv) is conducted by, or relates to, a person against whom a terrorist designation order is in force or relates to the property of such a person; and”;</p> <p style="padding-left: 20px;">(b) delete subsection (2) and substitute the following:</p> <p style="padding-left: 40px;">“(2) In subsection (1)(a)(iv), “terrorist designation order” has the meaning assigned to it in section 2 of the <i>Anti-Terrorism Act</i>, Cap. 158.”; and</p> <p style="padding-left: 20px;">(c) insert after subsection (2), the following:</p> <p style="padding-left: 40px;">“(3) Notwithstanding section 47, a financial institution which does not make a report as required by this section is guilty of an offence and is liable on conviction on indictment to a fine of \$100 000.”.</p>

Schedule - (Concl'd)

CONSEQUENTIAL AMENDMENTS - (Concl'd)

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
<p>3. <i>Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011</i> (Act 2011-23) (Concl'd)</p>	<p>6. In the Third Schedule,</p> <p>(a) in Part I</p> <p style="padding-left: 2em;">(i) in paragraph (m), delete the word “and”;</p> <p style="padding-left: 2em;">(ii) in paragraph (n), delete the full-stop appearing at the end of the paragraph and substitute a semi-colon; and</p> <p style="padding-left: 2em;">(iii) insert after paragraph (n), the following:</p> <p style="padding-left: 4em;">“(o) a foundation within the meaning of the <i>Foundations Act, 2013</i> (Act 2013-2), the <i>Foundations Act, 2013</i> (Act 2013-2); and</p> <p style="padding-left: 4em;">(p) a private trust company within the meaning of the <i>Private Trust Companies Act, 2012</i> (Act 2012-22), the <i>Private Trust Companies Act, 2012</i> (Act 2012-22).”; and</p> <p>(b) in Part II</p> <p style="padding-left: 2em;">(i) in paragraph (j), delete the word “and”;</p> <p style="padding-left: 2em;">(ii) in paragraph (k), delete the full-stop appearing at the end of the paragraph and substitute a semi-colon; and</p> <p style="padding-left: 2em;">(iii) insert after paragraph (k), the following:</p> <p style="padding-left: 4em;">“(l) a foundation within the meaning of the <i>Foundations Act, 2013</i> (Act 2013-2), the Registrar of Corporate Affairs and Intellectual Property; and</p> <p style="padding-left: 4em;">(m) a private trust company within the meaning of the <i>Private Trust Companies Act, 2012</i> (Act 2012-22), the Minister responsible for International Business.”.</p>

Read three times and passed the House of Assembly this
day of _____, 2015.

Speaker

Read three times and passed the Senate this _____ day of
_____, 2015.

President