

2019/12/11

OBJECTS AND REASONS

This Bill would amend the *Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011* (Act 2011-23) to make provision for the establishment of a unit to be known as the “Compliance Unit” and for other matters related thereto.

Arrangement of Sections

1. Short title
2. Repeal and replacement of section 9 of Act 2011-23
3. Amendment of section 13 of Act 2011-23
4. Amendment of section 34 of Act 2011-23
5. Repeal and replacement of section 38 of Act 2011-23
6. Insertion of Part VIA into Act 2011-23
7. Repeal and replacement of section 50 of Act 2011-23

BARBADOS

A Bill entitled

An Act to amend the *Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011* (Act 2011-23) to make provision for the establishment of a unit to be known as the “Compliance Unit” and for other matters related thereto.

ENACTED by the Parliament of Barbados as follows:

Short title

1. This Act may be cited as the *Money Laundering and Financing of Terrorism (Prevention and Control) (Amendment) (No.) Act, 2019*.

Repeal and replacement of section 9 of Act 2011-23

2. *Section 9 of the principal Act, is deleted and following is substituted:*

“Administration and staff

9.(1) The office of the Authority shall comprise

- (a) the Financial Intelligence Unit which shall consist of a director and other public officers whose offices shall be established in accordance with the *Public Service Act*, Cap. 29; and
- (b) the Compliance Unit which shall consist of public officers whose offices shall be established in accordance with the *Public Service Act*.

(2) The Director shall, subject to the directions of the Authority, be responsible for the general administration of this Act.

(3) The Compliance Unit shall, subject to the directions of the Authority, be responsible for the supervision of non-financial business entities or professionals.

(4) For the purposes of this section and Part VIA, “non-financial business entities or professionals” means entities or professionals referred to in the *Second Schedule* who are not corporate service providers or trust service providers licensed in accordance with the *Corporate and Trust Service Providers Act, 2015 (Act 2015-12)*.”.

Amendment of section 13 of Act 2011-23

3. *Section 13 of the principal Act is amended by deleting subsection (3) and substituting the following:*

“(3) The Authority may delegate to the Director any of its functions under this Act except

(a) the functions set out in section 26; and

(b) the responsibilities of the Compliance Unit under this Act.”.

Amendment of section 34 of Act 2011-23

4. *Section 34 of the principal Act is amended by deleting subsection (3) and substituting the following:*

“(3) A person who is aggrieved by a decision of

(a) the Authority made pursuant to this section; or

(b) a regulatory authority or other public authority under this section or sections 35 or 36,

may appeal to a Judge in Chambers against the decision.”.

Repeal and replacement of section 38 of Act 2011-23

5. *Section 38 of the principal Act is deleted and the following is substituted:*

“Power to freeze assets

38.(1) On receipt of information under this Act and on being satisfied that it is necessary to do so, the Director may apply to a Judge in Chambers for an order to

- (a) prohibit any person from completing any transaction for a period not exceeding 72 hours; or
- (b) freeze a bank account of a person for a period not exceeding 5 days.

(2) Where the Director decides that it is necessary to apply to a Judge in Chambers for an order pursuant to subsection (1), he shall do so expeditiously.”.

Insertion of Part VIA into Act 2011-23

6. *The principal Act is amended by inserting immediately after Part VI the following:*

“PART VIA

COMPLIANCE UNIT

Request for information

47A.(1) The Compliance Unit may require a non-financial business entity or professional to produce information that is considered relevant to

- (a) ensuring compliance with the provisions of this Act except information that is subject to legal professional privilege; and
- (b) facilitating the keeping of a register pursuant to subsection (3).

(2) The Compliance Unit shall retain a record of all information received pursuant to subsection (1)(a) for a period of no less than 5 years from the date that the information is received.

(3) The Compliance Unit may cause to be kept a register of non-financial business entities or professionals which shall record

- (a) the name of the entity or professional;
- (b) the address of the registered office or principal place of business of the entity or professional;
- (c) the nature of the operations of the entity or professional;
- (d) such other information as the Compliance Unit considers appropriate.

(4) Where a non-financial business entity or professional fails to comply with subsection (1)

- (a) the Compliance Unit may
 - (i) issue a warning or reprimand to the non-financial business entity or professional;
 - (ii) give such directives as seem appropriate;
 - (iii) require the non-financial business entity or professional, within such period as the Compliance Unit specifies, to cease engaging in the activity which may obstruct the Compliance Unit in performing its functions pursuant to subsection (1); or
- (b) the Authority may, with the necessary modifications, impose on the non-financial business entity or professional, a pecuniary penalty in accordance with section 36.

Communication of information to foreign states by the Compliance Unit

47B. The Compliance Unit may, in accordance with the directions of the Authority, communicate information that is relevant to the purposes of this Act to any compliance unit of a foreign state, by whatever name called, where the Compliance Unit is satisfied that

- (a) the unit is located in a state that is a party to any agreement with Barbados in respect of the exchange of information under this Act; and
- (b) the appropriate arrangements are in place for protecting the confidentiality of the information and controlling the information and the use that will be made of the information.

Information sharing with a public authority by the Compliance Unit

47C.(1) Subject to section 48, any report or information received by or on behalf of or disclosed to the Compliance Unit under this Act may be provided by the Compliance Unit to a public authority for the purposes of this Act.

(2) Notwithstanding any law to the contrary but subject to section 49, a public authority may provide information to the Compliance Unit for the purposes of this Act, if the information is not subject to legal professional privilege.

Power to ensure compliance

47D.(1) The Compliance Unit may examine or cause an examination of the operations of a non-financial business entity or professional to determine whether

- (a) the provisions of this Act or any regulation or guideline made thereunder; or
- (b) any directives given by the Compliance Unit

are being complied with.

(2) Where it appears to the Compliance Unit that a non-financial business entity or professional is in contravention of this Act or any regulation or guideline made under this Act, or any directive given by the Compliance Unit, the Compliance Unit may

- (a) require the non-financial business entity or professional to cease engaging in the activity which is in contravention of the Act, regulation, guideline or directive and to take such remedial measures as the Compliance Unit directs within such period as the Compliance Unit specifies;
- (b) give such directives as seem appropriate.

(3) A requirement or a directive referred to in subsection (1) shall be in writing and shall specify the reasons for such requirement or direction.

(4) The Compliance Unit may, in ensuring that a non-financial business entity or professional complies with

- (a) the provisions of this Act or any regulation or guideline made thereunder; or
- (b) any directive given by the Compliance Unit,

exercise the powers set out in sections 31, 32(1) and 34(2)(a), (b) and (c) with the necessary modifications.

(5) A non-financial business entity or professional who is aggrieved by a decision of the Compliance Unit made pursuant to this section may appeal to a Judge in Chambers against the decision within 14 days of the date of the decision.”.

Repeal and replacement of section 50 of Act 2011-23

7. Section 50 of the principal Act is deleted and the following is substituted:

“Immunity from suit

50. No action or other proceeding for damages shall be instituted against the Authority, the Financial Intelligence Unit or the Compliance Unit or a member of the Authority or officer, employee or agent of the Financial Intelligence Unit or Compliance Unit for any act done in good faith in the performance of a duty or in the exercise of a power under this Act.”.