



BERMUDA

ANTI-TERRORISM (FINANCIAL AND OTHER MEASURES) ACT 2004

2004 : 31

TABLE OF CONTENTS

CHAPTER I
INTRODUCTORY

- 1 Short title and commencement
- 2 Interpretation: general
- 3 Terrorism: interpretation
- 4 Terrorist property: interpretation

CHAPTER II
OFFENCES

- 5 Fund-raising
- 5A Organising or directing others to commit offences
- 5B Offences by bodies corporate etc.
- 6 Use and possession
- 7 Funding arrangements
- 8 Money laundering
- 9 Disclosure of information: duty
- 10 Disclosure of information: permission
- 10A Tipping-off
- 11 Disclosure of information: regulated and public sectors
- 12 Cooperation with the FIA
- 12A Regulations
- 12B Directions
- 12C Transactions and persons affected by directions
- 12D Requirements that may be imposed on financial institutions
- 12E Requirements that may be imposed on insurers
- 12F Customer due diligence
- 12G Ongoing monitoring

ANTI-TERRORISM (FINANCIAL AND OTHER MEASURES) ACT 2004

- 12H Systematic reporting
- 12I Limiting or ceasing business
- 12J Making and giving effect to directions
- 12K Directions limiting or ceasing business: exemption by license
- 12L Offence: failure to comply with a direction
- 12M Offences in connection with licenses
- 12N Report to Legislature
- 12O Use of guidance
- 13 Penalties
- 14 Forfeitures
- 15 Forfeiture of terrorist cash
- 15A Prohibition of double jeopardy

CHAPTER III
ACCOUNT MONITORING ORDERS

- 16 Account monitoring orders

CHAPTER IV
TERRORIST FINANCE OFFENCES: JURISDICTION

- 17 Terrorist finance: things done outside Bermuda

CHAPTER V
GENERAL

- 18 Police powers
- 19 Production orders
- 20 Search warrants
- 21 Offences of prejudicing investigation
- 22 Consent to prosecution
- 23 Disapplication of section 9 with respect to regulators etc.
- 24 Evidence
- 25 Orders and directions
- 26 Section 55A of Proceeds of Crime Act 1997 amended

SCHEDULE 1
DISCLOSURE OF INFORMATION: REGULATED AND PUBLIC SECTORS

SCHEDULE 2
FORFEITURE ORDERS

SCHEDULE 3
FORFEITURE OF TERRORIST CASH

SCHEDULE 4
ACCOUNT MONITORING ORDERS

WHEREAS it is expedient to make provision for cutting off the financing of terrorism;
and for connected purposes:

ANTI-TERRORISM (FINANCIAL AND OTHER MEASURES) ACT 2004

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:—

CHAPTER I INTRODUCTORY

Short title and commencement

1 This Act may be cited as the Anti-Terrorism (Financial and Other Measures) Act 2004 and shall come into operation on such day as the Minister may appoint by notice published in the Gazette.

Interpretation: general

2 In this Act, unless the contrary intention appears—

“act” and “action” include omission;

“AML/ATF regulated financial institution” means a person who—

- (a) carries on deposit-taking business within the meaning of section 4 of the Banks and Deposit Companies Act 1999;
- (b) carries on investment business within the meaning of section 3 of the Investment Business Act 2003;
- (c) is an insurer (and not a reinsurer) registered under section 4 of the Insurance Act 1978 who carries on long term business falling within paragraph (a) or (c) of the definition of “long-term business” in section 1(1) of the Insurance Act 1978;
- (d) is an insurance manager or broker registered under section 10 of the Insurance Act 1978 in so far as he acts as a manager or broker in connection with long term business (other than reinsurance business) falling within paragraph (a) or (c) of the definition of “long-term business” in section 1(1) of the Insurance Act 1978;
- (e) carries on the business of a fund administrator within the meaning of section 2(2) of the Investment Funds Act 2006;
- (f) carries on money service business within the meaning of section 20AA of the Bermuda Monetary Authority Act 1969;
- (g) carries on trust business within the meaning of section 9(3) of the Trusts (Regulation of Trust Business) Act 2001 and is not otherwise exempted by or under paragraph 3 of the Trusts (Regulation of Trust Business) Exemption Order 2002;
- (h) is the operator of an investment fund within the meaning of section 2 of the Investment Funds Act 2006; or

ANTI-TERRORISM (FINANCIAL AND OTHER MEASURES) ACT 2004

- (i) carries on corporate service provider business within the meaning of section 8 of the Corporate Service Provider Business Act 2012;

“article” includes substance and any other thing;

“Bermuda Casino Gaming Commission” has the meaning given in section 6 of the Casino Gaming Act 2014;

“biological weapon” means

- (a) any biological agent or toxin of a type and in a quantity that has no justification for prophylactic, protective or other peaceful purposes; or
- (b) any weapon, equipment or means of delivery designed to use biological agents or toxins for hostile purposes or in armed conflict;

“business relationship” means a business, professional or commercial relationship between an AML/ATF regulated financial institution or an insurer and a customer, which is expected by the institution or insurer, when contact is first made between them, to have an element of duration;

“casino” has the meaning given in section 2 of the Casino Gaming Act 2014;

“casino operator” has the meaning given in section 2 of the Casino Gaming Act 2014;

“chemical weapon” means a weapon, other than one whose intended use is only for peaceful purposes, purposes related to protection against toxic chemicals, legitimate military purposes or purposes of enforcing the law, consisting of—

- (a) toxic chemicals and their precursors;
- (b) munitions and other devices designed to cause death or harm through the toxic properties of toxic chemicals released by them; or
- (c) equipment designed for use in connection with munitions and devices falling within paragraph (b);

“Confiscated Assets Fund” means the Fund established under section 55A of the Proceeds of Crime Act 1997;

“country” includes territory;

“designated person”, in relation to a direction, means any of the persons in relation to whom the direction is given;

“direction” means a direction issued by the Minister by order under section 12B;

“FIA” means the Financial Intelligence Agency established under section 3 of the Financial Intelligence Agency Act 2007;

“insurer” means a person, other than an insurer referred to in paragraph (c) of the definition “AML/ATF regulated financial institution”, that is carrying on insurance business in Bermuda, as defined in section 1 of the Insurance Act 1978;

ANTI-TERRORISM (FINANCIAL AND OTHER MEASURES) ACT 2004

- “international organisation” means an organisation of which two or more sovereign powers, or the governments of two or more sovereign powers, are members;
- “Minister” means the Minister responsible for justice;
- “National Anti-Money Laundering Committee” means National Anti-Money Laundering Committee established under section 49 of the Proceeds of Crime Act 1997;
- “notice” means a notice in writing;
- “nuclear weapon” includes a nuclear explosive device that is not intended for use as a weapon;
- “patron” has the meaning given in section 2 of the Casino Gaming Act 2014;
- “premises” includes any place, and in particular includes a vehicle and a tent or moveable structure;
- “professional accountant” means an accountant who is a member of the Chartered Professional Accountants of Bermuda;
- “professional legal adviser” means a barrister and attorney who is a member of the Bermuda Bar Association.
- “property” includes property wherever situated and whether real or personal, heritable or moveable, and things in action and other intangible or incorporeal property;
- “radiological weapon” means a device designed to cause destruction, damage or injury by means of the radiation produced by the decay of radioactive material; and
- “terrorist financing” means an offence under section 5, 6, 7 or 8 or an act that would constitute such an offence if carried out in Bermuda;
- “terrorist investigation” means an investigation of—
- (a) the commission, preparation or instigation of acts of terrorism;
 - (b) an act which appears to have been done for the purposes of terrorism; or
 - (c) the commission, preparation or instigation of an offence under this Act;
- “vehicle” includes an aircraft, hovercraft, train or vessel.

[section 2 amended by 2008:36 s. 2 effective 15 November 2008; section 2 amended by 2009 : 50 s. 2 effective 15 January 2010; section 2 definition “AML/ATF regulated financial institution” amended by 2012 : 35 s. 67 effective 1 January 2013; amended by 2014 : 8 s. 16 effective 11 April 2014; “Bermuda Casino Gaming Commission”, “casino”, “casino operator” and “patron” inserted by 2015 : 35 s. 18 effective 6 November 2015]

Terrorism: interpretation

- 3 (1) In this Act “terrorism” means the use or threat of action where—
- (a) the action falls within subsection (2);

ANTI-TERRORISM (FINANCIAL AND OTHER MEASURES) ACT 2004

- (b) the use or threat is designed to influence the government or an international organisation or intimidate the public or a section of the public; and
 - (c) the use or threat is made for the purpose of advancing a political, religious, racial, ethnic or philosophical, or ideological cause;
- (2) Action falls within this section if it—
- (a) involves serious violence against persons, including internationally protected persons (including diplomats);
 - (b) involves serious damage to property;
 - (c) endangers a person's life, other than that of the person committing the action;
 - (d) creates a serious risk to the health or safety of the public or a section of the public;
 - (e) is designed seriously to interfere with or seriously to disrupt an electronic system;
 - (f) involves the unlawful seizure of aircraft in flight; or
 - (g) involves unlawful violence against the safety of maritime navigation.
 - (h) involves unlawful acts against the safety of civil aviation;
 - (i) involves the seizure or detention of another person (“the hostage”) and threatens to kill, to injure or to continue to detain the hostage;
 - (j) involves nuclear material such that it—
 - (i) involves serious interference with the physical protection of nuclear material; or
 - (ii) involves an act that without lawful authority constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material,
and which causes or is likely to cause death or serious injury to any person or substantial damage to property;
 - (k) involves unlawful violence at airports serving international civil aviation;
 - (l) involves unlawful violence against the safety of fixed platforms located on the continental shelf; or
 - (m) involves terrorist bombings, the unlawful and intentional delivery, placement, discharge or detonation of an explosive or other lethal device in, into or against a place of public use, a government facility, a public transportation system or an infrastructure facility.
- (3) The use or threat of action falling within subsection (2) which involves the use of firearms or explosives is terrorism whether or not subsection (l)(b) is satisfied.

ANTI-TERRORISM (FINANCIAL AND OTHER MEASURES) ACT 2004

- (4) In this section—
- (a) “action” includes action outside Bermuda;
 - (b) a reference to any person or to property is a reference to any person, or to property, wherever situated;
 - (c) a reference to the public includes a reference to the public of a country other than Bermuda;
 - (d) “explosive” means—
 - (i) an article or substance manufactured for the purpose of producing a practical effect by explosion;
 - (ii) materials for making an article or substance within subparagraph (i);
 - (iii) anything used or intended to be used for causing or assisting in causing an explosion; and
 - (iv) a part of anything within subparagraph (i) or (iii);
 - (e) “firearm” includes an air gun or air pistol; and
 - (f) “the government” means the government of Bermuda or of a country (or a part of a country) other than Bermuda.

[section 3 amended by 2008:36 s.3 effective 15 November 2008; Section 3 subsection (1)(c) deleted and substituted by 2013 : 30 s. 6 effective 8 November 2013; Section 3 subsections (2)(h)-(m) inserted by 2013 : 30 s. 7 effective 8 November 2013]

Terrorist property: interpretation

- 4 (1) In this Act “terrorist property” means—
- (a) money or other property which is likely to be used for the purposes of terrorism;
 - (b) proceeds of the commission of acts of terrorism; and
 - (c) proceeds of acts carried out for the purposes of terrorism.
- (2) In subsection (1) a reference to proceeds of an act includes a reference to any property which wholly or partly, and directly or indirectly, represents the proceeds of the act (including payments or other rewards in connection with its commission).

CHAPTER II
OFFENCES

Fund-raising

- 5 (1) A person commits an offence if he—
- (a) invites another to provide money or other property; and

ANTI-TERRORISM (FINANCIAL AND OTHER MEASURES) ACT 2004

- (b) intends that it should be used, or suspects that it may be used, for the purposes of—
 - (i) terrorism;
 - (ii) financing of terrorist organisations; or
 - (iii) financing of a person or persons participating in terrorist activity.
- (2) A person commits an offence if he—
 - (a) receives money or other property; and
 - (b) intends that it should be used, or suspects that it may be used, for the purposes of—
 - (i) terrorism;
 - (ii) financing of terrorist organisations; or
 - (iii) financing of a person or persons participating in terrorist activity.
- (3) A person commits an offence if he—
 - (a) provides money or other property; and
 - (b) intends that it should be used, or suspects that it may be used, for the purposes of—
 - (i) terrorism;
 - (ii) financing of terrorist organisations; or
 - (iii) financing of a person or persons participating in terrorist activity.

(4) In this section a reference to the provision of money or other property is a reference to its being given, lent or otherwise made available, whether or not for consideration.

[Section 5 subsections (1)(b), (2)(b) and (3)(b) deleted and substituted by 2013 : 30 s. 8 effective 8 November 2013]

Organising or directing others to commit offences

5A It is an offence for a person to organise or direct another person to commit an offence specified in section 5.

[section 5A inserted by 2008:36 s.4 effective 15 November 2008]

Offences by bodies corporate etc.

- 5B (1) If an offence under this Act committed by a body corporate is shown—
- (a) to have been committed with the consent or the connivance of an officer of the body corporate; or
 - (b) to be attributable to any neglect on his part,

ANTI-TERRORISM (FINANCIAL AND OTHER MEASURES) ACT 2004

the officer as well as the body corporate is guilty of an offence and liable to be proceeded against and punished accordingly.

(2) If an offence under this Act committed by a partnership is shown—

- (a) to have been committed with the consent or the connivance of a partner;
or
- (b) to be attributable to any neglect on his part

the partner as well as the partnership is guilty of an offence and liable to be proceeded against and punished accordingly.

(3) If an offence under this Act committed by an unincorporated association (other than a partnership) is shown—

- (a) to have been committed with the consent or the connivance of an officer of the association; or
- (b) to be attributable to any neglect on his part

that officer as well as the association is guilty of an offence and liable to be proceeded against and punished accordingly.

(4) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to acts and defaults of a member in connection with his functions of management as if he were a director of the body.

(5) Proceedings for an offence alleged to have been committed by a partnership or an unincorporated association shall be brought in the name of the partnership or association (and not in that of its members).

(6) A fine imposed on a partnership or association on its conviction of an offence is to be paid out of the funds of the partnership or association.

(7) In this section—

“officer”—

- (a) in relation to a body corporate, means a director, manager, secretary, chief executive, member of the committee of management, or a person purporting to act in such capacity; and
- (b) in relation to an unincorporated association, means any officer of the association or any member of its governing body, or a person purporting to act in such capacity; and

“partner” includes a person purporting to act as a partner.

[section 5B inserted by 2008:36 s.4 effective 15 November 2008]

Use and possession

6 (1) A person commits an offence if he uses money or other property for the purposes of terrorism.

- (2) A person commits an offence if he—
- (a) possesses money or other property; and
 - (b) intends that it should be used, or suspects that it may be used, for the purposes of terrorism.

Funding arrangements

7 A person commits an offence if—

- (a) he enters into or becomes concerned in an arrangement as a result of which money or other property is made available or is to be made available to another; and
- (b) he knows or suspects that it will or may be used for the purposes of terrorism.

Money laundering

8 (1) A person commits an offence if he enters into or becomes concerned in an arrangement which facilitates the retention or control by or on behalf of another person of terrorist property—

- (a) by concealment;
- (b) by removal from the jurisdiction;
- (c) by transfer to nominees; or
- (d) in any other way.

(2) It is a defence for a person charged with an offence under subsection (1) to prove that he did not know or suspect that the arrangement related to terrorist property.

Disclosure of information: duty

9 (1) This section applies where a person—

- (a) believes or suspects that another person has committed an offence under any of sections 5 to 8; and
- (b) bases his belief or suspicion on information which comes to his attention in the course of a trade, profession, business or employment.

(2) But this section does not apply if the information came to the person in the course of a business in the regulated sector (as defined in paragraph 1(12) of Schedule 1 for the purposes of that paragraph).

(3) The person commits an offence if he does not disclose to the FIA, as soon as is reasonably practicable—

- (a) his belief or suspicion; and
- (b) the information on which it is based.

ANTI-TERRORISM (FINANCIAL AND OTHER MEASURES) ACT 2004

(4) It is a defence for a person charged with an offence under subsection (3) to prove that he had a reasonable excuse for not making the disclosure.

(5) Where—

- (a) a person is in employment;
- (b) his employer has established a procedure for the making of disclosures of the matters specified in subsection (3); and
- (c) he is charged with an offence under that subsection;

it is a defence for him to prove that he disclosed the matters specified in that section in accordance with the procedure.

(6) Subsection (3) does not require disclosure by a professional legal adviser of—

- (a) information which he obtains in privileged circumstances; or
- (b) a belief or suspicion based on information which he obtains in privileged circumstances.

(7) For the purposes of subsection (6) information is obtained by an adviser in privileged circumstances if it comes to him, otherwise than with a view to furthering a criminal purpose—

- (a) from a client or a client's representative, in connection with the provision of legal advice by the adviser to the client;
- (b) from a person seeking legal advice from the adviser, or from the person's representative; or
- (c) from any person, for the purpose of actual or contemplated legal proceedings.

(8) For the purposes of subsection (1)(a) a person shall be treated as having committed an offence under one of sections 5 to 8 if—

- (a) he has taken an action or been in possession of a thing; and
- (b) he would have committed an offence under one of those sections if he had been in Bermuda at the time when he took the action or was in possession of the thing.

(9) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction, to a fine of \$15,000 or imprisonment for three years or both;
- (b) on conviction on indictment, to an unlimited fine or imprisonment for ten years or both.

[section 9 subsection (3) amended by 2007:22 s. 22 effective 15 November 2008; subsection (9) amended by 2013 : 30 s. 9 effective 8 November 2013]

ANTI-TERRORISM (FINANCIAL AND OTHER MEASURES) ACT 2004

Disclosure of information: permission

- 10 (1) A person may disclose to the FIA —
- (a) a suspicion or belief that any money or other property is terrorist property or is derived from terrorist property;
 - (b) any matter on which the suspicion or belief is based.
- (2) A person may make a disclosure to the FIA in the circumstances mentioned in sections 9 (1) and (3).
- (3) Subsections (1) and (2) shall have effect notwithstanding any restriction on the disclosure of information imposed by statute or otherwise.
- (4) Where—
- (a) a person is in employment; and
 - (b) his employer has established a procedure for the making of disclosures of the kinds mentioned in subsection (1) and section 9(3);

subsections (1) and (2) shall have effect in relation to that person as if any reference to disclosure to the FIA included a reference to disclosure in accordance with the procedure.

[section 10 subsections (1), (2), and (4) amended by 2007:22 s. 22 effective 15 November 2008]

Tipping-off

- 10A (1) A person is guilty of an offence if—
- (a) he knows or suspects that a police officer is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted into terrorist financing; and
 - (b) he discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation.
- (2) A person is guilty of an offence if—
- (a) he knows or suspects that a disclosure has been made to the FIA under sections 9, 10 or paragraph 1 of Part 1 of Schedule 1; and
 - (b) he discloses to any other person—
 - (i) his knowledge or suspicion that a disclosure or related information has been filed with the FIA; or
 - (ii) information or any other matter which is likely to prejudice any investigation which might be conducted following such a disclosure.
- (3) Nothing in subsection (1) or (2) makes it an offence for a professional legal adviser to disclose any information or other matter—
- (a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client; or

ANTI-TERRORISM (FINANCIAL AND OTHER MEASURES) ACT 2004

(b) to any person—

- (i) in contemplation of, or in connection with, legal proceedings; and
- (ii) for the purpose of those proceedings;

but this subsection does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(4) In proceedings against a person for an offence under subsection (1) or (2)(b)(ii), it is a defence that the person did not know or suspect that the disclosure was likely to be prejudicial in the way there mentioned.

[section 10A inserted by 2008:36 s.5 effective 15 November 2008; subsection (2)(b) deleted and substituted and subsection (4) amended by 2013 : 30 s. 10 effective 8 November 2013]

Disclosure of information: regulated and public sectors

11 Schedule 1, which makes special provision for the disclosure of information by persons in the regulated and public sectors, shall have effect.

Cooperation with the FIA

12 (1) A person does not commit an offence under any of sections 5 to 8 if he is acting with the express consent of the FIA.

(2) Subject to subsections (3) and (4), a person does not commit an offence under any of sections 5 to 8 by involvement in a transaction or arrangement relating to money or other property if he discloses to the FIA —

- (a) his suspicion or belief that the money or other property is terrorist property; and
- (b) the information on which his suspicion or belief is based.

(3) Subsection (2) applies only where a person makes a disclosure—

- (a) after he becomes involved in the transaction or arrangement concerned;
- (b) on his own initiative; and
- (c) as soon as is reasonably practicable.

(4) Subsection (2) does not apply to a person if—

- (a) the FIA forbids him to continue his involvement in the transaction or arrangement to which the disclosure relates; and
- (b) he continues his involvement.

(5) It is a defence for a person charged with an offence under any of sections 5(2) and (3) and 6 to 8 to prove that—

- (a) he intended to make a disclosure of the kind mentioned in subsections (2) and (3); and
- (b) there is reasonable excuse for his failure to do so.

ANTI-TERRORISM (FINANCIAL AND OTHER MEASURES) ACT 2004

(6) Where—

- (a) a person is in employment; and
- (b) his employer has established a procedure for the making of disclosures of the same kind as may be made to the FIA under subsection (2);

this section shall have effect in relation to that person as if any reference to disclosure to the FIA included a reference to disclosure in accordance with the procedure.

(7) A reference in this section to a transaction or arrangement relating to money or other property includes a reference to use or possession.

[section 12 amended by 2007:22 s.22 effective 15 November 2008; section 12 heading changed by deleting "police" and replacing with "the FIA" under the authority of the Computerization and Revision of Laws Act 1989 s.11(m)]

Regulations

12A (1) The Minister may, after consulting the National Anti-Money Laundering Committee, make such regulations as he thinks fit for the purposes of—

- (a) detecting and preventing the financing of terrorism; or
- (b) detecting and preventing the financing of proliferation of weapons of mass destruction.

(2) Without prejudice to the generality of subsection (1), such regulations may in particular—

- (a) require—
 - (i) such persons or classes of persons conducting businesses in the financial services industry, falling within any one or more activities or operations for or on behalf of a customer as may be prescribed by the Minister;
 - (ii) professional legal advisers and accountants in independent practice, who by way of business provide legal or accountancy services to other persons when participating in financial or real property transactions concerning a class of activity specified in subsection (3); and for this purpose, a person participates in a transaction by assisting in the planning or execution of the transaction or otherwise acting for or on behalf of a client in the transaction; and
 - (iii) casino operators,
 - to establish and maintain procedures relating to the identification of clients, the keeping of records, the making of records, the vetting of employees, the verification of the effective design and operation of anti-money laundering systems and the training of employees; and
- (b) create criminal offences of failing to comply with the regulations.

ANTI-TERRORISM (FINANCIAL AND OTHER MEASURES) ACT 2004

(2A) In the application of subsection (2) in relation to casino operators “client” means a patron.

(3) For the purposes of subsection (2) (a) (ii), the following are specified activities—

- (a) buying and selling real property;
- (b) managing of client monies, securities and other assets;
- (c) management of bank, savings or securities accounts;
- (d) organisation of contributions for the creation or management of companies;
- (e) creation, operation or management of legal persons or arrangements, and buying and selling business entities.

(4) Regulations made under this section are subject to the affirmative resolution procedure.

[section 12A inserted by 2008:36 s.6 effective 15 November 2008; subsection (2)(a) amended and subsection (2A) inserted by 2015 : 35 s. 18 effective 6 November 2015; subsection (1) repealed and replaced by 2015 : 53 s. 24 effective 1 January 2016]

Directions

12B (1) The Minister may, by order, issue a direction to an AML/ATF regulated financial institution if—

- (a) the Financial Action Task Force has advised that measures should be taken in relation to a country because of the risk of terrorist financing being carried on—
 - (i) in the country;
 - (ii) by the government of the country; or
 - (iii) by persons resident or incorporated in the country; or
- (b) the Minister reasonably believes that there is a risk that terrorist financing is being carried on—
 - (i) in a country;
 - (ii) by the government of a country; or
 - (iii) by persons resident or incorporated in the country,

and that this poses a significant risk to the national interests of Bermuda.

(2) The Minister may, by order, issue a direction to an AML/ATF regulated financial institution or to an insurer, if the Minister reasonably believes that—

- (a) the development or production in a country of nuclear, radiological, biological or chemical weapons or systems of delivery for such weapons; or

ANTI-TERRORISM (FINANCIAL AND OTHER MEASURES) ACT 2004

- (b) the doing in a country of anything that facilitates the development or production of such weapons or systems of delivery,

poses a significant risk to the national interests of Bermuda.

- (3) A direction may be issued to—
 - (a) a particular AML/ATF regulated financial institution or insurer;
 - (b) any description of AML/ATF regulated financial institutions or insurers; or
 - (c) all AML/ATF regulated financial institutions and insurers.

(4) The requirements imposed by a direction must be proportionate to the seriousness of the risk, having regard to the advice mentioned in subsection (1)(a) or the risk mentioned in subsection (1)(b) or (2), as the case may be.

[Section 12B inserted by 2009 : 50 s. 3 effective 15 January 2010]

Transactions and persons affected by directions

12C (1) A direction may impose requirements in relation to transactions or business relationships with—

- (a) a person carrying on business in the country;
 - (b) the government of the country;
 - (c) a person resident or incorporated in the country.
- (2) The direction may impose requirements in relation to—
- (a) a particular person within subsection (1);
 - (b) any description of persons within that subsection; or
 - (c) all persons within that subsection.

(3) For the purposes of this section, a transaction or business relationship with a person or government includes a transaction or business relationship with a third party that ultimately benefits, or is intended to benefit, that person or government.

- (4) A direction may make different provisions—
 - (a) in relation to different descriptions of persons to whom the direction is given; and
 - (b) in relation to different descriptions of transaction or business relationship.

[Section 12C inserted by 2009 : 50 s. 3 effective 15 January 2010]

Requirements that may be imposed on financial institutions

12D A direction issued to an AML/ATF regulated financial institution under section 12B may impose any of the following requirements—

- (a) customer due diligence;

ANTI-TERRORISM (FINANCIAL AND OTHER MEASURES) ACT 2004

- (b) ongoing monitoring;
- (c) systematic reporting;
- (d) limiting or ceasing business.

[Section 12D inserted by 2009 : 50 s. 3 effective 15 January 2010]

Requirements that may be imposed on insurers

12E A direction issued to an insurer under section 12B(2) may impose either or both of the following requirements—

- (a) systematic reporting;
- (b) limiting or ceasing business.

[Section 12E inserted by 2009 : 50 s. 3 effective 15 January 2010]

Customer due diligence

12F (1) A direction may require an AML/ATF regulated financial institution to undertake enhanced customer due diligence measures—

- (a) before entering into a transaction or business relationship with a designated person; and
 - (b) during a business relationship with such a person.
- (2) The direction may do either or both of the following—
- (a) impose a general obligation to undertake enhanced customer due diligence measures;
 - (b) require an AML/ATF regulated financial institution to undertake specific measures identified or described in the direction.
- (3) In this section, “customer due diligence measures” means measures to—
- (a) establish the identity of the designated person,
 - (b) obtain information about the designated person, their business, and the source of their funds; and
 - (c) assess the risk of the designated person being involved in terrorist financing.

[Section 12F inserted by 2009 : 50 s. 3 effective 15 January 2010]

Ongoing monitoring

12G (1) A direction may require an AML/ATF regulated financial institution to undertake enhanced ongoing monitoring of any business relationship with a designated person.

- (2) The direction may do either or both of the following—
- (a) impose a general obligation to undertake enhanced ongoing monitoring;

ANTI-TERRORISM (FINANCIAL AND OTHER MEASURES) ACT 2004

- (b) require an AML/ATF regulated financial institution to undertake specific measures identified or described in the direction.
- (3) In this section, “ongoing monitoring” of a business relationship means—
 - (a) scrutiny of transactions undertaken throughout the course of the relationship (including, where necessary, the source of funds) to ensure that the transactions are consistent with the AML/ATF regulated financial institution’s knowledge of the customer, his business and risk profile; and
 - (b) so far as practicable keeping the documents, data or information obtained for the purpose of applying customer due diligence measures up-to-date.

[Section 12G inserted by 2009 : 50 s. 3 effective 15 January 2010]

Systematic reporting

12H (1) A direction may require an AML/ATF regulated financial institution or an insurer to provide such information and documents as may be specified in the direction relating to transactions or business relationships with designated persons.

(2) A direction imposing such a requirement must specify how the direction is to be complied with, including—

- (a) the person to whom the information and documents are to be provided; and
- (b) the period within which, or intervals at which, information and documents are to be provided.

(3) The power conferred by this section may not be exercised in relation to information or documents in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

(4) The exercise of the power conferred by this section and the provision of information under it is not otherwise subject to any restriction on the disclosure of information, whether imposed by statute or otherwise.

[Section 12H inserted by 2009 : 50 s. 3 effective 15 January 2010]

Limiting or ceasing business

12I A direction may require an AML/ATF regulated financial institution or an insurer not to enter into or continue to participate in—

- (a) a specified transaction or business relationship with a designated person;
- (b) a specified description of transactions or business relationships with a designated person; or
- (c) any transaction or business relationship with a designated person.

[Section 12I inserted by 2009 : 50 s. 3 effective 15 January 2010]

Making and giving effect to directions

12J (1) The Minister may vary or revoke a direction at any time.

(2) A direction ceases to have effect one year after the day on which it was made, without prejudice to the making of further directions.

(3) A direction given to a description of AML/ATF regulated financial institutions or insurers or to all such institutions and insurers is a statutory instrument and subject to the negative resolution procedure.

(4) A direction given to a particular person is not a statutory instrument. The Minister must give notice of the direction to that person as soon as possible after issuing it.

[Section 12J inserted by 2009 : 50 s. 3 effective 15 January 2010]

Directions limiting or ceasing business: exemption by license

12K (1) An AML/ATF regulated financial institution or insurer that is subject to a direction referred to in section 12I may apply to the Minister, in such form as the Minister may specify, to exempt a specific transaction or business relationship or a description of transactions or business relationships from the requirements of the direction.

(2) The applicant shall provide such information and documents as the Minister may require in determining the application.

(3) The Minister may grant a license to the applicant exempting it from the requirements of the direction in relation to the transactions or business relationships specified in the license with the persons designated in it, if the Minister is satisfied that the applicant's participation in the transactions or business relationships with those persons does not pose a risk to the national interests of Bermuda.

(4) The Minister, on his own initiative, may—

(a) grant a license to a particular AML/ATF regulated financial institution or insurer or to a group of such institutions or insurers exempting them from the requirements of a direction in relation to transactions or business relationships specified in the license with persons designated in it; or

(b) grant a general license exempting all AML/ATF regulated financial institutions and insurers from the requirements of the direction in relation to transactions or business relationships specified in the license with persons designated in it,

if the Minister is satisfied that the participation of those institutions or insurers in the specified transactions or business relationships with the designated persons does not pose a risk to the national interests of Bermuda.

(5) A license may be subject to such conditions as the Minister sees fit to impose and may be of the same duration as the direction or subject to an earlier expiry date.

(6) The Minister may vary or revoke a license at any time.

(7) On the grant, variation or revocation of a license, the Minister must—

ANTI-TERRORISM (FINANCIAL AND OTHER MEASURES) ACT 2004

- (a) in the case of a license granted to a particular person, give notice of the grant, variation or revocation to that person; or
- (b) in the case of a general license or a license granted to a description of persons, take such steps as he considers appropriate to publicize the grant, variation or revocation of the license.

[Section 12K inserted by 2009 : 50 s. 3 effective 15 January 2010]

Offence: failure to comply with a direction

12L (1) A person who fails to comply with a requirement imposed by direction commits an offence.

(2) Notwithstanding subsection (1), no offence is committed if the person took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.

(3) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to a fine of \$50,000; or
- (b) on conviction on indictment to a fine of \$750,000 or to imprisonment for a term of two years or to both.

(4) Where a person is convicted of an offence under this section, he is not liable to a civil penalty under any statutory provision in relation to the same matter.

[Section 12L inserted by 2009 : 50 s. 3 effective 15 January 2010]

Offences in connection with licenses

12M (1) A person commits an offence who for the purpose of obtaining a license under section 12K—

- (a) provides information that is false in a material respect or a document that is not what it purports to be; and
- (b) knows that, or is reckless as to whether, the information is false or the document is not what it purports to be.

(2) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to a fine of \$50,000; or
- (b) on conviction on indictment to a fine of \$750, 000 or to imprisonment for a term of two years or to both.

[Section 12M inserted by 2009 : 50 s. 3 effective 15 January 2010]

Report to Legislature

12N (1) As soon as reasonably practicable after the end of each calendar year, the Minister must—

ANTI-TERRORISM (FINANCIAL AND OTHER MEASURES) ACT 2004

- (a) prepare a report about the exercise during that year of the Minister's powers and functions in relation to directions and licenses under this Act; and
- (b) lay a copy of the report before both Houses of the Legislature.

(2) Subsection (1) does not apply in relation to a year if the Minister has not issued a direction pursuant to those powers and functions at any time in that year.

[Section 12N inserted by 2009 : 50 s. 3 effective 15 January 2010]

Use of guidance

12O (1) In determining whether a person has committed an offence under sections 5 to 9 or 12L, a court shall consider whether a defendant has followed any relevant guidance which was at the time—

- (a) issued by a supervisory authority;
- (b) approved by the Minister; and
- (c) published in a manner approved by the Minister as appropriate in his opinion to bring the guidance to the attention of persons likely to be affected by it.

(2) In this section "supervisory authority" means—

- (a) the Bermuda Monetary Authority in relation to persons falling within section 12A(2)(a)(i), being persons who are licensed, registered or otherwise exempted under any enactment regulating the financial services industry;
- (b) a professional body designated by the Minister under any enactment in relation to relevant persons regulated by it; or
- (c) the Bermuda Casino Gaming Commission in relation to casino operators.

(3) Guidance issued under this section is not a statutory instrument and the Statutory Instruments Act 1977 shall not apply to it.

[section 12B inserted by 2008:36 s.6 effective 15 November 2008; Section 12B renumbered to Section 12O by 2009 : 50 s. 3 and amended by 2009 : 50 s. 4 effective 15 January 2010; Section 12O subsection (1) amended by 2013 : 30 s. 11 effective 8 November 2013; Section 12O(2) repealed and substituted by 2015 : 35 s. 18 effective 6 November 2015]

Penalties

13 (1) A person guilty of an offence under any of sections 5 to 8 shall be liable—

- (a) on summary conviction, to a fine of \$20,000 or to imprisonment for twelve months or to both;
- (b) on conviction on indictment, to a fine of \$200,000 or to imprisonment for fourteen years, or to both.

(2) A person guilty of an offence under section 10A (tipping off) shall be liable—

ANTI-TERRORISM (FINANCIAL AND OTHER MEASURES) ACT 2004

- (a) on summary conviction, to a fine of \$15,000 or imprisonment for three years or to both;
- (b) on conviction on indictment, to an unlimited fine or to imprisonment for ten years, or to both.

[section 13 amended by 2008:49 s.40(1) effective 1 January 2009]

Forfeitures

14 (1) The court by or before which a person is convicted of an offence under any of sections 5 to 8 may make a forfeiture order in accordance with the provisions of this section.

(2) Where a person is convicted of an offence under section 5(1) or (2) or 6, the court may order the forfeiture of any money or other property—

- (a) which, at the time of the offence, he had in his possession or under his control; and
- (b) which, at that time, he intended should be used, or suspected might be used, for the purposes of terrorism.

(3) Where a person is convicted of an offence under section 5(3) the court may order the forfeiture of any money or other property—

- (a) which, at the time of the offence, he had in his possession or under his control; and
- (b) which, at that time, he knew suspected would or might be used for the purposes of terrorism.

(4) Where a person is convicted of an offence under section 7 the court may order the forfeiture of the money or other property—

- (a) to which the arrangement in question related; and
- (b) which, at the time of the offence, he knew or suspected would or might be used for the purposes of terrorism.

(5) Where a person is convicted of an offence under section 8 the court may order the forfeiture of the money or other property to which the arrangement in question related.

(6) Where a person is convicted of an offence under any of sections 5 to 8, the court may order the forfeiture of any money or other property which wholly or partly, and directly or indirectly, is received by any person as a payment or other reward in connection with the commission of the offence.

(7) Where a person other than the convicted person claims to be the owner of or otherwise interested in anything which can be forfeited by an order under this section, the court shall give him an opportunity to be heard before making an order.

(8) Schedule 2 (which makes further provision in relation to forfeiture orders under this section) shall have effect.

ANTI-TERRORISM (FINANCIAL AND OTHER MEASURES) ACT 2004

Forfeiture of terrorist cash

15 (1) Schedule 3 (which makes provision for enabling cash which—
(a) is intended to be used for the purposes of terrorism; or
(b) is, or represents, property obtained through terrorism,
to be forfeited in civil proceedings before a magistrate's court) shall have effect.

(2) The powers conferred by Schedule 3 are exercisable in relation to any cash whether or not proceedings have been brought for an offence in connection with the cash.

(3) Expressions used in this section have the same meanings as in Schedule 3.

Prohibition of double jeopardy

15A No person shall be tried for an offence under this Act if the person has been charged with an offence under the Terrorist-Asset Freezing etc. Act 2010 (Overseas Territories) Order 2011.

[section 15A inserted by 2008:36 s. 7 effective 15 November 2008; amended by 2013 : 30 s. 12 effective 8 November 2013]

CHAPTER III

ACCOUNT MONITORING ORDERS

Account monitoring orders

16 Schedule 4 (account monitoring orders) shall have effect.

CHAPTER IV

TERRORIST FINANCE OFFENCES: JURISDICTION

Terrorist finance: things done outside Bermuda

17 (1) If—
(a) a person does anything outside Bermuda; and
(b) his action would have constituted the commission of an offence under any of sections 5 to 8 if it had been done in Bermuda, he shall be guilty of the offence.

(2) For the purposes of subsection (1)(b), section 8(1)(b) shall be read as if for “the jurisdiction” there were substituted “a jurisdiction”.

CHAPTER V

GENERAL

Police powers

- 18 (1) A power conferred by virtue of this Act on a police officer—
- (a) is additional to powers which he has at common law or by virtue of any other law in force in Bermuda; and
 - (b) shall not be taken to affect those powers.
- (2) A police officer may if necessary use reasonable force for the purposes of exercising a power conferred on him by virtue of this Act.
- (3) Where anything is seized by a police officer under a power conferred by virtue of this Act, it may (unless the contrary intention appears) be retained for so long as is necessary in all the circumstances for the purposes of this Act.
- (4) An offence under this Act is an offence for which a person may be arrested without warrant; and the provisions of section 454 of the Criminal Code Act 1907 shall apply to offences under this Act as they apply to offences under that Act.

Production orders

- 19 (1) Section 37 of the Proceeds of Crime Act 1997 (production orders) applies (with appropriate modification) for the purposes of an investigation into offences under sections 5 to 8 of this Act as it applies for the purposes of investigations into the matters specified in paragraphs (a) to (c) of section 37(1) of that Act.
- (2) Section 38 of the Proceeds of Crime Act 1997 (failure to comply with production orders) applies (with appropriate modification) to production orders made pursuant to subsection (1) of this section as it applies to production orders made pursuant to section 37 of that Act.

Search warrants

- 20 Section 39 of the Proceeds of Crime Act 1997 (search warrants) applies (with appropriate modification) for the purposes of investigations into offences under sections 5 to 8 of this Act as it applies for the purposes of investigations into the matters specified in paragraphs (a) to (c) of section 39(1) of that Act.

Offences of prejudicing investigation

- 21 Section 42 of the Proceeds of Crime Act 1997 (offence of prejudicing investigation) applies (with appropriate modification) in relation to investigations into offences under sections 5 to 8 of this Act as it applies in relation to investigations into criminal conduct under that Act.

Consent to prosecution

- 22 Proceedings for an offence under this Act shall not be instituted without the consent of the Director of Public Prosecutions.

ANTI-TERRORISM (FINANCIAL AND OTHER MEASURES) ACT 2004

Disapplication of section 9 with respect to regulators etc.

23 (1) Section 9 shall not apply to the Bermuda Monetary Authority.

(2) The Minister may by order provide for section 9 not to apply to persons who are in his opinion performing or connected with the performance of regulatory, supervisory, investigative or registration functions of a public nature.

(3) An order made under this section—

- (a) may make different provision for different purposes;
- (b) may make provision which is to apply only in specified circumstances; and
- (c) may make provision which applies only to particular persons or persons of a particular description.

Evidence

24 (1) A document which purports to be—

- (a) an order made by the Minister for the purposes of paragraph 19 of Schedule 2 or paragraph 19 of Schedule 3; and
- (b) signed by him or on his behalf;

shall be received in evidence and shall, until the contrary is proved, be deemed to have been made by the Minister.

(2) A document bearing a certificate which—

- (a) purports to be signed by or on behalf of the Minister; and
- (b) states that the document is a true copy of an order made by the Minister for the purposes of a provision mentioned in subsection (1)(a);

shall be evidence of the document in legal proceedings.

(3) No person shall be guilty of an offence, or be liable to any penalty, by reason of an order made by the Minister in respect of anything done or omitted before the coming into operation of that order.

Orders and directions

25 (1) The Minister may make any order or direction authorised to be made under this Act.

(2) An order made or a direction given under this Act may be varied or revoked by a further such order or direction, as the case may be.

(3) An statutory instrument made under this Act is subject to negative resolution procedure.

Section 55A of Proceeds of Crime Act 1997 amended

26 Section 55A of the Proceeds of Crime Act 1997 (confiscated assets fund) is amended—

ANTI-TERRORISM (FINANCIAL AND OTHER MEASURES) ACT 2004

- (a) by inserting the following paragraph after paragraph (b) of subsection (2)—
 - “(ba) cash or property forfeited or confiscated under the Anti-Terrorism (Financial and Other Measures) Act 2004”;
- (b) by inserting “terrorist financing” after “drug trafficking” in paragraph (a)(i) of subsection (3); and
- (c) by inserting “or the Anti-Terrorism (Financial and Other Measures) Act 2004” at the end of paragraphs (d) and (e) of subsection (3).

SCHEDULE 1

(section 11)

DISCLOSURE OF INFORMATION: REGULATED AND PUBLIC SECTORS

PART 1

REGULATED SECTOR

Failure to disclose

- 1 (1) A person commits an offence if each of the following conditions is satisfied.
- (2) The first condition is that he knows or suspects that another person has committed an offence under any of sections 5 to 8.
- (3) The second condition is that the information or other matter on which his knowledge or suspicion is based came to him in the course of a business in the regulated sector.
- (4) The third condition is that he does not disclose the information or other matter to the FIA or a nominated officer as soon as is reasonably practicable after it comes to him.
- (5) But a person does not commit an offence under this paragraph if—
- (a) he has a reasonable excuse for not disclosing the information or other matter; or
 - (b) he is a professional legal adviser and the information or other matter came to him in privileged circumstances.
- (6) In deciding whether a person committed an offence under this paragraph the court must consider whether he followed any relevant guidance which was at the time concerned—
- (a) issued by a supervisory authority or any other appropriate authority;
 - (b) approved by the Minister; and
 - (c) published in a manner approved by the Minister as appropriate in his opinion to bring the guidance to the attention of persons likely to be affected by it.
- (7) A certificate signed by or behalf of the Minister (or a true copy of such a certificate) that a matter was, or was not, approved by the Minister at any material time for the purposes of subparagraph (6) shall be conclusive evidence of that fact in any legal proceedings, and a document which purports to be such a certificate (or to be a true copy of such a certificate) shall be received in evidence in any legal proceedings and shall, until the contrary is proved, be deemed to be such a certificate (or such a copy).
- (8) A disclosure to a nominated officer is a disclosure which—

- (a) is made to a person nominated by the alleged offender's employer to receive disclosures under this paragraph; and
 - (b) is made in the course of the alleged offender's employment and in accordance with the procedure established by the employer for the purpose
- (9) Information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him—
- (a) by (or by a representative of) a client of his in connection with the giving by the adviser of legal advice to the client;
 - (b) by (or by a representative of) a person seeking legal advice from the adviser; or
 - (c) by a person in connection with legal proceedings or contemplated legal proceedings.
- (10) But subparagraph (9) does not apply to information or other matter which is communicated or given with a view to furthering a criminal purpose.
- (11) For the purposes of subparagraph (2) the other person is taken to have committed an offence there mentioned if—
- (a) he has taken an action or been in possession of a thing; and
 - (b) he would have committed an offence if he had been in Bermuda at the time when he took the action or was in possession of the thing.
- (12) For the purposes of this paragraph a business is in the regulated sector if it is for the time being specified as being in the regulated sector, or if it belongs to a class of businesses that is for the time being specified as being in the regulated sector, by order made by the Minister.
- (13) For the purposes of this paragraph a supervisory authority, in relation to a business or a class of businesses within the regulated sector, is any authority that is for the time being specified in that behalf by order made by the Minister, and any such order may specify an authority as a supervisory authority in relation to a particular business within that sector or in relation to a particular class or particular classes of businesses within that sector or in relation to businesses within that sector in general
- (14) For the purposes of this paragraph an appropriate body is any body which regulates or is representative of any trade, profession, business or employment carried on by the alleged offender.
- (15) A person guilty of an offence under this paragraph is liable—
- (a) on summary conviction, to a fine of \$10,000 or to imprisonment for six months, or to both, or
 - (b) on conviction on indictment, to a fine of \$100,000 or to imprisonment for five years, or to both.

ANTI-TERRORISM (FINANCIAL AND OTHER MEASURES) ACT 2004

Protected disclosures

2 (1) A disclosure which satisfies the following three conditions is not to be taken to breach any restriction on the disclosure of information (however imposed).

(2) The first condition is that the information or other matter disclosed came to the person making the disclosure (the discloser) in the course of a business in the regulated sector.

(3) The second condition is that the information or other matter causes the discloser to know or suspect that another person has committed an offence under any of sections 5 to 8.

(4) The third condition is that the disclosure is made to the FIA or a nominated officer as soon as is practicable after the information or other matter comes to the discloser.

(5) A disclosure to a nominated officer is a disclosure which—

(a) is made to a person nominated by the discloser's employer to receive disclosures under this paragraph; and

(b) is made in the course of the discloser's employment and in accordance with the procedure established by the employer for that purpose.

(6) A business is within the regulated sector for the purposes of this paragraph if it is such a business, in accordance with sub-paragraph (12) of paragraph 1, for the purposes of that paragraph.

[Part I of Schedule 1 amended in paragraph 1(4) and 2(4) by 2007:22 s. 22 effective 15 November 2008]

PART 2

PUBLIC SECTOR

Authorised or required disclosures

3 (1) Notwithstanding any restriction otherwise imposed by any law for the time being in force in Bermuda on the disclosure by a specified public officer or a specified public authority of information obtained in an official capacity by that officer or authority, that officer or authority may, and shall if so directed by the Minister under this paragraph, disclose such information for any of the purposes to which this paragraph applies.

(2) A direction given by the Minister under this paragraph may specify the information to be disclosed, the person or authority to whom it is to be disclosed and the manner in which, and any conditions subject to which, it is to be disclosed.

(3) The information that may, or may be directed to be, disclosed under this paragraph includes information obtained before the commencement of this paragraph.

(4) It is an offence to fail to comply with a direction given by the Minister under this paragraph, and any person guilty of such an offence shall be liable—

(a) on summary conviction, to a fine of \$10,000 or to imprisonment for six months, or to both; or

- (b) on conviction on indictment, to a fine of \$100,000 or to imprisonment for five years, or to both.
- (5) The purposes to which this paragraph applies are—
 - (a) the purposes of any terrorist finance criminal investigation which is being or may be carried out, whether in Bermuda or elsewhere;
 - (b) the purposes of any terrorist finance criminal proceedings which have been or may be initiated, whether in Bermuda or elsewhere;
 - (c) the purposes of the initiation or bringing to an end of any such investigation or proceedings;
 - (d) the purpose of facilitating a determination of whether any such investigation or proceedings should be initiated or brought to an end.
- (6) Nothing in this paragraph shall be taken to prejudice any power to disclose information which exists apart from this paragraph.
- (7) In this paragraph—
 - “conduct” includes acts, omissions and statements;
 - “information” includes documents;
 - “specified public authority” means an authority that is for the time being specified for the purposes of this paragraph by an order made by the Minister;
 - “specified public officer” means any person holding or acting in any office that is for the time being specified for the purposes of this paragraph by an order made by the Minister;
 - “terrorist finance criminal investigation” means an investigation of any conduct which—
 - (a) constitutes one or more terrorist finance offences; or
 - (b) is, or corresponds to, conduct which, if it all took place in Bermuda, would constitute such an offence or such offences;and includes an investigation of any alleged or suspected such conduct and an investigation of whether any such conduct has taken place;
 - “terrorist finance criminal proceedings” means proceedings for a terrorist finance offence or, if they are proceedings outside Bermuda, for an offence or offences substantially corresponding to a terrorist finance offence; and
 - “terrorist finance offence” means an offence under any of sections 5 to 8.

Restriction on disclosure of information for overseas purposes

- 4 (1) The Minister may give a direction which—
- (a) specifies any overseas proceedings or overseas investigation or any description of such proceedings or investigations; and

(b) prohibits, either absolutely or in such cases, or subject to such conditions as to consent or otherwise, as may be specified in the direction, the making of any relevant disclosures for the purposes of those proceedings or that investigation or, as the case may be, proceedings or investigations of that description.

(2) In subparagraph (1) the reference, in relation to a direction, to a relevant disclosure is a reference to a disclosure which—

- (a) is authorised by paragraph 3 or by or under any other law for the time being in force in Bermuda; and
- (b) is a disclosure of such information as is described in the direction.

(3) A person who discloses any information in contravention of a direction under this paragraph shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine of \$5,000 or to imprisonment for three months, or to both;
- (b) on conviction on indictment, to a fine of \$50,000 or imprisonment for two years, or to both;

(4) In this paragraph—

“information” includes documents;

“overseas investigation” means a terrorist finance criminal investigation (as defined in paragraph 3(7)) which is being, or will or may be, conducted by an authority of a country outside Bermuda;

“overseas proceedings” means terrorist finance criminal proceedings (as defined in paragraph 3(7)) which are taking place, or will or may take place, in a country outside Bermuda.

SCHEDULE 2

(section 14)

FORFEITURE ORDERS

PART 1

BERMUDA ORDERS

Interpretation

1 In this Schedule—

“forfeiture order” means an order made by a court under section 14; and

“forfeited property” means the money or other property to which a forfeiture order applies.

Implementation of forfeiture orders

2 (1) Where a court makes a forfeiture order it may make such other provision as appears to it to be necessary for giving effect to the order, and in particular it may—

- (a) require any of the forfeited property to be paid or handed over to the proper officer or to a police officer ;
- (b) direct any of the forfeited property other than money or land to be sold or otherwise disposed of in such manner as the court may direct and the proceeds (if any) to be paid to the proper officer;
- (c) appoint a receiver to take possession, subject to such conditions and exceptions as may be specified by the court, of any of the forfeited property, to realise it in such manner as the court may direct and to pay the proceeds to the proper officer;
- (d) direct a specified part of any forfeited money, or of the proceeds of the sale, disposal or realisation of any forfeited property, to be paid by the proper officer to a specified person falling within section 14(7).

(2) A forfeiture order shall not come into force until there is no further possibility of it being varied or set aside on appeal (disregarding any power of a court to grant leave to appeal out of time).

(3) In subparagraphs (1)(b) and (d) a reference to the proceeds of the sale, disposal or realisation of property is a reference to the proceeds after deduction of the costs of sale, disposal or realisation.

Remuneration of receiver

3 (1) A receiver appointed under paragraph 2 shall be entitled to be paid his remuneration and expenses out of the proceeds of the property realised by the receiver and paid to the proper officer under paragraph 2(1)(c).

(2) If and so far as those proceeds are insufficient, the receiver shall be entitled to be paid his remuneration and expenses out of the Confiscated Assets Fund.

(3) A receiver appointed under paragraph 2 shall not be liable to any person in respect of any loss or damage resulting from action—

- (a) which he takes in relation to property which is not forfeited property, but which he reasonably believes to be forfeited property;
- (b) which he would be entitled to take if the property were forfeited property; and
- (c) which he reasonably believes that he is entitled to take because of his belief that the property is forfeited property.

(4) Subparagraph (3) does not apply in so far as the loss or damage is caused by the receiver's negligence.

Meaning of "proper officer"

4 (1) In paragraphs 2 and 3 "the proper officer" means the person holding or acting in the office (however styled) of clerk to the court by which the forfeiture order was made.

(2) The proper officer shall issue a certificate in respect of a forfeiture order if an application is made by—

- (a) the prosecutor in the proceedings in which the forfeiture order was made;
- (b) the defendant in those proceedings; or
- (c) a person whom the court heard under section 14(7) before making the order.

(3) The certificate shall state the extent (if any) to which, at the date of the certificate, effect has been given to the forfeiture order.

Restraint orders

5 (1) The Supreme Court may make a restraint order under this paragraph where —

- (a) proceedings have been instituted for an offence under any of sections 5 to 8;
- (b) the proceedings have not been concluded;
- (c) an application for a restraint order is made to the Supreme Court by the prosecutor; and
- (d) a forfeiture order has been made, or it appears to the Supreme Court that a forfeiture order may be made, in the proceedings for the offence.

ANTI-TERRORISM (FINANCIAL AND OTHER MEASURES) ACT 2004

(2) The Supreme Court may also make a restraint order under this paragraph where—

- (a) a criminal investigation has been started with regard to an offence under any of sections 5 to 8;
- (b) an application for a restraint order is made to the Supreme Court by a person who the Supreme Court is satisfied will have the conduct of any proceedings for the offence; and
- (c) it appears to the Supreme Court that a forfeiture order may be made in any proceedings for the offence.

(3) A restraint order prohibits a person to whom notice of it is given, subject to any conditions and exceptions specified in the order, from dealing with property in respect of which a forfeiture order has been or could be made in any proceedings referred to in subparagraph (1) or (2).

(4) An application for a restraint order may be made *ex parte* to a judge in Chambers.

(5) In this paragraph a reference to dealing with property includes a reference to removing the property from Bermuda.

(6) In this paragraph “criminal investigation” means an investigation which police officers or others have a duty to conduct with a view to it being ascertained whether a person should be charged with an offence.

Restraint orders: discharge of order

6 (1) A restraint order shall provide for notice of it to be given to any person affected by the order.

(2) A restraint order may be discharged or varied by the Supreme Court on the application of a person affected by it.

(3) A restraint order made under paragraph 5(1) shall in particular be discharged on an application under subparagraph (2) if the proceedings for the offence have been concluded.

(4) A restraint order made under paragraph 5(2) shall in particular be discharged on an application under subparagraph (2)—

- (a) if no proceedings in respect of offences under any of sections 5 to 8 are instituted within such time as the Supreme Court considers reasonable; or
- (b) if all proceedings in respect of offences under any of sections 5 to 8 have been concluded.

Restraint orders: power to seize property

7 (1) A police officer may seize any property subject to a restraint order for the purpose of preventing it from being removed from Bermuda.

(2) Property seized under this paragraph shall be dealt with in accordance with the Supreme Court's directions.

Restraint orders: land charges and registration

- 8 (1) Any provision of any law in force in Bermuda with respect to land charges—
- (a) shall apply in relation to restraint orders as they apply in relation to orders affecting land made by the court for the purpose of enforcing judgments or recognizances; and
 - (b) shall apply in relation to applications for restraint orders as they apply in relation to other pending land actions.

(2) Where a restraint order is made under paragraph 5(l) or an application for such an order is made, the prosecutor in the proceedings for the offence shall be treated for the purposes of any provision relating to inhibitions contained in any law in force in Bermuda with respect to land as a person interested in respect of any land to which the restraint order or the application for the restraint order relates.

(3) Where a restraint order is made under paragraph 5(2) or an application for such an order is made, the person who the Supreme Court is satisfied will have the conduct of any proceedings for an offence under any of sections 5 to 8 shall be treated for the purposes of any such provision as is referred to in subparagraph (2) as a person interested in respect of any land to which the restraint order or the application for a restraint order relates.

Compensation

9 (1) This paragraph applies where a restraint order is discharged under paragraph 6(4)(a).

(2) This paragraph also applies where a forfeiture order or a restraint order is made in or in relation to proceedings for an offence under any of sections 5 to 8 which—

- (a) do not result in conviction for an offence under any of those sections;
- (b) result in conviction for an offence under any of those sections in respect of which the person convicted is subsequently pardoned by Her Majesty; or
- (c) result in conviction for an offence under any of those sections which is subsequently quashed.

(3) A person who has an interest in any property which was subject to the order may apply to the Supreme Court for compensation.

(4) The Supreme Court may order compensation to be paid to the applicant if satisfied—

- (a) that there was a serious default on the part of a person concerned in the investigation or prosecution of the offence;
- (b) that the person concerned was or was acting as a member of the police service or was or was acting under the authority of the Attorney General or the Director of Public Prosecutions;

(c) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of the forfeiture order or restraint order; and

(d) that, having regard to all the circumstances, it is appropriate to order compensation to be paid.

(5) The Supreme Court shall not order compensation to be paid where it appears to it that proceedings for the offence would have been instituted even if the serious default had not occurred.

(6) Compensation payable under this paragraph shall be paid out of the Confiscated Assets Fund.

Proceedings for an offence: timing

10 (1) For the purpose of this Part of this Schedule, proceedings for an offence are instituted—

(a) when a summons or warrant is issued, or a complaint is laid, in respect of the offence;

(b) when a person is charged with the offence after being taken into custody without a warrant; or

(c) when a bill of indictment charging a person with the offence is preferred.

(2) Where the application of subparagraph (1) would result in there being more than one time for the institution of proceedings they shall be taken to be instituted at the earliest of those times.

(3) For the purposes of this Part of this Schedule proceedings are concluded—

(a) when a forfeiture order has been made in those proceedings and effect has been given to it in respect of all the forfeited property; or

(b) when no forfeiture order has been made in those proceedings and there is no further possibility of one being made as a result of an appeal (disregarding any power of a court to grant leave to appeal out of time).

PART 2

EXTERNAL ORDERS

Enforcement of orders made in designated countries

11 (1) The Minister may by order make provision for the purpose of enabling the enforcement in Bermuda of external orders.

(2) An “external order” means an order—

(a) which is made in a country that is designated for the purposes of this paragraph by the order made by the Minister; and

- (b) which makes relevant provision.
- (3) "Relevant provision" means—
 - (a) provision for the forfeiture of terrorist property ("an external forfeiture order"); or
 - (b) provision prohibiting dealing with property which is subject to an external forfeiture order or in respect of which such an order could be made in proceedings which have been or are to be instituted in the designated country ("an external restraint order").
- (4) An order made by the Minister under this paragraph may, in particular, include provision—
 - (a) which, for the purpose of facilitating the enforcement of an external order that may be made, has effect at times before there is an external order to be enforced;
 - (b) which disapplies, or qualifies or modifies the application of, any of the provisions of subparagraphs (6)(b) and (7) to (14) of this paragraph to or in relation to any specified external order (or any specified class of such orders) made in a specified designated country;
 - (c) for the proof of any matter relevant for the purposes of anything falling to be done in pursuance of the order made by the Minister.
- (5) An order made by the Minister under this paragraph may also make provision with respect to anything falling to be done on behalf of Bermuda in a designated country in relation to proceedings in that country for or in connection with the making of an external order.
- (6) An external order shall be enforced in Bermuda only in accordance with—
 - (a) the provisions of, or any provisions made under, this paragraph, and
 - (b) any provisions made by rules of court as to the manner in which, and the conditions subject to which, such orders are to be enforced there.
- (7) On an application made to it in accordance with rules of court for registration of an external order made in a designated country, the Supreme Court shall direct that the order shall, in accordance with such rules, be registered in that Court.
- (8) Rules of court shall also make provision—
 - (a) for cancelling or varying the registration of an external forfeiture order when effect has been given to it, whether in Bermuda or elsewhere, in respect of all or, as the case may be, part of the money or other property to which the order applies; and
 - (b) for cancelling or varying the registration of an external restraint order which has been discharged or varied by the court by which it was made.

ANTI-TERRORISM (FINANCIAL AND OTHER MEASURES) ACT 2004

(9) If an external forfeiture order is registered under this paragraph, the Supreme Court shall have, in relation to that order, the same powers as a court has under paragraph 2(1) to give effect to a forfeiture order made by it; and—

- (a) paragraphs 3 and 4 shall apply accordingly; and
- (b) after making any payments required by virtue of paragraph 2(1)(d) or (3), the balance of any sums received by the proper officer (as defined by paragraph 4(1)) by virtue of an order made under this subparagraph shall be paid by him to the Minister.

(10) If an external restraint order is registered under this paragraph—

- (a) paragraphs 7 and 8 shall apply as they apply to a restraint order under paragraph 5; and
- (b) the Supreme Court shall have the like power, in relation to proceedings brought or likely to be brought for that order, to make an order for inspection of property or for related matters as it would have, under any law for the time being in force in Bermuda, if those proceedings had been brought or were likely to be brought in the Supreme Court.

(11) In addition, if an external order is registered under this paragraph—

- (a) the Supreme Court shall have, in relation to its enforcement, the same power as if the order had originally been made in the Supreme Court;
- (b) proceedings for or with respect to its enforcement may be taken as if the order had originally been made in the Supreme Court; and
- (c) proceedings for or with respect to contravention of such an order, whether before or after such registration, may be taken as if the order had originally been made in the Supreme Court.

(12) The Supreme Court may also make such orders or do otherwise as seems to it appropriate for the purpose of—

- (a) assisting the achievement in Bermuda of the purposes of an external order that has been registered under this paragraph; or
- (b) assisting a receiver or other person directed by such an external order to sell or otherwise dispose of property.

(13) The following documents shall be received in evidence in Bermuda without further proof—

- (a) a document purporting to be a copy of an external order and to be certified as such by a proper officer of the court by which it was made; and
- (b) a document purporting to be a certificate for purposes corresponding to those of paragraphs 4(2) and (3) and to be certified by a proper officer of the court concerned.

(14) Where, under any of the provisions of this paragraph, a thing is to be done in accordance with rules of court, it may, if there are for the time being no rules of court in force in Bermuda governing that matter, be done in accordance with such directions in that behalf as may be given by a judge of the Supreme Court on application made ex parte to him in Chambers.

(15) An order made by the Minister under this paragraph may make different provision for different cases.

PART 3
INSOLVENCY

General

12 In this Part of this Schedule—

“ancillary order” means an order made in connection with a forfeiture, other than the forfeiture order;

“forfeiture order” means an order made in Bermuda under section 14 or an external forfeiture order which is enforceable in Bermuda by virtue of an order made by the Minister under paragraph 11;

“forfeited property” means the money or other property to which a forfeiture order applies; and

“restraint order” means an order made under paragraph 5 or an external restraint order which is enforceable in Bermuda by virtue of an order made by the Minister under paragraph 11.

Protection of creditors against forfeiture

13 (1) During the period of six months beginning with the making of a forfeiture order, the following shall not be finally disposed of under this Schedule—

- (a) the money to which the order applies; and
- (b) the money which represents any property to which the order applies.

(2) For the purposes of this paragraph money is finally disposed of under this Schedule when—

- (a) in the case of a forfeiture order made in Bermuda, it is paid to the person or authority authorised by law to receive the proceeds of fines; or
- (b) in the case of an external forfeiture order, it is paid to the Minister under paragraph 11(9)(b).

Insolvency

14 (1) This paragraph applies where—

- (a) before or after a forfeiture order is made, the commencement of qualifying insolvency proceedings occurs;
 - (b) an insolvency officer would, but for the forfeiture order, exercise a function in those proceedings in relation to property to which the forfeiture order applies; and
 - (c) he gives written notice to the relevant officer of the matters referred to in subparagraphs (a) and (b) before the end of the period of six months beginning with the making of the forfeiture order.
- (2) Subparagraph (3) shall apply to—
- (a) the property in relation to which the insolvency officer would, but for the forfeiture order, exercise a function as described in subparagraph (1)(b); and
 - (b) the proceeds of sale of that property.
- (3) The property—
- (a) shall cease to be subject to the forfeiture order and any ancillary order; and
 - (b) shall be dealt with in the qualifying insolvency proceedings as if the forfeiture order had never been made.
- (4) But—
- (a) the property to which subparagraph (3) applies is the balance remaining after the relevant officer has exercised his powers under paragraph 17(1); and
 - (b) subparagraph (3) shall not take effect in respect of property in relation to which the relevant officer, or any person acting in pursuance of an ancillary order, has incurred obligations until those obligations have been discharged.
- (5) In this paragraph “the commencement of qualifying insolvency proceedings” means—
- (a) the making of a receiving order in bankruptcy proceedings;
 - (b) in the case of the insolvent estate of a deceased person, the making of a bankruptcy administration order; or
 - (c) in the case of a company, the passing of a resolution for its winding up or, where no such resolution has been passed, the making of an order by a court for its winding up.

Minister’s debt

15 (1) Where by virtue of paragraph 14(3) property falls to be dealt with in qualifying insolvency proceedings, the Minister shall be taken to be a creditor in those proceedings for a debt to the amount or value of the property.

- (2) The Minister's debt—
- (a) shall rank after the debts of all other creditors; and
 - (b) shall not be paid until they have been paid in full with interest under the relevant provision.
- (3) In subparagraph (2)(b) the "relevant provision" means—
- (a) in relation to the winding up of a company, the provisions of the Companies Act 1981 relating to such winding up on insolvency that provides for the payment, from any surplus remaining after the payment of debts proved on the winding up, of interest on those debts in respect of the periods during which they have been outstanding since the commencement of the liquidation to which they would have been entitled but for the existence of the Minister's debt; and
 - (b) in relation to a bankruptcy, the provisions of the Bankruptcy Act 1989 that provide for the payment, from any surplus remaining after the payment of debts proved in the bankruptcy, of interest on those debts in respect of the periods during which they have been outstanding since the commencement of the bankruptcy.

(4) Subparagraphs (2) and (3) apply notwithstanding any other law for the time being in force in Bermuda.

Property subject to forfeiture where bankruptcy order annulled

16 (1) This paragraph applies to any property which ceased to be subject to a forfeiture order by virtue of paragraph 14(3) in consequence of the making of a bankruptcy order.

(2) The property shall again become subject to the forfeiture order and, if applicable, any ancillary order if the bankruptcy order is annulled.

- (3) Where the property is money or has been converted into money—
- (a) the court which ordered the annulment of the bankruptcy shall make an order specifying property comprised in the estate of the bankrupt or debtor to the amount or value of the property; and
 - (b) the specified property shall become subject to the forfeiture order, and any applicable ancillary order, in place of the property.

Allowable forfeiture expenses

17 (1) Where money or other property falls to be dealt with in accordance with paragraph 14(3), the relevant officer may—

- (a) deduct allowable forfeiture expenses from that money;
- (b) retain so much of that property as he considers necessary for the purpose of realising it and deducting allowable forfeiture expenses from the proceeds of realisation.

ANTI-TERRORISM (FINANCIAL AND OTHER MEASURES) ACT 2004

(2) Where property is delivered up in pursuance of paragraph 14(3) and the relevant officer has not made provision under sub-paragraph (1) for all the allowable forfeiture expenses, then—

- (a) a person who has incurred allowable forfeiture expenses for which provision has not been made shall have a claim to their value in qualifying insolvency proceedings; and
- (b) the expenses in question shall be treated for the purposes of the qualifying insolvency proceedings as if they were expenses of those proceedings.

Protection of insolvency officers

18 (1) This paragraph applies where an insolvency officer seizes or disposes of property which is subject to a forfeiture order or a restraint order and—

- (a) he reasonably believes that he is entitled to do so in the exercise of his functions; and
- (b) he would be so entitled if the property were not subject to a forfeiture order or a restraint order

(2) The insolvency officer shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence.

(3) The insolvency officer shall have a lien on the property seized or the proceeds of its sale—

- (a) for such of his expenses as were incurred in connection with the qualifying insolvency proceedings in relation to which the seizure or disposal purported to take place; and
- (b) for so much of his remuneration as may be reasonably assigned for his acting in connection with those proceedings.

(4) Subparagraphs (1) to (3) are without prejudice to the generality of any provision contained in any law relating to insolvency for the time being in force in Bermuda.

(5) In this paragraph “insolvency officer” means a person acting as such and, for the purposes of this paragraph, the question whether any person is acting as such shall be determined in accordance with subparagraphs (6), (7) and (8) except that the expression shall also include an Official Receiver (however styled) acting as receiver or manager of property.

(6) For the purposes of this paragraph a person acts as an insolvency officer in relation to a company by acting as its liquidator, provisional liquidator or administrator.

(7) For the purposes of this paragraph a person acts as an insolvency officer in relation to an individual by acting—

- (a) as his trustee in bankruptcy or interim receiver of his property; or

- (b) as trustee under a deed which is a deed of arrangement made for the benefit of his creditors; or
- (c) as supervisor of a voluntary arrangement proposed by him and approved under the law for the time being in force in Bermuda relating to the insolvency of individuals; or
- (d) in the case of a deceased individual to whose estate the provisions of the law for the time being in force in Bermuda relating to the administration of the insolvent estates of deceased persons apply, as administrator of that estate.

(8) References in subparagraph (7) to an individual include, except in so far as the context otherwise requires, references to a partnership.

Application of this part to external insolvency officer

19 (1) The Minister may make an order under this paragraph to secure that an external insolvency officer has the same rights under this Part of this Schedule in relation to property situated in Bermuda as he would have if he were an insolvency officer in Bermuda.

- (2) An order made under this paragraph may, in particular, include—
 - (a) provision which modifies the rights under this Part of this Schedule which are to be conferred under the order;
 - (b) provision as to the manner in which the rights conferred under the order are to be exercised;
 - (c) provision as to the conditions subject to which those rights are to be exercised, including the obtaining of leave from a court;
 - (d) provision empowering a court granting such leave to impose such conditions as it thinks fit.
- (3) In this paragraph—
 - (a) “external insolvency officer” means a person exercising under the insolvency law of a designated country (that is to say, a country designated as mentioned in paragraph 11), functions corresponding to those exercised by insolvency officers under the insolvency law of Bermuda;
 - (b) “the insolvency law of Bermuda” means the provisions of the law for the time being in force in Bermuda relating to insolvency;
 - (c) “the insolvency law of a designated country” means so much of the law for the time being in force in that country as corresponds to provisions falling within sub-paragraph (b).

Interpretation

20 (1) In this Part of this Schedule (other than in paragraph 18) “insolvency officer” means a person acting in any qualifying insolvency proceedings in Bermuda as—

- (a) a liquidator of a company ;
 - (b) a trustee in bankruptcy;
 - (c) an administrator of the insolvent estate of a deceased person;
 - (d) a receiver or manager of any property; or
 - (e) the Official Receiver when acting in any capacity move subparagraphs (a) to (d)
- (2) In this Part of this Schedule “qualifying insolvency proceedings” means—
- (a) any proceedings for the winding up of a company and includes any voluntary winding up of a company;
 - (b) any proceedings under the Bankruptcy Act 1989.
- (3) In this Part of this Schedule “the relevant officer” means the proper officer within the meaning given in paragraph 4.
- (4) In this Part of this Schedule references to the proceeds of sale or realisation of property are references to the proceeds after deduction of the costs of sale or realisation.

SCHEDULE 3

(section 15)

FORFEITURE OF TERRORIST CASH

PART 1

INTRODUCTORY

Terrorist cash

- 1 (1) This Schedule applies to cash (“terrorist cash”) which—
- (a) is within section 15(1)(a); or
 - (b) is property earmarked as terrorist property.
- (2) “Cash” means—
- (a) coins and notes in any currency;
 - (b) postal orders;
 - (c) cheques of any kind, including travellers’ cheques;
 - (d) bankers’ drafts;
 - (e) bearer bonds and bearer shares, found at any place in Bermuda.
- (3) Cash also includes any kind of monetary instrument found at any place in Bermuda if the instrument is specified by order made under subparagraph (4).
- (4) The Minister may, by order specify a monetary instrument for the purposes of this paragraph.

PART 2

SEIZURE AND DETENTION

Seizure of cash

- 2 (1) An authorised officer may seize any cash if he has reasonable grounds for suspecting that it is terrorist cash.
- (2) An authorised officer may also seize cash part of which he has reasonable grounds for suspecting to be terrorist cash if it is not reasonably practicable to seize only that part.

Detention of seized cash

3 (1) While the authorised officer continues to have reasonable grounds for his suspicion, cash seized under this Schedule may be detained initially for a period of 48 hours.

(2) The period for which the cash or any part of it may be detained may be extended by an order made by a magistrates' court; but the order may not authorise the detention of any of the cash—

- (a) beyond the end of the period of three months beginning with the date of the order; and
- (b) in the case of any further order under this paragraph, beyond the end of the period of two years beginning with the date of the first order.

(3) A justice of the peace or magistrate may also exercise the power of a magistrates' court to make the first order under sub-paragraph (2) extending the period.

(4) An order under subparagraph (2) must provide for notice to be given to persons affected by it.

(5) An application for an order under subparagraph (2) may be made by an authorised officer, and the court or justice or magistrate may make the order if satisfied, in relation to any cash to be further detained, that one of the following conditions is met.

(6) The first condition is that there are reasonable grounds for suspecting that the cash is intended to be used for the purposes of terrorism and that either—

- (a) its continued detention is justified while its intended use is further investigated or consideration is given to bringing (in Bermuda or elsewhere) proceedings against a person for an offence with which the cash is connected; or
- (b) proceedings against any person for an offence with which the cash is connected have been started (in Bermuda or elsewhere) and have not been concluded.

(7) The second condition is that there are reasonable grounds for suspecting that the cash is property earmarked as terrorist property and that either—

- (a) its continued detention is justified while its derivation is further investigated or consideration is given to bringing (in Bermuda or elsewhere) proceedings against any person for an offence with which the cash is connected; or
- (b) proceedings against any person for an offence with which the cash is connected have been started (in Bermuda or elsewhere) and have not been concluded.

Payment of detained cash into an account

4 (1) If cash is detained under this Schedule for more than 48 hours, it is to be held in an interest-bearing account and the interest accruing on it is to be added to it on its forfeiture or release.

(2) In the case of cash seized under paragraph 2(2) of this Part, the authorised officer must, on paying it into the account, release so much of it as is not attributable to terrorist cash.

(3) Subparagraph (1) does not apply if the cash is required as evidence of an offence or evidence in proceedings under this Schedule.

Release of detained cash

5 (1) This paragraph applies while any cash is detained under this Schedule.

(2) A magistrates' court may direct the release of the whole or any part of the cash if satisfied, on an application by the person from whom it was seized, that the conditions in paragraph 3 for the detention of cash are no longer met in relation to the cash to be released.

(3) An authorised officer may, after notifying the magistrates' court or justice or magistrate under whose order cash is being detained, release the whole or any part of it if satisfied that the detention of the cash to be released is no longer justified.

(4) But cash is not to be released—

- (a) if an application for its forfeiture under paragraph 6, or for its release under paragraph 9, is made, until any proceedings in pursuance of the application (including any proceedings on appeal) are concluded;
- (b) if (in Bermuda or elsewhere) proceedings are started against any person for an offence with which the cash is connected, until the proceedings are concluded.

PART 3
FORFEITURE

Forfeiture

6 (1) While cash is detained under this Schedule, an application for the forfeiture of the whole or any part of it may be made to a magistrates' court by an authorised officer.

(2) The court may order the forfeiture of the cash or any part of it if satisfied that the cash or part is terrorist cash.

(3) In the case of property earmarked as terrorist property which belongs to joint tenants one of whom is an excepted joint owner, the order may not apply to so much of it as the court thinks is attributable to the excepted joint owner's share.

(4) An excepted joint owner is a joint tenant who obtained the property in circumstances in which it would not (as against him) be earmarked; and references to his

ANTI-TERRORISM (FINANCIAL AND OTHER MEASURES) ACT 2004

share of the earmarked property are references to so much of the property as would have been his if the joint tenancy had been severed.

Appeal against forfeiture

7 (1) Any party to proceedings in which an order is made under paragraph 6 (“a forfeiture order”) who is aggrieved by the order may appeal to the Supreme Court.

(2) An appeal under subparagraph (1) must be made within the period of 30 days beginning with the date on which the order is made.

(3) The Court may make any order it thinks appropriate.

(4) If the Court upholds the appeal, it may order the release of the cash.

Application of forfeited cash

8 (1) Cash forfeited under this Schedule, and any accrued interest on it, is to be paid into the Confiscated Assets Fund.

(2) But it is not to be paid in—

(a) before the end of the period within which an appeal under paragraph 7 may be made; or

(b) if a person appeals under that paragraph, before the appeal is determined or otherwise disposed of.

PART 4

MISCELLANEOUS

Victims

9 (1) A person who claims (including a person who asserts an interest in any property) that any cash detained under this Schedule, or any part of it, belongs to him may apply to a magistrates’ court for the cash or part to be released to him under this paragraph.

(2) The application may be made in the course of proceedings under paragraph 3 or 6 or at any other time.

(3) If it appears to the court that—

(a) the applicant was deprived of the cash claimed, or of property which it represents, by criminal conduct;

(b) the property he was deprived of was not, immediately before he was deprived of it, property obtained by or in return for criminal conduct and nor did it then represent such property; and

(c) the cash claimed belongs to him,

the court may order the cash to be released to the applicant.

Compensation

10 (1) If no forfeiture order is made in respect of any cash detained under this Schedule, the person to whom the cash belongs or from whom it was seized may make an application to the magistrates' court for compensation.

(2) If, for any period after the initial detention of the cash for 48 hours, the cash was not held in an interest-bearing account while detained, the court may order an amount of compensation to be paid to the applicant.

(3) The amount of compensation to be paid under sub-paragraph (2) is the amount the court thinks would have been earned in interest in the period in question if the cash had been held in an interest-bearing account.

(4) If the court is satisfied that, taking account of any interest to be paid under this Schedule or any amount to be paid under subparagraph (2), the applicant has suffered loss as a result of the detention of the cash and that the circumstances are exceptional, the court may order compensation (or additional compensation) to be paid to him.

(5) The amount of compensation to be paid under sub-paragraph (4) is the amount the court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

(6) Any compensation ordered to be paid under this paragraph is to be paid out of the Confiscated Assets Fund

(7) If a forfeiture order is made in respect only of a part of any cash detained under this Schedule, this paragraph has effect in relation to the other part.

(8) This paragraph does not apply if the court makes an order under paragraph 9.

PART 5

PROPERTY EARMARKED AS TERRORIST PROPERTY

Property obtained through terrorism

11 (1) A person obtains property through terrorism if he obtains property by or in return for acts of terrorism, or acts carried out for the purposes of terrorism.

(2) In deciding whether any property was obtained through terrorism—

(a) it is immaterial whether or not any money, goods or services were provided in order to put the person in question in a position to carry out the acts; and

(b) it is not necessary to show that the acts were of a particular kind if it is shown that the property was obtained through acts of one of a number of kinds, each of which would have been an act of terrorism, or an act carried out for the purposes of terrorism.

Property earmarked as terrorist property

12 (1) Property obtained through terrorism is earmarked as terrorist property.

ANTI-TERRORISM (FINANCIAL AND OTHER MEASURES) ACT 2004

(2) But if property obtained through terrorism has been disposed of (since it was so obtained), it is earmarked as terrorist property only if it is held by a person into whose hands it may be followed.

(3) Property may be followed into the hands of a person obtaining it on a disposal by—

- (a) the person who obtained the property through terrorism; or
- (b) a person into whose hands it may (by virtue of this subparagraph) be followed.

Tracing property

13 (1) Where property obtained through terrorism (“the original property”) is or has been earmarked as terrorist property, property which represents the original property is also earmarked.

(2) If a person enters into a transaction by which—

- (a) he disposes of the original property or of property which (by virtue of this Part) represents the original property; and
- (b) he obtains other property in place of it;

the other property represents the original property.

(3) If a person disposes of property which represents the original property, the property may be followed into the hands of a person who obtains it (and it continues to represent the original property).

Mixing property

14 (1) Subparagraph (2) applies if a person’s property which is earmarked as terrorist property is mixed with other property (whether his property or another’s).

(2) The portion of the mixed property which is attributable to the property earmarked as terrorist property represents the property obtained through terrorism.

(3) Property earmarked as terrorist property is mixed with other property if (for example) it is used—

- (a) to increase funds held in a bank account;
- (b) in part payment for the acquisition of an asset;
- (c) for the restoration or improvement of land;
- (d) by a person holding a leasehold interest in the property to acquire the freehold.

Accruing profits

15 (1) This paragraph applies where a person who has property earmarked as terrorist property obtains further property consisting of profits accruing in respect of the earmarked property.

(2) The further property is to be treated as representing the property obtained through terrorism.

General exceptions

16 (1) If—

- (a) a person disposes of property earmarked as terrorist property; and
- (b) the person who obtains it on the disposal does so in good faith, for value and without notice that it was earmarked;

the property may not be followed into that person's hands and, accordingly, it ceases to be earmarked.

(2) If—

- (a) in pursuance of a judgment in civil proceedings (whether in Bermuda or elsewhere), the defendant makes a payment to the plaintiff or the plaintiff otherwise obtains property from the defendant;
- (b) the plaintiff's claim is based on the defendant's criminal conduct; and
- (c) apart from this subparagraph, the sum received, or the property obtained, by the plaintiff would be earmarked as terrorist property;

the property ceases to be earmarked.

(3) If—

- (a) under any law in force in Bermuda, a payment is made to any person, or a person otherwise obtains property, in pursuance of a compensation order or a restitution order made in respect of loss or injury suffered in consequence of criminal conduct or other misconduct; and
- (b) apart from this subparagraph, the sum received, or the property obtained, would be earmarked as terrorist property;

the property ceases to be earmarked.

(4) Where—

- (a) a person enters into a transaction to which paragraph 13(2) applies; and
- (b) the disposal is one to which subparagraph (1) applies;

this paragraph does not affect the question whether (by virtue of paragraph 13(2)) any property obtained on the transaction in place of the property disposed of is earmarked.

PART 6

EXERCISE OF OFFICERS' POWERS

General

17 An authorised officer may enter any premises for the purposes of exercising any of the functions conferred on him by virtue of this Schedule.

18 An authorised officer may if necessary use reasonable force for the purpose of exercising a power conferred on him by virtue of this Schedule.

Information

- 19 (1) Information acquired by an authorised officer may be supplied—
- (a) to a customs officer;
 - (b) to a police officer;
 - (c) to a person specified by order of the Minister for use of a kind specified in the order.

PART 7

INTERPRETATION

Property

- 20 (1) Property is all property wherever situated and includes—
- (a) money;
 - (b) all forms of property, real or personal, heritable or moveable;
 - (c) things in action and other intangible or incorporeal property.
- (2) Any reference to a person's property (whether expressed as a reference to the property he holds or otherwise) is to be read as follows.
- (3) In relation to land, it is a reference to any interest which he holds in the land.
- (4) In relation to property other than land, it is a reference—
- (a) to the property (if it belongs to him); or
 - (b) to any other interest which he holds in the property.

Obtaining and disposing of property

- 21 (1) References to a person disposing of his property include a reference—
- (a) to his disposing of a part of it; or
 - (b) to his granting an interest in it;

(or to both); and references to the property disposed of are references to any property obtained on the disposal.

(2) If a person grants an interest in property of his which is earmarked as terrorist property, the question whether the interest is also earmarked is to be determined in the same manner as it is on any other disposal of earmarked property.

(3) A person who makes a payment to another is to be treated as making a disposal of his property to the other, whatever form the payment takes.

(4) Where a person's property passes to another under a will or intestacy or by operation of law, it is to be treated as disposed of by him to the other.

(5) A person is only to be treated as having obtained his property for value in a case where he gave unexecuted consideration if the consideration has become executed consideration.

General interpretation

22 (1) In this Schedule—

“authorised officer” means a police officer, a customs officer or an immigration officer;

“cash” has the meaning given by paragraph 1;

“criminal conduct” means conduct which constitutes an offence in Bermuda, or would constitute an offence in Bermuda if it occurred there;

“forfeiture order” has the meaning given by paragraph 7;

“interest” means—

(a) in relation to land, any legal estate and any equitable interest or power;
and

(b) in relation to property other than land, includes any right (including a right to possession of the property);

“part”, in relation to property, includes a portion;

“property earmarked as terrorist property” is to be read in accordance with Part 5;

“property obtained through terrorism” has the meaning given by paragraph 11;

“terrorist cash” has the meaning given by paragraph 1;

“value” means market value.

(2) Paragraphs 20 and 21 and the following provisions apply for the purposes of this Schedule.

(3) For the purpose of deciding whether or not property was earmarked as terrorist property at any time (including times before the commencement of this Act), it is to be assumed that this Schedule was in force at that and any other relevant time.

ANTI-TERRORISM (FINANCIAL AND OTHER MEASURES) ACT 2004

- (4) Proceedings against any person for an offence are concluded when—
- (a) the person is convicted or acquitted;
 - (b) the prosecution is discontinued; or
 - (c) the jury is discharged without a finding.

[Schedule 3 paragraph 9(1) amended by 2013 : 30 s. 13 effective 8 November 2013]

SCHEDULE 4

(section 16)

ACCOUNT MONITORING ORDERS

Interpretation

- 1 (1) In this Schedule, “financial institution” means—
- (a) a bank or a deposit company licensed under the Banks and Deposit Companies Act 1999;
 - (b) a credit union authorised to operate as such under the Credit Unions Act 1982;
 - (c) a person who is licensed to carry on an investment business under the Investment Business Act 2001 or is exempt therefrom;
 - (d) a person who is licensed to carry on an insurance or reinsurance business under the Insurance Act 1978.
- (2) The Minister may by order provide for a class of person—
- (a) to be a financial institution for the purposes of this Schedule; or
 - (b) to cease to be a financial institution for the purposes of this Schedule.
- (3) An institution which ceases to be a financial institution for the purposes of this Schedule (whether by virtue of subparagraph (2)(b) or otherwise) shall continue to be treated as a financial institution for the purposes of any requirement under this Schedule to provide information which relates to a time when the institution was a financial institution.
- (4) In this Schedule “the court” means the Supreme Court and “judge” means a judge of that Court.

Account monitoring orders

- 2 (1) A judge may, on application made to him by a police officer, make an account monitoring order if he is satisfied that—
- (a) the order is sought for the purposes of a terrorist investigation;
 - (b) the tracing of terrorist property is desirable for the purposes of the investigation; and
 - (c) the order will enhance the effectiveness of the investigation.
- (2) The application for an account monitoring order must state that the order is sought against the financial institution specified in the application in relation to information which—
- (a) relates to an account or accounts held at the institution by the person specified in the application (whether solely or jointly with another); and

(b) is of the description so specified.

(3) The application for an account monitoring order may specify information relating to—

- (a) all accounts held by the person specified in the application for the order at the financial institution so specified;
- (b) a particular description, or particular descriptions, of accounts so held; or
- (c) a particular account, or particular accounts, so held.

(4) An account monitoring order is an order that the financial institution specified in the application for the order must—

- (a) for the period specified in the order;
- (b) in the manner so specified;
- (c) at or by the time or times so specified; and
- (d) at the place or places so specified;

provide information of the description specified in the application to a police officer.

(5) The period stated in an account monitoring order must not exceed the period of 90 days beginning with the day on which the order is made.

Applications

3 (1) An application for an account monitoring order may be made ex parte to a judge in Chambers.

(2) The description of information specified in an application for an account monitoring order may be varied by the police officer who made the application or by any other police officer.

Discharge or variation

4 (1) An application to discharge or vary an account monitoring order may be made to the court by—

- (a) the police officer who applied for the order or any other police officer;
- (b) any person affected by the order.

(2) The court—

- (a) may discharge the order;
- (b) may vary the order.

Rules of court

5 Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to account monitoring orders.

ANTI-TERRORISM (FINANCIAL AND OTHER MEASURES) ACT 2004

Effect of orders

- 6 (1) An account monitoring order has effect as if it were an order of the court.
- (2) An account monitoring order has effect in spite of any restriction on the disclosure of information (however imposed).

Statements

- 7 (1) A statement made by a financial institution in response to an account monitoring order may not be used in evidence against it in criminal proceedings.
- (2) But subparagraph (1) does not apply—
- (a) in the case of proceedings for contempt of court;
 - (b) in the case of proceedings under section 14 where the financial institution has been convicted of an offence under any of sections 5 to 8;
 - (c) on a prosecution for an offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement mentioned in sub-paragraph (1).
- (3) A statement may not be used by virtue of subparagraph (2)(c) against a financial institution unless—
- (a) evidence relating to it is adduced; or
 - (b) a question relating to it is asked;
- by or on behalf of the financial institution in the proceedings arising out of the prosecution.

[Assent Date: 17 December 2004]

[Operative Date: 7 March 2005]

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