

JAMAICA

No. 13 – 2019

I assent,

[L.S.]

Sgd. P. L. Allen
Governor-General.

15th day of November 2019

AN ACT to Amend the Terrorism Prevention Act.

[*15th November 2019*]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Terrorism Prevention (Amendment) Act, 2019, and shall be read and construed as one with the Terrorism Prevention Act (hereinafter referred to as the principal Act) and all amendments thereto.

Short title
and
construction.

Amendment
of section 2
of principal
Act.

2. Section 2 of the principal Act is amended—

- (a) by inserting in the appropriate alphabetical sequence the following definitions—

““competent authority” has the meaning given to it by section 18(5);

“designated authority” has the meaning given to it by section 15(1);”;

- (b) in the definition of “financial institution”, delete paragraph (e) and substitute therefor the following—

“(e) a person who—

- (i) carries on life insurance business within the meaning of the Insurance Act; or
- (ii) performs services as an insurance intermediary, in respect of life insurance business, within the meaning of the Insurance Act,

but does not include an insurance consultant or an adjuster;”;

- (c) in paragraph (c) of the definition of “terrorism offence” by inserting next after the words “attempt to commit” the words “or incite”;

- (d) in paragraph (d) of the definition of “terrorist activity” by inserting next after the words “attempt to commit” the words “or incite”.

Amendment
of section 4
of principal
Act.

3. Section 4 of the principal Act is amended by inserting next after subsection (2) the following subsection—

“(3) The meaning of facilitating terrorist activity shall be construed in accordance with section 8.”.

Amendment
of section 6
of principal
Act.

4. Section 6 of the principal Act is amended—

- (a) in subsection (1) by deleting the words “No person” and substituting therefor the words “Except as permitted by

exemptions set out in an order under section 14(4B), no person”;

- (b) in subsection (1)(a) by inserting next after the words “terrorist group” the words “or derived or generated from property owned or controlled by or on behalf of a terrorist group”;
- (c) in subsection (1)(c) by inserting next after the word “provide” the words “any property referred to in paragraph (a) or”;
- (d) by inserting next after subsection (2) the following subsection—

“ (3) A person shall not be liable in any civil action for any act or omission of that person taken reasonably for the purpose of complying with subsection (1) in any case where the person took all reasonable steps to satisfy himself or herself that the property is property described in subsection (1).”.

5. Section 7 of the principal Act is amended in subsection (3)(d) by—

Amendment
of section 7
of principal
Act.

- (a) inserting immediately before the words “entering or remaining in” the words “leaving or attempting to leave Jamaica or”;
- (b) inserting next after the words “a terrorist group” the words “or to participate in any activity referred to in subsection (1)”.

6. Section 8 of the principal Act is amended by inserting next after subsection (2) the following subsection—

Amendment
of section 8
of principal
Act.

“ (3) For the avoidance of doubt, facilitating terrorist activity includes—

- (a) leaving or attempting to leave Jamaica in order to facilitate or commit a terrorism offence; or
- (b) providing any financial or other services to facilitate any person leaving or attempting to leave Jamaica in order to carry out a terrorism offence.”.

Amendment
of section 14
of principal
Act.

7. Section 14 of the principal Act is amended—

(a) in subsection (1)(b) by—

- (i) deleting the word “or” at the end of paragraph (i);
- (ii) deleting the full stop at the end of paragraph (ii) and substituting therefor the word “; or”; and
- (iii) inserting the following as paragraph (iii)—

“(iii) not being an individual, is owned or controlled, directly or indirectly, by an entity referred to in sub-paragraph (i).”;

(b) by inserting next after subsection (4) the following subsections—

“(4A) An order under subsection (1) shall include a prohibition in terms of section 6(1) in respect of property owned or controlled by or on behalf of the listed entity or derived or generated from such property.

(4B) Subject to paragraph (4C), the prohibition referred to in subsection (4A) may be made subject to such exemptions, as the Judge thinks necessary for—

- (a) meeting basic expenses such as payments for food, rent or mortgage, medicine, medical treatment, taxes, insurance premiums and public utility charges;
- (b) payment of reasonable professional fees or re-imburement of incurred expenses associated with the provision of legal services;
- (c) fees or service charges for routine holding or maintenance of frozen funds or other financial assets or economic resources; or

- (d) meeting any extraordinary expense which the Judge thinks fit to allow, and those exemptions shall be set out in the order.

(4C) An exemption under any of paragraphs (4B) (c) or (d) shall not be allowed by the Judge unless the person seeking the exemption satisfies the Judge that notification was given to the committee established pursuant to United Nations Security Council Resolution 1267 and forty-eight hours have elapsed, after the giving of such notification, without the committee giving a negative decision with respect thereto.

(4D) Where an order is made under subsection (4), (7)(d), or (10), the following shall cause the order to be published on its public website within twenty-four hours after the order is made—

- (a) the Ministry responsible for foreign affairs;
- (b) every competent authority; and
- (c) the designated authority.”;

(c) in subsection (5)—

- (i) by deleting the words “, within seven days after the date of the order,”;
- (ii) by deleting sub-paragraph (a) and substituting therefor the following—

“(a) within seven days after the end of each calendar quarter, a copy of each such order made during the calendar quarter;”;

- (iii) in sub-paragraph (b), by inserting next after the words “under subsection (4),” the words “include with the publication”;

(d) in subsection (6) by deleting the numeral “(5)” and substituting therefor the numeral “(4A)”;

- (e) in subsection (9) by—
- (i) deleting the words “six months” and substituting therefor the words “two years”;
 - (ii) deleting paragraph (b) and substituting therefor the following—
 - “(b) if the Director of Public Prosecutions determines that such circumstances—
 - (i) no longer exist, apply to a Judge of the Supreme Court for the revocation of the order in respect of the listed entity; or
 - (ii) still exist, apply to a Judge of the Supreme Court for renewal of the order.”;
- (f) by deleting subsection (10) and substituting therefor the following—
- “(10) Upon an application under—
- (a) sub-paragraph (i) of subsection (9)(b), the Judge shall, if satisfied as to the matters referred to in that sub-paragraph, make an order for the revocation; or
 - (b) sub-paragraph (ii) of subsection 9(b), the Judge shall, if satisfied as to the matters referred to in that sub-paragraph, make an order for the renewal.”;
- (g) by inserting next after subsection (10) the following subsections—
- “(11) Unless sooner revoked or renewed under subsection (9), an order under subsection (4) made on the basis of a Judge of the Supreme Court being satisfied as to the matters specified in subsection

(4)(b)(i) or (ii) shall expire three years after the date on which the order was made or renewed, whichever is the later.

(12) The Director of Public Prosecutions may apply under subsection (4) for a new order in respect of an entity in respect of whom a previous order under subsection (4) has expired.”.

8. The principal Act is amended by inserting next after section 14 the following sections—

Insertion of
new sections
14A and 14B
in principal
Act.

“Application
to United
Nations
Security
Council for
de-listings.

14A.—(1) Without prejudice to any application for review that may be made under section 14, an entity included on a list of entities designated as terrorist entities by the United Nations Security Council and in respect of whom an order is made under section 14(4) (hereinafter referred to as the listed entity) may—

- (a) submit directly to the appropriate authority to receive de-listing requests pursuant to United Nations Security Council Resolution 1730 or 1904 (as the case may require); or
- (b) forward to the Minister for transmission to the appropriate authority referred to in subparagraph (a), a request for the de-listing of that entity from the list of entities designated as terrorist entities by the United Nations Security Council.

Application
for listing.

14B.—(1) Where the Minister responsible for foreign affairs and the Minister responsible for national security are satisfied, on a written recommendation made by the Chief Technical Director of the Financial Investigations Division and the Director of Public Prosecutions, as to the criteria set out in a relevant United Nations Security Council Resolution, in respect of an entity, the Minister responsible for foreign affairs

shall make a request to the United Nations Security Council for the listing of the entity on the list of entities designated as terrorist entities by the United Nations Security Council.

(2) The written recommendation for the purposes of subsection (1) shall include all the case information required under the relevant United Nations Security Council Resolution, to the extent that the information can be provided without compromising the interests of national security.

(3) In this section, “relevant United Nations Security Council Resolution” means a United Nations Security Council Resolution which sets out criteria for the listing of an entity, as a terrorist entity, on a list of entities designated as terrorist entities by the United Nations Security Council.”.

Amendment
of section 16
of principal
Act.

9. Section 16 of the principal Act is amended—

- (a) by deleting subsections (2) and (3) and renumbering subsection (3A) as subsection (3);
- (b) by inserting next after subsection (1) the following subsection—

“ (2) For the purposes of this section, a reporting entity shall, in relation to each customer, make and retain for a period of not less than seven years or such other period as the competent authority shall in writing direct, a record of all—

- (a) complex, unusual or large business transactions carried out by that customer with the reporting entity; and
- (b) unusual patterns of transactions, whether completed or not, which appear to the person to be inconsistent with the normal

transactions carried out by that customer with the reporting entity.”;

- (c) in subsections (4), (5) and (7) by deleting in each case the words “or (3A)”;
- (d) in subsection (7) by deleting the words “as the case may require,”.

10. The principal Act is amended by inserting next after section 16 the following section—

Insertion of new section 16A in principal Act.

“Enhanced monitoring in respect of transactions with customers domiciled, resident or incorporated in specified territories.

16A.—(1) A reporting entity shall, in respect of all its business relationships and transactions with any customer resident or domiciled or, in the case of a body corporate, incorporated, in a specified territory—

- (a) apply enhanced due diligence procedures;
- (b) ensure that the background and purpose of all such relationships and transactions are examined;
- (c) ensure that the findings under paragraphs (a) and (b) are set out in writing and made available, upon request, to the designated authority or the competent authority concerned, as the case may require; and
- (d) limit those business relationships and one-off transactions, in accordance with enhanced terrorist financing counter-measures set out in regulations made under this Act.

(2) For the purposes of this section—

“enhanced due diligence procedures” means such enhanced due diligence procedures as are prescribed pursuant to section 47;

“specified territory” means a territory specified in a list, published by notice in the *Gazette*, by the designated authority as being a territory in respect of which there is a greater associated risk of money laundering or terrorist financing.”

Amendment
of section 17
of principal
Act.

11. Section 17 of the principal Act is amended—

- (a) in subsection (2) by inserting immediately after the words “has been made” the words “, or is about to be made”;
- (b) in subsection (3) by inserting immediately after the words “has been made” the words “, or is about to be made”.

Amendment
of section 18
of principal
Act.

12. Section 18 of the principal Act is amended in subsection (3) by deleting the words “complex, unusual or large” and substituting therefor the word “suspicious”.

Amendment
of section
18A and 18B
of principal
Act.

13. The principal Act is amended by inserting next after section 18 the following sections—

“Functions of
competent
authority.

18A.—(1) In addition to any other function of a competent authority under this Part, and without prejudice to any other function which that competent authority may exercise under any other enactment, a competent authority shall exercise the function set out in subsection (2) for the purpose of ensuring that any reporting entity which that competent authority is responsible for monitoring operates in compliance with this Act and any regulations made under this Act.

(2) A competent authority—

- (a) shall establish such measures as it thinks fit, including carrying out, or directing a third party to carry out, such inspections or such verification procedures as may be necessary;
- (b) may issue directions to any of the reporting entities concerned, and the directions may

require the business to take measures for the prevention or detection of, or reducing the risk of, terrorist financing;

- (c) may examine and take copies of information or documents in the possession or control of any of the reporting entities concerned, and which the competent authority has reason to suspect contains information or evidence relevant to terrorist financing;
- (d) may share information, pertaining to any examination conducted by it under paragraph (c), with another competent authority, a supervisory authority or the designated authority, or an authority in another jurisdiction exercising functions analogous to those of any of the aforementioned authorities—
 - (i) other than information which is protected from disclosure under this Act or any other law; and
 - (ii) subject to any terms, conditions or undertakings which it thinks fit in order to prevent disclosure of the kind referred to in subparagraph (i) and secure against the compromising or obstruction of any investigation in relation to an offence under this Part or any other law;
- (e) may require the reporting entities concerned, in accordance with such

procedures as it may establish by notice in writing to those reporting entities—

- (i) if a registration requirement does not already exist under any other law, to register with the competent authority such particulars as may be prescribed; and
 - (ii) to make such reports to the competent authority in respect of such matters as may be specified in the notice;
- (f) shall continually assess the risks of terrorist financing relating to the entities referred to in section 15(2)(a) to (c) and tailor the competent authority's activities (including any directions or requirements that may be issued, or measures or procedures that may be established) under this Act accordingly.

(3) Nothing in subsection (2)(c) shall be construed as requiring an attorney-at-law to disclose any information or advice that is subject to legal professional privilege.

(4) Subsection (3) does not apply to information or other matter that is communicated or given with the intention of furthering a criminal purpose.

(5) A reporting entity which fails to comply with any requirement or direction issued to it under this Part by the competent authority, commits an offence and is liable on conviction —

- (a) before a Judge of a Parish Court, to a fine not exceeding three million dollars; or

(b) on indictment before a Circuit Court, to a fine.

(6) Where a reporting entity which is convicted of an offence under subsection (5) is registered, or is the holder of a licence or other form of permit in respect of its operations under a regime administered by the competent authority concerned, the conviction for the offence shall be deemed to constitute grounds on which the registration, licence or other form of permit may be suspended or revoked, and the competent authority may, if it thinks fit, act accordingly.

Statistical
information.

18B.—(1) An entity designated as a competent authority, or designated authority, under this Act shall keep such statistical records as it considers appropriate for the purpose of measuring the overall effectiveness of measures taken under this Act with respect to the prevention of terrorist financing.

(2) The Minister may by order published in the *Gazette* specify—

- (a) entities, other than those specified in subsection (1), that are required to keep statistics for the purposes of this section; and
- (b) the statistics to be kept by the entities to which paragraph (a) applies, for the purpose of measuring the overall effectiveness of measures taken under this Act with respect to the prevention of terrorist financing.

(3) Statistical information kept under subsection (1) or (2) may be disclosed to any entity referred to in subsection (4) if the information does not include any information from which the identity of

any person, or any personal details in respect of any person, is ascertainable either on the face of the disclosure or by reasonable inference.

(4) The entities are—

- (a) the Director of Public Prosecutions;
- (b) the Commissioner of Police;
- (c) the Commissioner of Customs;
- (d) the Attorney-General;
- (e) the Director-General of the Major Organized Crime and Anti-Corruption Agency;
- (f) the Chief Technical Director of the Financial Investigations Division;
- (g) any other entity designated by the Minister by order for the purposes of this section.”.

Amendment
of Schedule
to principal
Act.

14. The Schedule to the principal Act is amended in paragraph 1(5), in the definition of “BCN weapon” by moving the words “in types and quantities consistent to those purposes” from the end of subparagraph (D) and placing them back to the margin of paragraph (b) of the definition.

Passed in the Senate this 25th day of October, 2019 with two (2) Amendments.

AUBYN HILL
President.

Passed in the House of Representatives this 29th day of October, 2019.

PEARNEL P. CHARLES, CD, MP, JP

Speaker.

This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act.

Sgt. Valrie A. Curtis
Clerk to the Houses of Parliament.