

COMMONWEALTH OF DOMINICA

ARRANGEMENT OF SECTIONS

1. Short title.
2. Interpretation.
3. Amendment of section 2.
4. Amendment of section 4.
5. Repeal and replacement of section 5.
6. Insertion of new sections 5A and 5B.
7. Repeal of section 6.
8. Repeal and replacement of section 7.
9. Repeal and replacement of section 12.
10. Insertion of new section 12A to 12C.
11. Insertion of new Part V A.
12. Amendment of section 20.
13. Amendment of section 27.
14. Amendment of section 35.
15. Amendment of section 36.
16. Insertion of new section 38A.
17. Repeal and replacement of section 47.
18. Insertion of new section 48.
19. Amendment of the Schedule.
20. Insertion of new Schedule.

2011 SUPPRESSION OF THE FINANCING OF TERRORISM (AMENDMENT) ACT 9

COMMONWEALTH OF DOMINICA

ACT NO. 9 OF 2011

I assent



E. I. WATTY
President (Ag.)

22nd November, 2011

**AN ACT TO PROVIDE FOR THE AMENDMENT OF
THE SUPPRESSION OF THE FINANCING OF
TERRORISM ACT, ACT NO. 3 OF 2003.**

BE IT ENACTED by the Parliament of the Commonwealth
of Dominica as follows –

(Gazetted 1st December, 2011)

1. This Act may be cited as the –

Short title.

**SUPPRESSION OF THE FINANCING OF
TERRORISM (AMENDMENT) ACT, 2011.**

2011 SUPPRESSION OF THE FINANCING OF TERRORISM (AMENDMENT) ACT 9

Interpretation.
Act No. 3 of 2003.

2. (1) In this Act “the Act” means the Suppression of the Financing of Terrorism Act 2003.

Amendment of section 2.

3. Section 2 of the Act is amended –

(a) by deleting the definition of “terrorist” and substituting the following –

“terrorist” means an individual who-

(a) commits, or attempts to commit, a terrorist act by any means, directly or indirectly, unlawfully and wilfully;

(b) participates as an accomplice in a terrorist acts;

(c) organizes or directs others to commit terrorists acts; or

(d) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act;

(b) by deleting the definition of “terrorist act” and substituting the following –

“terrorist act” means –

(a) an act or threat of action which –

(i) involves serious bodily harm to a person;

- (ii) involves serious damage to property;
- (iii) endangers a person's life;
- (iv) creates a serious risk to the health or safety of the public or a section of the public;
- (v) involves the use of firearms or explosives;
- (vi) involves releasing into the environment or any part of the environment or distributing or exposing the public to any hazardous matter;
- (vii) is designed or intended to disrupt an electronic system or the provision of services directly related to communications infrastructure, banking or financial services, utilities, transportation or other essential infrastructure;
- (viii) is designed or intended to disrupt the provision of essential emergency services such as police, civil defence or medical services;
- (ix) involves prejudice to national security or public safety; or
- (x) involves participating in the activities of a terrorist group or assisting a terrorist including the supplying of information or material resources, or the funding of the activities of the group or terrorist in any way, with

knowledge of the fact that the participation will contribute to the criminal activities of the group or terrorist;

and is intended or by its nature and context may reasonably be regarded as being intended to –

- (xi) intimidate or coerce a civilian population;
- (xii) influence the policy of any Government by intimidation or coercion;
- (xiii) affect the conduct of a Government by mass destruction, assassination, kidnapping or hostage taking;
- (b) an act or omission, whether committed in or outside Dominica, which constitutes an offence within the scope of a counter terrorism contention;
- (c) in the definition of “counter-terrorism convention” by deleting the words “the Schedule” and substituting the word and figure “Schedule 1”;
- (d) inserting the following definitions in alphabetical order –

“designation order” means an order made under section 11 (2);

“financial institution” means a person whose regular occupation or business

is the carrying on of any activity listed in Schedule 2;

“Financial Services Unit” means the Unit established under section 3 of the Financial Services Unit Act 2008; No. 18 of 2008.

“freezing order” means an order made under section 12 (1);

“hazardous matter” means –

(a) any dangerous, hazardous, radioactive or harmful substance;

(b) any toxic chemical;

(c) any microbial or other biological agent or toxin;

“offences of terrorist financing” means conduct which constitutes an offence under section 4;

“terrorist group” means a group of terrorists that -

(a) commit, or attempt to commit terrorist acts by any means, directly or indirectly, unlawfully and wilfully;

(b) participates as an accomplice in terrorist acts;

2011 SUPPRESSION OF THE FINANCING OF TERRORISM (AMENDMENT) ACT 9

(c) organizes or directs others to commit terrorist acts; or

(d) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act with the knowledge of the intention of the group to commit a terrorist act;

(e) inserting the following as subsection (3) –

“(3) The knowledge, intent purpose required as an element of any offence under this Act may be inferred from objective, factual circumstances.”

Amendment of section 4.

4. Section 4 of the Act is amended in subsection (1) by inserting the word “any” immediately after the word “means”.

Repeal and replacement of section 5.

5. The Act is amended by repealing section 5 and replacing it with the following -

^{“Liability for section 4 offence.}

5. (1) A person who commits an offence under section 4 is liable on conviction -

(a) in the case of an individual, to a fine of two hundred thousand dollars or imprisonment for a term of twenty-five years or to both;

(b) in case of an entity, to a fine of one million dollars.

(2) The liability of an entity under this section is without prejudice to any penalty which may be imposed on an individual directly involved in the commission of the offence.”

6. The Act is amended by inserting the following new section 5A immediately after section 5 -

Insertion of new sections 5A and 5B.

“Commission of terrorist act offence.

5A. A person who commits a terrorist act commits an offence and is liable on conviction -

(a) in the case of an individual, to a term of imprisonment for life;

(b) in the case of an entity, to a fine of five million dollars.”

“Recruitment of person for terrorist group or terrorist act.

5B. A person who knowingly agrees to recruit, or recruits, another person -

(a) to be a member of a terrorist group; or

(b) to participate in the commission of a terrorist act,

commits an offence and is liable on conviction to a term of imprisonment for life.”

7. The Act is amended by repealing section 6.

Repeal of section 6.

8. Section 7 of the Act is repealed and replaced by the following—

Repeal and replacement of section 7.

“Liability of financial institutions.

7. Where a financial institution commits an offence under this Act, the Court may on conviction –

(a) order that a written warning be imposed on the directors or employees of the financial institution;

(b) order the suspension or cancellation of the licence of the financial institution;

(c) impose a fine not exceeding one million dollars on the financial institution.”

Repeal and replacement of section 12.

9. Section 12 of the Act is repealed and replaced by the following—

“Freezing Orders.

12. (1) The Attorney General shall, on the publication of a designation order, in writing issue an order to a financial institution in the State requiring it to freeze any account, funds or property held by that financial institution on behalf of a person who or terrorist group which is the subject of a designation Order.

(2) A financial institution which freezes an account in compliance with an Order made by the Attorney General under subsection (1) shall, as soon as practicable, notify in writing, the holder of the account that the account has been frozen.

(3) Where a financial institution fails to freeze an account, pursuant to a freezing order, that financial institution commits an offence and is liable to a fine of one million dollars.

(4) In addition to or as alternative to the fine in subsection (3), the court may on conviction of a person under subsection (1) –

(a) order the suspension of license of the financial institution by the Financial Services Unit; or

(b) issue specific instructions to the financial institution to freeze the account by a certain date, failing which to impose a fine of twenty thousand dollars for every day that the financial institution fails to adhere to the specific instructions.”

10. The Act is amended by inserting immediately after section 12 the following new sections –

Insertion of new sections 12A to 12C.

“Time limit and extension of time for a freezing Order.

12A. (1) Subject to subsection (1), a freezing order made by the Attorney General shall be effective for three months unless previously revoked by him or by order of the court.

(2) The court may, upon an application of the Attorney General order the extension of a freezing order, if the court is satisfied that the conditions referred to in section 12 (1) still apply.

(3) An application under subsection (2) may be made without notice.

(4) For the avoidance of doubt, an application made pursuant to subsection (2) shall not operate as a stay of the freezing order in respect of which an order is sought.

“Access to frozen accounts, funds or property.

12B. The Court, on an application of a person who is the subject of a freezing order or in making an order for extension of time for a freezing order, may give directions with regard to the disposal of the accounts, funds or property in respect of -

(a) determining any dispute as to the ownership of the accounts, or property or any part thereof;

**2011 SUPPRESSION OF THE FINANCING ACT 9
OF TERRORISM (AMENDMENT)**

- (b) its proper administration during the period of freezing;
- (c) the payment of debts due to creditors prior to the order; and
- (d) the payment of money to a person for the reasonable subsistence of that person and his family.”

“Request under freezing mechanisms of other States.

12C. The court may, on an application, by the competent authority, receive a request from the court of another State to freeze the –

- (a) accounts;
- (b) funds; or
- (c) property,

connected to a terrorist, terrorist act or terrorist group, that was the subject of the freezing mechanism of the requesting State.”

Insertion of new Part VA.

11. The Act is amended by inserting the following new Part VA immediately after section 19 –

“PART V A

SUSPICIOUS BUSINESS TRANSACTIONS

“Reporting suspicious business transactions.

19A. (1) A financial institution shall pay attention to –

- (a) all complex, unusual or large business transactions, whether completed or not;
- (b) all unusual patterns of transactions;
- (c) relations and transactions with persons, including business and other

financial institutions from countries which have not adopted comprehensive legislation to prevent or deter offences of terrorist financing.

- (2) Where a financial institution suspects or has reasonable grounds to suspect that –
- (a) a transaction, proposed transaction or attempted transaction, is related to offences of terrorist financing;
 - (b) funds which are the subject of a transaction referred to in paragraph (b) are linked or related to, or to be used for terrorism, terrorist acts or by terrorist groups,

it shall promptly report the transaction to the Unit.

- (3) A financial institution, its employees, staff directors, owners or other authorised representatives or a person carrying on a scheduled business, who wilfully fail to comply with subsection (1) or (2) commits an offence.

Standard for reasonable suspicion.

19B. The question whether a reasonable suspicion, for the purpose of section 19A (2), has been formed shall be determined objectively having regard to all the facts and surrounding circumstances.

Penalty for contravention of section 19A.

19C. Without prejudice to any other liability, criminal or civil, in relation to any offences connected to offences of terrorist financing, a financial institution, its employees, staff, directors,

**2011 SUPPRESSION OF THE FINANCING ACT 9
OF TERRORISM (AMENDMENT)**

owners or other authorised representatives or a person carrying on a scheduled business, who contravenes section subsection (1) or (2) of section 19A is liable on conviction to a fine of two hundred and fifty thousand dollars or to imprisonment for a term of five years.

Non-disclosure.

19D. (1) A director, officer or employee of a financial institution who has made a suspicious transaction report shall not disclose that fact or any information regarding the contents of a suspicious transaction report to any other person, including the person in respect of whom the suspicious transaction report shall be or has been made, otherwise than for the purpose of -

- (a) carrying out the provisions of this Act;
- (b) legal proceedings, including any proceeding before a Judge in chambers;
- (c) complying with the terms of an Order of a Court; or
- (d) the Financial Services Unit carrying out its powers and duties under the Financial Services Unit Act, 2008.

No.18 of 2008.

(2) A director, officer or employee of a financial institution who contravenes subsection (1), commits an offence and is liable on conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for a term not exceeding five years.

19E. Where a report under section 19A is made in good faith the financial institution, its employees, staff, directors, owners or other authorised representatives are exempt from

criminal, civil or administrative liability for complying with section or for breach of any restriction on disclosure of information imposed by contact or by any legislative, regulatory or administrative provision, regardless of the result of the communication”

12. Section 20 of the Act is amended by inserting the following as subsection (4) –

Amendment of section 20.

“(4) The Unit or a person authorised by the Unit may investigate an offence under this Act, whether it occurred in Dominica or any other territorial jurisdiction.”

13. Section 27 of the Act is repealed and replaced by the following –

Amendment of Section 27.

“Extradition requests to be considered irrespective of arrangement and without undue delay.

27. (1) Where the Competent Authority in Dominica receives a request from another State to extradite a person over whom that other State establishes jurisdiction in accordance with the provisions of this Act for the commission of an offence in that other State, the request shall be considered whether or not there is an extradition treaty between Dominica and that State.

(2) Where the Competent Authority receives a request for extradition under subsection (1) that request shall be fulfilled without undue delay.

14. Section 35 of the Act is amended by deleting subsection (2) and substituting the following –

Amendment of section 35.

“(2) Subject to the provisions of the

2011 SUPPRESSION OF THE FINANCING OF TERRORISM (AMENDMENT) ACT 9

Constitution, requests for information under this Part, shall be fulfilled, notwithstanding any obligations as to secrecy, confidentiality or other restriction upon disclosure of information imposed by any law of otherwise, except where the information sought under subsection (1) is held in circumstances where legal professional privilege exists.”

Amendment of section 36.

15. Section 36 of the Act is amended –

- (a) in subsection (2) by deleting the Words “Eastern Caribbean Central Bank” and substituting the words “Financial Services Unit”;
- (b) by deleting subsection (3);
- (c) in subsection (4) by deleting the words “or the Commissioner of Police”;
- (d) in subsection (6) by deleting the word and figures “subsection (1), (2) or (3)” and substituting the word and figures ‘subsection (1) or (2)’.

Insertion of new section 38.

16. The Act is amended by inserting the following as section 38A –

“Voidable transfers

38A. The Court may-

- (a) before making a forfeiture order; and
- (b) in the case of property in respect of which a freezing order was made and where the order was duly served,

set aside any conveyance or transfer of the property that occurred after the seizure of the property or the service of the freezing order, unless the conveyance or transfer was made

for valuable consideration to a person acting in good faith and without notice.”

17. The Act is amended by repealing section 47 and replacing it with the following –

Repeal and replacement of section 47.

“Guidance Notes. 47. (1) The Financial Services Unit shall from time to time issue guidance notes for financial institutions or person who may be in possession of such funds and assets and such institutions or person shall comply with the guidance notes.

(2) Where a financial institution or person fails to comply with the guidance notes issued under subsection 1, the Financial Services Unit may –

(a) issue a written warning to the financial institution or person who may be in possession of target funds;

(b) issue specific institutions to the financial institution or person who may be in possession of targeted funds to comply with the guidance notes within a specific time;

(c) suspend or revoke the licence of the financial institution.

18. The Act is amended by inserting the following new section 48 –

Amendment of the Schedule.

“Regulations 48. (1) The Minister may make Regulations generally for giving effect to the provisions of this Act and, without prejudice to the generality of the foregoing, and make Regulations –

- (a) requiring financial institutions to establish and maintain procedures relating to—
 - (i) the identification of clients;
 - (ii) record keeping;
 - (iii) reporting;
 - (iv) training;
 - (b) prescribing sanctions which may be imposed by the Financial Services Unit on its discovery of a contravention of a regulation including—
 - (i) the issue of written warnings;
 - (ii) order compliance with specific instructions;
 - (iii) order the financial institution to submit regular reports of the measures it is taking;
 - (iv) suspend or revoke the licence of the financial institution;
 - (v) recommend the suspension or revocation of the licence of the financial institution;
 - (c) all matters for which Regulations are required for or authorised to be made by this Act.
- (2) The Minister may make Regulations prescribing penalties to be imposed on summary conviction for contravention of a regulation, but the penalty so prescribed shall not exceed a fine of fifty thousand dollars or a term of imprisonment of three years or both.

(3) Regulations made under this section are subject to negative resolution of the House within six months.

(4) The Minister may by Order subject to affirmative resolution of the House amend the Schedules.”

19. The Schedule to the Act is amended by inserting the figure “1” after the heading “Schedule”.

Amendment of the Schedule.

20. The Act is amended by inserting the following as Schedule 2—

Insertion of new Schedule 2.

“SCHEDULE 2

ACTIVITIES OF FINANCIAL INSTITUTIONS

- 1.** “Banking business” and “financial business” as defined in the Banking Act 2005;
- 2.** “Banking business” as defined in the Offshore Banking Act 1996;
- 3.** Venture risk capital;
- 4.** Money transmission services;
- 5.** Issuing and administering means of payments (e.g. credit cards, travellers’ cheques and bankers’ drafts);
- 6.** Guarantees and commitments;
- 7.** Trading for own account of customers in –
 - (a) money market instruments (e.g. cheques, bills, certificates of deposits, commercial paper, etc.);
 - (b) foreign exchange;

No. 16 of 2005.

No. 8 of 1996.

2011 SUPPRESSION OF THE FINANCING OF TERRORISM (AMENDMENT) ACT 9

(c) financial and commodity-based derivative instruments (e.g. options, interests rate and foreign exchange instruments etc);

(d) transferable or negotiable instruments;

8. Money Brokering;
9. Money Lending and Pawning;
10. Money Exchange (e.g. casa de cambio);
11. Mutual Funds;
12. Credit Unions;
13. Building Societies;
14. Trust Business;
15. Insurance Business;
16. Securities Exchange.”

Passed in the House of Assembly this 26th day of October, 2011.

VERNANDA RAYMOND (MRS.)
Clerk of the House of Assembly (Ag.)

DOMINICA