

A BILL
entitled
Draft

**ANTI-TERRORISM (FINANCIAL AND OTHER MEASURES)
AMENDMENT ACT 2008**

ARRANGEMENT OF SECTIONS

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|---|---------------------------------|---|----------------------------------|
| 1 | Short title | 6 | Inserts new section 10A |
| 2 | Amends section 2 | 7 | Inserts new sections 12A and 12B |
| 3 | Amends section 3 | | |
| 4 | Inserts new sections 5A and 5B | 8 | Inserts new section 15A |
| 5 | Amends sections 10(1) and 10(2) | | |

WHEREAS it is desirable to amend the Anti-Terrorism (Financial and Other Measures) Act 2004 for the purposes of further prohibiting the financing of terrorism:

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:

Short title

1 This Act, which amends the Anti-Terrorism (Financial and Other Measures) Act 2004 (the "principal Act"), may be cited as the Anti-Terrorism (Financial and Other Measures) Amendment Act 2008.

Amends section 2

2 Section 2 of the principal Act is amended by inserting in their appropriate alphabetical order the following—

“FIA” means the Financial Intelligence Agency established under section 3 of the Financial Intelligence Agency Act 2008”;

“international organisation” means an intergovernmental organisation, whose scope and aims are in the public interest”;

“National Anti-Money Laundering Committee” means National Anti-Money Laundering Committee established under section 49 of the Proceeds of Crime Act 1997”;

“professional accountant” means an accountant who is a member of the Institute of Chartered Accountants of Bermuda”; and

“professional legal adviser” means a barrister and attorney who is a member of the Bermuda Bar Association.”

Amends section 3

3 Section 3 of the principal Act is amended—

(a) in subsection (1) (b) by inserting next after the word “government” the words “or an international organisation”;

(b) in subsection (2) (a) by inserting next after the word “persons” the words “, including internationally protected persons (including diplomats)”;

(c) in subsection (2) (d) by deleting the word “or”; and

(d) in subsection (2) by inserting next after paragraph (c) the following—

“(f) involves unlawful violence against civil aviation;

(g) involves serious violence against internationally protected persons (including diplomats);

(h) involves serious violence against nuclear material;

(i) involves the unlawful seizure of aircraft in flight;

(j) involves unlawful violence against the safety of maritime navigation;

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- (k) involves serious damage to fixed platforms on the continental shelf;
 - (l) involves terrorist bombing;
 - (m) involves unlawful violence against airports serving civil aviation; or
 - (n) involves the taking of hostages. ”

Inserts new sections 5A and 5B

4 The principal Act is amended by inserting next after section 5 the following—

“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

Offences by body corporate

5B Where a body corporate is guilty of an offence under this Act and that offence is proved to have been committed with the consent or connivance of any director, manager, or secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly. ”

Amends sections 10(1) and 10(2)

5 Sections 10(1) and 10(2) of the principal Act are amended by adding next after the words “disclose to” the words “the FIA or to”.

Inserts new section 10A

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

“Tipping-off

10A (1) A person is guilty of an offence if—

- (a) he knows or suspects that a police officer is acting, or are proposing to act, in connection with an investigation which is being, or is proposed to be, conducted into offences under sections 5, 6, 7 and 8; 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 police or to the FIA under sections 9 or paragraph 1 of Part 1 of Schedule 1; and

(b) he discloses to any other person 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 advisor 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

(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), 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.”

Inserts new sections 12A and 12B

⁷ The principal Act is amended by inserting next after section 12 the following—

“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 detecting and preventing the financing of terrorism.

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

(a) require—

(i) persons in the regulated sector;

(ii) professional legal advisers and accountants in independent practice, who by way of business provide legal, accountancy or notarial 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) such other persons as the Minister may prescribe,

to establish and maintain procedures relating to the identification of clients; the keeping of records, the making of reports, the vetting of employees, the verification of the effective design and operation of terrorist financing detection systems and the training of employees; and

(b) create criminal offences for failing to comply with the regulations.

(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.

Use of guidance

12B In determining whether a person has committed an offence under sections 5 to 8, 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 the Gazette.”

Inserts new section 15A

8 The principal Act is amended by inserting next after section 15 the following—

“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 Terrorism (United Nations Measures) (Overseas Territories) Order 2001.”

CONSULTATION DRAFT

**ANTI-TERRORISM (FINANCIAL AND OTHER MEASURES)
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EXPLANATORY MEMORANDUM

The Bill for consideration is Anti-Terrorism (Financial and Other Measures) Amendment Act 2008.

Consultation Draft