



*EXTRAORDINARY*

**OFFICIAL GAZETTE**

**THE BAHAMAS**

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10<sup>th</sup> August, 2018

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# ANTI-TERRORISM ACT, 2018

## Arrangement of Sections

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No. 27 of 2018

## ANTI-TERRORISM ACT, 2018

AN ACT TO CRIMINALISE TERRORISM, PROLIFERATION OF WEAPONS OF MASS DESTRUCTION, THE FINANCING OF TERRORISM AND THE PROLIFERATION OF WEAPONS OF MASS DESTRUCTION, TO PROVIDE FOR THE DETECTION, PREVENTION, PROSECUTION, CONVICTION AND PUNISHMENT OF SUCH ACTIVITIES AND THE CONFISCATION, FORFEITURE AND SEIZURE OF ASSETS OF THOSE INVOLVED IN SUCH ACTIVITIES AND FOR RELATED MATTERS

[Date of Assent - 10<sup>th</sup> August, 2018]

Enacted by the Parliament of The Bahamas

### PART I - PRELIMINARY

**1. Short title.**

This Act may be cited as the Anti-Terrorism Act, 2018.

**2. Interpretation.**

(1) In this Act, unless the context otherwise requires —

“**biological weapon**” means any weapon, equipment or means of delivery designed to use biological agents or toxins for hostile purposes or in armed conflict;

“**bearer negotiable instrument**” includes—

- (a) a monetary instrument such as travellers’ cheque, negotiable instrument including cheque, promissory note and money order that is either in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in

such form that title thereto passes or payment is made upon delivery;

- (b) an incomplete instrument including a cheque, promissory note or money order signed, but with the payee's name omitted;

**“Charter”** means the Charter of The United Nations agreed at San Francisco on the 26<sup>th</sup> day of June, 1945, which established the international organisation to be known as the United Nations, as amended from time to time in conformity with Article 108 of the Charter;

**“chemical weapon”** means –

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

**“Competent Authority”** means the Attorney-General;

**“computer”** means a device or group of interconnected or related devices which follows a program or external instruction to perform automatic processing of information or electronic data;

**“Convention”** means any of the Conventions listed in the *Schedule*;

**“Confiscated Assets Fund”** means the Confiscated Assets Fund established under section 90 of the Proceeds of Crime Act, 2018;

**“designation”** means the identification of a person or entity that is subject to targeted financial sanctions pursuant to —

- (a) United Nations Security Council resolution 1267 (1999) and its successor resolutions;
- (b) Security Council Resolution 1373 (2001), and its successor resolutions, including the determination that the relevant sanctions will be applied to the person or entity and the public communication of that determination;
- (c) Security Council resolution 1718 (2006) and its successor resolutions;
- (d) Security Council resolution 1737 (2006) and its successor resolutions; and
- (e) any future Security Council resolutions which impose targeted financial sanctions in the context of the financing of proliferation of weapons of mass destruction;

**“enforcement authority”** means in relation to —

- (a) domestic proceedings, the Director of Public Prosecutions, and any person authorised by the Director of Public Prosecutions;
- (b) proceedings undertaken in response to any international request to the Competent Authority, the Attorney-General or any person designated by him to act in those proceedings under this Act;

“**entity**” means two or more persons howsoever styled, group, cell, unincorporated association or organization or similar body acting together;

“**Financial Action Task Force**” means the task force established by Finance Ministers of France, Italy, Germany, Japan, United Kingdom, United States and Canada formed in 1989 to develop and provide national and international policies to combat money laundering and terrorist financing;

“**FIU**” means the Financial Intelligence Unit established under section 3 of the Financial Intelligence Unit Act (*Ch. 367*);

“**financial institution**” has the meaning assigned to it in section 3 of the Financial Transactions Reporting Act (*Ch. 368*);

“**foreign terrorist fighter**” means an individual who commits an offence under section 24(2);

“**funds**” means any assets, economic resources, property of every kind, whether corporeal or incorporeal, tangible or intangible, movable or immovable, however acquired, wherever located, legal documents or instruments in any form, electronic or digital, evidencing title to, or interest in, such assets, economic resources or property, including but not limited to currency, bank credits, deposits and other financial resources, travellers cheques, bank cheques, money orders, promissory notes, shares, non-shareholding interest, securities, bonds, drafts, letters of credit, and any interest in, dividends or others income on or value accruing from or generated by, in full or in part, any such assets, economic resources or property;

“**instrumentality**” and “**instrumentalities**” includes any property used or intended to be used, in any manner, wholly or in part in or in connection with the commission of a criminal offence or criminal offences and shall include property that is used in or intended or allocated for use in the commission of any of the identified risks;

“**international organisation**” means an organisation constituted by States to which its Member States have transferred competence over matters governed by a Convention of the United Nations;

“**items subject to legal privilege**” means —

- (a) communications between a counsel and attorney and his client made in connection with the giving of legal advice to the client; and
- (b) communications between a counsel and attorney and his client or between such counsel and attorney and any other person made in connection with or in contemplation of legal proceedings and for the purpose of such proceedings, when they are in the possession of a person who is entitled to possession of them; but items held resulting from criminal conduct or with the intention of furthering a criminal purpose are not items subject to legal privilege:

Provided that the legal privilege shall not extend to information regarding the identity and address of the client or principal;

“**judge**” means a judge of the Supreme Court of The Bahamas;

“**legal entity**” means a body corporate, foundation, trust, partnership, fund or any other entity;

“**listed entity**” means an entity in respect of which an Order under section 45 has been made;

“**master**” in relation to a vessel, means the owner or person (except a harbour master or pilot) having for the time being command or charge of the vessel;

“**Minister**” means the Minister responsible for national security;

“**National Identified Risk Framework Coordinator**” means the person nominated as the National Identified Risk Framework Coordinator in accordance with section 5 of the Proceeds of Crime Act, 2018;

“**nuclear weapon**” means a weapon which contains nuclear material within the meaning of Article 1 (a) and (b) of the Convention on the Physical Protection of Nuclear Material opened for signature at Vienna and New York on the 3<sup>rd</sup> March, 1980;

“**operator**” in relation to an aircraft, means the owner or person for the time being in charge or command or control of the aircraft;

“**precursor**” means a substance from which another is formed, especially by metabolic reaction;

“**Security Council**” means the Security Council constituted under Chapter V of the Charter;

“**state or government facility**” means any permanent or temporary facility or conveyance that is occupied or used by representatives of a State, members of government, the legislature or the judiciary or by officials or employees of a State or any other public authority or



entity or by employees or officials of an intergovernmental organization in connection with their official duties;

**“terrorist”** includes a person who—

- (a) commits a terrorist act by any means directly or indirectly, unlawfully and willfully;
- (b) participates as an accomplice in terrorist acts or the financing of terrorism;
- (c) organises or directs others to commit terrorist acts or the financing of terrorism; or
- (d) contributes to the commission of terrorist acts or the financing of terrorism by an individual or a group of persons acting with a common purpose where the contribution is made intentionally—
  - (i) with the aim of furthering the terrorist act or the financing of terrorism; or
  - (ii) with the knowledge of the intention of the individual or group of persons to commit the terrorist act or the financing of terrorism;

**“terrorist act”** means an act which constitutes an offence under this Part, Part III or Part IV;

**“terrorist organisation, group or entity”** means a legal entity or group of terrorists that—

- (a) commits a terrorist act by any means, directly or indirectly, unlawfully and wilfully;
- (b) participates as an accomplice in terrorist acts or the financing of terrorism;
- (c) organises or directs others to commit terrorist acts or the financing of terrorism; or
- (d) contributes to the commission of terrorists acts or the financing of terrorism by an individual or 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 the financing of terrorism with the knowledge of the intention of the group to commit the terrorist act or the financing of terrorism;

**“terrorist property”** means —

- (a) proceeds from the commission of a terrorist act;
- (b) property which has been, is being, or is intended to be used to commit a terrorist act;

- (c) property which has been, is being, or is intended to be used by a terrorist organisation;
- (d) property owned or controlled by, or on behalf of, a terrorist organisation; or
- (e) property which has been collected for the purpose of providing support to a terrorist organisation or funding a terrorist act;

**“United Nations Convention Against Transnational Organized Crime”** means the United Nations Convention Against Transnational Organized Crime adopted by the United Nations General Assembly on the 15<sup>th</sup> November 2000; signed in December, 2000 at Palermo, Italy, entered into force on the 29<sup>th</sup> September, 2003 and deposited with the Secretary General of the United Nations and signed by The Bahamas on the 9<sup>th</sup> April, 2001.

**“vessel”** means anything made or adapted for the conveyance by water, of people or property;

**“weapon”** includes a firearm, explosive, chemical, biological or nuclear weapon.

- (2) Parts II and III apply whether or not an offence is committed inside or outside of The Bahamas.

### **3. Objectives of Act.**

The objectives of this Act are to—

- (a) strengthen The Bahamas' capacity to suppress and detect terrorist acts or acts designed to facilitate a terrorist act or actions and to bring to trial or extradite, persons committing those acts;
- (b) take comprehensive measures to prevent the national territory, resources and financial services of The Bahamas from being used to commit or finance terrorist acts;
- (c) cooperate with other states in suppressing terrorism by implementing the United Nations and other international instruments relating to the combating of terrorism; and
- (d) ensure that goods are not supplied or exported and services are not provided, in circumstances where the goods will or may be used in, or the services will or may assist in the development, production, acquisition or stockpiling of weapons that are capable of causing mass destruction or missiles of any kind that are capable of delivering such weapons.

## PART II – WEAPONS OF MASS DESTRUCTION

### 4. Interpretation of Part.

For the purposes of this Part —

“**device**” means a weapon of mass destruction.

“**transfer**” means buying or otherwise acquiring or agreeing to do so, seeking, selling or otherwise disposing or agreeing with another to do so or making such arrangements;

“**weapons of mass destruction**” means a nuclear, biological, or chemical weapon able to cause widespread devastation and loss of life;

“**to acquire an object**” means to buy it, hire it, borrow it or accept it as a gift or obtain possession of it by any other means; and

“**to dispose of an object**” means to sell it, let it on hire, lend it, abandon it or give it.

### 5. Weapons training.

- (1) Subject to sections 10 and 11, a person commits an offence if he —
  - (a) provides instruction or training;
  - (b) wilfully receives instruction or training; or
  - (c) invites another to receive or provide instruction or training, in the making or use of —
    - (i) firearms;
    - (ii) explosives;
    - (iii) chemical, biological or nuclear weapons; or
    - (iv) any other weapon or means of mass destruction.
- (2) A person commits an offence under subsection (1) whether or not the instruction, training or invitation takes place inside or outside of The Bahamas or by electronic means.
- (3) For the purpose of subsections (1) and (2) —
  - (a) a reference to the provision of instruction includes a reference to making it available either generally or to one or more specific persons; and
  - (b) an invitation to receive instruction or training may be either general or addressed to one or more specific persons.
- (4) Subsection (1) does not apply to The Royal Bahamas Police Force, The Royal Bahamas Defence Force or to any person permitted by law or licence to carry out any of those actions specified in that subsection.
- (5) A person who commits an offence under this section is liable –

- (a) on summary conviction, to a fine of four hundred thousand dollars, or imprisonment for ten years, or both; or
  - (b) on conviction on indictment, to a fine of one million dollars, or imprisonment for thirty years, or both.
- (6) A court by or before which a person is convicted of an offence under this section may order the forfeiture of anything which the court considers to have been in the person's possession for use or for any purposes connected with the offence.
- (7) Prior to making an order under subsection (6) a court shall give an opportunity to be heard to any person, other than the convicted person, who claims to be the owner of or otherwise interested in anything which can be forfeited under that subsection.
- (8) An order under subsection (6) 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).

**6. Restriction on development of certain biological weapons and toxins.**

- (1) Subject to sections 10 and 11, any person who develops, produces, stockpiles, acquires or retains —
- (a) any biological agent or toxin of a type and in a quantity that has no justification for prophylactic, protective or 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, commits an offence.
- (2) A person who —
- (a) transfers any biological agent or toxin to another person or enters into an agreement to do so; or
  - (b) makes arrangements under which another person transfers any biological agent or toxin or enters into an agreement with a third person to do so, if the biological agent or toxin is likely to be kept or used (whether by the transferee or any other person) otherwise than for prophylactic, protective or other peaceful purposes and he knows or has reasons to suspect that that is the case, commits an offence.
- (3) This section applies to acts done inside or outside of The Bahamas.
- (4) A person who commits an offence under this section is liable on conviction on indictment to imprisonment for their natural life.
- (5) For the purposes of this section —

**“biological agent”** means any microbe including bacterium, virus, fungus or other micro-organism whether arising naturally or as a result of human manipulation;

**“toxin”** means a poison of plant or animal origin, especially one produced by or derived from micro organisms and acting as an antigen in the body.

## **7. Use of chemical weapons.**

- (1) Subject to sections 10 and 11, a person commits an offence who —
  - (a) uses a chemical weapon or any chemical agent;
  - (b) develops or produces or participates in the development or production of a chemical weapon;
  - (c) has a chemical weapon in his possession;
  - (d) participates in the transfer of a chemical weapon; or
  - (e) engages in military preparations, or in preparations of a military nature, intending to use a chemical weapon.
- (2) For the purposes of subsection (1)(b), a person participates in the development or production of a chemical weapon if —
  - (a) he knowingly does any act which facilitates the development by another of the capability to produce or use a chemical weapon; or
  - (b) he facilitates the making by another of a chemical weapon knowing or having reason to believe that his act has or will have that effect.
- (3) For the purposes of this section, **“chemical agent”** means solid, liquid, or gaseous substance that produces an effect on a living organism by acting on the body tissue, or in an environment by interacting with air, water, or soil.
- (4) This section applies to acts done inside or outside of The Bahamas.
- (5) A person who commits an offence under this section is liable on conviction on indictment to imprisonment for life.

## **8. Use of nuclear weapons.**

- (1) Subject to sections 10 and 11, a person commits an offence who —
  - (a) knowingly causes or attempts to cause a nuclear weapons explosion;
  - (b) develops or produces or participates in the development or production of a nuclear weapon;
  - (c) has a nuclear weapon in his possession;
  - (d) participates in the transfer of a nuclear weapon; or

- (e) engages in military preparations or in preparation of a military nature intending to use or threaten to use a nuclear weapon.
- (2) A person who unlawfully and intentionally uses in any way nuclear material or a device, or uses or damages a nuclear facility in a manner which releases or risks the release of nuclear material with the intent —
  - (a) to cause death or serious bodily injury;
  - (b) to cause damage to property or the environment; or
  - (c) to compel a natural or legal person, an inter-governmental organisation or a State to do or refrain from doing an act,commits an offence.
- (3) A person who —
  - (a) threatens to commit an offence referred to in subsection (1)(b); or
  - (b) unlawfully and intentionally demands radioactive material, a device or control of a nuclear facility which indicates the credibility of the threat or by use of force,commits an offence.
- (4) For the purposes of subsection (1)(b) a person participates in the development or production of a nuclear weapon if he does any act which —
  - (a) knowingly facilitates the development by another of the capability to produce or use a nuclear weapon; or
  - (b) facilitates the making by another of a nuclear weapon knowing or having reason to believe that his act has or will have that effect.
- (5) This section applies to acts done inside or outside of The Bahamas.
- (6) Proceedings for an offence committed under this section outside The Bahamas may be taken and the offence may for incidental purposes be treated as having been committed in The Bahamas.
- (7) A person who commits an offence under this section is liable on conviction on indictment to imprisonment for life.

**9. Financing of proliferation of weapons of mass destruction.**

- (1) Any person who by any means, directly or indirectly, willfully provides or collects funds, provides financial services or makes such services available to persons, or attempts to do so, with the intention or in the knowledge that such funds are to be used in whole or in part —
  - (a) to manufacture, develops or produces or participates in the development or production of a nuclear, biological, or chemical weapon for use in terrorists acts;

- (b) to distribute, or supply a nuclear, biological or chemical weapon to carry out a terrorist act;
- (c) to train persons or groups of persons to develop or produce or participate in the development or production of a nuclear, biological or chemical weapon for use, by a terrorist or by a terrorist organisation for any purpose;
- (d) conducts and the constitutes an offence under or defined in any of the Treaties listed in the *Schedule*; or
- (e) to carry out any other act —
  - (i) that has the purpose by its nature or context, to intimidate the public or to compel a government or an international organization to do or to refrain from doing any act; and
  - (ii) that is intended to cause —
    - (aa) death or serious bodily harm to a civilian or in a situation of armed conflict, to any person not taking an active part in the hostilities;
    - (bb) the risk, damage, interference or disruption of the kind mentioned in subparagraph (bb), (cc) or (dd) of section 13 (1) as the case may be,

commits the offence of financing of proliferation of weapons of mass destruction.

- (2) An offence under subsection (1) is committed irrespective of whether —
  - (a) the funds are actually used to manufacture, develop or produce nuclear, biological or chemical weapons to commit or attempt to commit a terrorist act;
  - (b) the funds are actually used to distribute or supply a nuclear, biological or chemical weapon to carry out a terrorist act; or
  - (c) the person alleged to have committed the offence is in the same country or a different country from the one in which the nuclear, biological or chemical terrorist act occurred or will occur.
- (3) A person who contravenes this section commits an offence and is liable on conviction on indictment to a fine of twenty-five million dollars and to imprisonment for twenty-five years.
- (4) A director or person in charge of a legal entity who commits an offence under this section is liable on conviction on indictment to a fine of twenty-five million dollars and to imprisonment for twenty-five years.
- (5) Where a body corporate or its director, manager, secretary or other similar officer concerned with the management of a body corporate has been convicted of an offence under this section, the Court shall have the power to —

- (a) revoke business licences;
  - (b) order that the body corporate be wound up;
  - (c) forfeit the assets and properties of the body corporate to the Confiscated Assets Fund; and
  - (d) prohibit the body corporate from performing any further activities.
- (6) The taking of preparatory steps including but not limited to acquiring material or participating in the planning of an offence under this section shall be an offence and a person who commits such offence is liable to the same penalty as provided for the offence.

#### **10. Exceptions.**

- (1) Nothing in section 5, 7, 8 or 9 applies —
- (a) to an act which is authorised under subsection (2); or
  - (b) to an act done in the course of an armed conflict in the defence of The Bahamas or for the purpose of preserving law and order in The Bahamas.
- (2) The National Security Council may —
- (a) authorise any act which would otherwise contravene sections 5, 7, 8 or 9; or
  - (b) withdraw or vary any authorisation given under this subsection.
- (3) Any question arising in proceedings for an offence under section 5, 7, 8 or 9 as to whether anything was done in the course of an armed conflict shall be determined by the Minister.
- (4) A certificate purporting to set out any such determination and to be signed by the Minister shall be received in evidence in any such proceedings and shall be presumed to be conclusive and so signed unless the contrary is shown.

#### **11. Defences.**

- (1) In proceedings for an offence under section 5, 7, 8 or 9 relating to an object it is a defence for the accused to show that he did not know and had no reasonable cause to believe that the object was a weapon for the purposes of those sections.
- (2) Notwithstanding subsection (1), an accused person shall be taken to have shown that fact where provided that —
- (a) sufficient evidence is adduced to raise an issue with respect to it; and
  - (b) the contrary is not proved by the prosecution beyond reasonable doubt.



- (3) In proceedings for an offence under this Act it is also a defence for the accused to show that he knew or believed that the object was a weapon but, as soon as reasonably practicable after he first knew or believed that fact, he took all reasonable steps to inform the police of his knowledge or belief.

## **12. Extra-territorial application.**

Proceedings for an offence committed under section 5, 6, 7, 8 or 9 outside The Bahamas may be taken, and the offence may for incidental purposes be treated as having been committed, in any part of The Bahamas.

## **13. Powers of entry.**

- (1) Where a peace officer reasonably suspects that a person is in possession of a biological, chemical or nuclear weapon, he may enter any building or premises without warrant and seize and take possession by whatever means to secure lawful custody of the same.
- (2) Subsections (4) to (7) shall apply *mutatis mutandis* to an entry without warrant pursuant to subsection (1).
- (3) If a Magistrate is satisfied on information on oath that there are reasonable grounds for suspecting that evidence of the commission of an offence under section 5, 6, 7, 8 or 9 is to be found on any premises he may issue a warrant authorising a police officer to enter the premises, if necessary by force, at any time within one month from the time of the issue of the warrant and to search the premises.
- (4) The powers of a police officer who enters the premises under the authority of the warrant include power —
  - (a) to take with him such other persons and such equipment as appear to him to be necessary;
  - (b) to inspect, seize and retain any substance, equipment or document found on the premises;
  - (c) to require any document or other information which is held in electronic form and is accessible from the premises to be produced in a form—
    - (i) in which he can read and copy it; or
    - (ii) from which it can readily be produced in a form in which he can read and copy it;
  - (d) to copy any document which he has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of an offence under section 5, 6, 7, 8 or 9; and
  - (e) to search or cause to be searched any person on the premises who the police officer has reasonable cause to believe may have in his

possession any document or other thing which may be required as evidence for the purposes of proceedings in respect of an offence under sections 5, 6, 7, 8 or 9.

- (5) The powers conferred by a warrant under this section shall only be exercisable, if the warrant so provides, in the presence of a police officer.
- (6) A person who —
  - (a) willfully obstructs a police officer in the exercise of a power conferred by a warrant under this section; or
  - (b) fails without reasonable excuse to comply with a reasonable request made by a police officer for the purpose of facilitating the exercise of such a power,commits an offence.
- (7) A person who commits an offence under subsection (6) is liable —
  - (a) on summary conviction, to a fine not exceeding ten thousand dollars, or imprisonment for two years, or both; and
  - (b) on conviction on indictment to a fine not exceeding twenty thousand dollars, or to imprisonment for three years, or to both.

### PART III – TERRORIST OFFENCES

#### 14. Offence of terrorism.

- (1) A person or terrorist entity who in or outside The Bahamas carries out —
  - (a) an act that constitutes an offence under or defined in any of the treaties listed in the *Schedule*; or
  - (b) any other act —
    - (i) that has the purpose by its nature or context, to intimidate the public or to compel a government or an international organisation to do or to refrain from doing any act; and
    - (ii) that is intended to cause —
      - (aa) death or serious bodily harm to a civilian or in a situation of armed conflict, to any other person not taking an active part in the hostilities;
      - (bb) serious risk to health or safety of the public or any segment of the public;
      - (cc) substantial property damage; whether to public or private property, where the damage involves a risk of the kind mentioned in sub-paragraph (bb) or an

interference or disruption of the kind mentioned in sub-paragraph (dd); or

- (dd) serious interference with or serious disruption of an essential service, facility or system, whether public or private; not being an interference or disruption resulting from lawful advocacy or from protest, dissent or stoppage of work,
- (ee) prejudice to national security or disruption of public safety including disruption —
  - (A) in the provision of emergency services;
  - (B) to any computer or electronic system; or
  - (C) to the provision of services directly related to banking, communications, infrastructure, financial services, public utilities, transportation or other essential infrastructure;
- (ff) cybercrime resulting in any offence under this Act,

commits an offence of terrorism and on conviction on information where death ensues and where that act would have constituted the offence of murder or treason, whether prior to or after the commencement of this Act, may be sentenced to death; or in any other case, is liable to imprisonment for life.

- (2) A person or terrorist entity acting with a common purpose who in or outside of The Bahamas —
  - (a) commits the offence of terrorism by any means, directly or indirectly, unlawfully and wilfully;
  - (b) participates as an accomplice in the offence of terrorism or the financing of terrorism as set forth in subsection (1) and (2) above;
  - (c) organises or directs others to commit the offence of terrorism or the financing of terrorism; or
  - (d) contributes to the commission of the offence of terrorism or the financing of terrorism by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist acts or the financing of terrorism with the knowledge of the intention of the group to commit the terrorist acts or the financing of terrorism,

commits the offence of terrorism and on conviction on information where death ensues and where that act would have constituted the offence of murder or treason, whether prior to or after the commencement of this Act, may be sentenced to death or in any other case, is liable to imprisonment for life.

## 15. Offence of financing of terrorism.

- (1) Any person who by any means, directly or indirectly, willfully provides or collects funds, provides financial services or makes such services available to persons, or attempts to do so, with the intention or in the knowledge that such funds are to be used in whole or in part —
- (a) in order to carry out a terrorist act;
  - (b) by a terrorist or by a terrorist organisation for any purpose;
  - (c) conducts an act that constitutes an offence under or defined in any of the Treaties listed in the *Schedule*;
  - (d) in order to facilitate travel by an individual to a foreign State for the purpose of —
    - (i) carrying out a terrorist act; or
    - (ii) participating in, or provide instruction or training to carry out a terrorist act;
  - (e) by a listed entity;
  - (f) by an entity owned or controlled, directly or indirectly by a listed entity;
  - (g) by a person or entity acting on behalf of, or at the direction of, a designated person or listed entity;
  - (h) to facilitate the travel or activities of a foreign terrorist fighter; or
  - (i) to carry out any other act —
    - (i) that has the purpose by its nature or context, to intimidate the public or to compel a government or an international organization to do or to refrain from doing any act; and
    - (ii) that is intended to cause —
      - (aa) death or serious bodily harm to a civilian or in a situation of armed conflict, to any person not taking an active part in the hostilities;
      - (bb) the risk, damage, interference or disruption of the kind mentioned in subparagraph (bb). (cc) or (dd) of section 14(1) as the case may be,
- commits the offence of financing of terrorism.
- (2) An offence under subsection (1) is committed irrespective of whether —
- (a) the funds are actually used to commit or attempt to commit a terrorist act;
  - (b) the funds are linked to a terrorist act; or
  - (c) the person alleged to have committed the offence is in the same country or a different country from the one in which the terrorist or

terrorist organisation is located or the terrorist act occurred or will occur.

- (3) A person who contravenes this section commits an offence and is liable on conviction on indictment to a fine of up to twenty-five million dollars and to imprisonment for twenty-five years.
- (4) A director or person in charge of a legal entity who commits an offence under this section is liable on conviction on indictment to a fine of up to twenty-five million dollars and to imprisonment for twenty-five years.
- (5) Where a body corporate or its director, manager, or other similar officer concerned with the management of a body corporate has been convicted of an offence under this section, the Court shall have the power to —
  - (a) revoke business licences;
  - (b) order that the body corporate be wound up;
  - (c) forfeit the assets and properties of the body corporate to the Confiscated Assets Fund; and
  - (d) prohibit the body corporate from performing any further activities.
- (6) The taking of preparatory steps including but not limited to acquiring material or participating in the planning of an offence under this section shall be an offence and a person who commits such offence is liable to the same penalty as provided for the offence.

#### **16. Use of property for commission of terrorist acts.**

Every person who –

- (a) uses property, directly or indirectly, in whole or in part, for the purpose of committing or facilitating the commission of a terrorist act; or
- (b) possesses property intending that it be used or knowing that it will be used, directly or indirectly, in whole or in part, for the purpose of committing or facilitating the commission of a terrorist act,

commits an offence and is liable on conviction on information to imprisonment for a term not exceeding twenty years.

#### **17. Arrangements for retention of control of terrorist property.**

Every person who knowingly enters into, or becomes concerned in, an arrangement which facilitates the acquisition, retention or control by or on behalf of another person of terrorist property —

- (a) by concealment,
- (b) by a removal out of jurisdiction,
- (c) by transfer to a nominee, or

(d) in any other way,  
commits an offence and is liable on conviction on information to imprisonment for a term not exceeding twenty years.

**18. Dealing with terrorist property.**

Every person who knowingly –

- (a) deals, directly or indirectly, in any terrorist property;
- (b) acquires or possesses terrorist property;
- (c) enters into, or facilitates, directly or indirectly, any transaction in respect of terrorist property;
- (d) converts, conceals or disguises terrorist property; or
- (e) provides financial or other services in respect of terrorist property at the direction of a terrorist group,

commits an offence and is liable on conviction on information to imprisonment for a term not exceeding twenty years.

**19. Soliciting and giving of support to terrorist groups or for the commission of terrorist acts.**

(1) Every person who knowingly, and in any manner —

- (a) solicits support for, or gives support to, any terrorist group, or
- (b) solicits support for, or gives support to, the commission of a terrorist act,

commits an offence and is liable on conviction on information to imprisonment for a term not exceeding twenty years.

(2) Support under subsection (1) includes but is not limited to—

- (a) an offer to provide, or the provision of, forged or falsified travel documents to a member of a terrorist group;
- (b) an offer to provide, or the provision of a skill or an expertise for the benefit of, at the direction of or in association with a terrorist group; or
- (c) entering or remaining in any country for the benefit of, or at the direction of or in association with a terrorist group.

**20. Provision of training and instruction to terrorist groups and persons committing terrorist acts.**

Every person who agrees knowingly to provide training to persons or instructions, or reasonably suspected of being a member of a terrorist group or preparing to engage in a terrorist group or provides training or instruction —

- (a) in the making or use of any explosive or other lethal device;

- (b) in carrying out a terrorist act;
- (c) in the practice of military exercises or movements;

to a member of a terrorist group or a person engaging in, or preparing to engage in, the commission of a terrorist act commits an offence and is liable on conviction on information to imprisonment for twenty-five years.

**21. Attending or receiving training to commit a terrorist act.**

- (1) Any person who knowingly attends or receives any instruction or training in—
  - (a) the making or use of any explosive or other lethal device; or
  - (b) the practice of military exercises or movements,whether in person or through electronic or other means, for the purposes of carrying out a terrorist act, commits an offence and shall, on conviction, on indictment, be liable to imprisonment for twenty years.
- (2) A person who knowingly attends or receives any instruction or training from a terrorist or a terrorist organization, whether in person or through electronic or other means, commits an offence and shall, on conviction on indictment, be liable to imprisonment for twenty years.

**22. Incitement, promotion or solicitation of property for the commission of terrorist acts.**

Every person who, knowingly—

- (a) incites or promotes the commission of a terrorist act;
- (b) incites or promotes membership in a terrorist group; or
- (c) solicits property for the benefit of a terrorist group or for the commission of a terrorist act,

commits an offence and is liable on conviction on information to imprisonment for a period of term not exceeding twenty-five years.

**23. Providing facilities in support of terrorist acts.**

Every person who being —

- (a) the owner, occupier, lessee or person in charge of any building, premises, room, or place knowingly permits a meeting of persons to be held in that building, premises, room or place;
- (b) the owner, charterer, lessee, operator of a motor vehicle who knowingly permits the motor vehicle to be used;
- (c) the owner, charterer, lessee, operator, agent, or pilot in charge of an air craft knowingly permits that vessel or aircraft to be used;

- (d) the owner, lessee or person in charge of any equipment or facility that allows for recording or conferencing or meetings via technology knowingly permits that equipment or facility to be used;

for the purposes of committing an offence under section 22, or planning, promoting or supporting the commission of a terrorist act, commits an offence and is liable on conviction on information to imprisonment for a term not exceeding twenty years.

**24. Travelling for the purpose of committing a terrorist act.**

- (1) A person who knowingly travels into or outside of The Bahamas for the purpose of —
  - (a) planning a terrorist act;
  - (b) committing a terrorist act;
  - (c) supporting a terrorist act;
  - (d) facilitating the commission of a terrorist act;
  - (e) attending or receiving any instruction or training in —
    - (i) the making or use of any explosive or other lethal device; or
    - (ii) the practice of military exercises or movements, for the purpose of carrying out a terrorist act; or
  - (f) attending or receiving any instruction or training from a terrorist or a terrorist organization; or
  - (g) joining a terrorist organization,commits an offence and shall be liable on conviction on indictment to imprisonment for twenty years.
- (2) A person who commits an offence under subsection (1) shall be deemed to be a foreign terrorist fighter.

**CONVENTION OFFENCES**

**25. Threats to commit offences under this Part.**

A threat to commit any offence under this Part shall be an offence and a person who commits such offence is liable to the same penalty as provided for the offence.

**26. Taking of preparatory steps to commit an offence.**

The taking of preparatory steps including but not limited to acquiring material or participating in the planning of an offence under this Part shall be an offence and a person who commits such offence is liable to the same penalty as provided for the offence.



## **27. Endangering the safety of maritime navigation.**

A person who, in respect of a ship registered in The Bahamas or within the archipelagic or territorial waters of The Bahamas unlawfully and intentionally—

- (a) seizes or exercises control over the ship by force or threat thereof or any other form of intimidation;
- (b) performs an act of violence against a person on board the ship if that act is likely to endanger the safe navigation of the ship;
- (c) destroys the ship or causes damage to such ship or to its cargo;
- (d) places or causes to be placed on the ship, by any means whatsoever, a device or substance which is likely to destroy the ship, or cause damage to the ship or its cargo;
- (e) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation; or
- (f) communicates information, knowing the information to be false and under circumstances in which the information may reasonably be believed,

commits an offence and is liable, on conviction on indictment —

- (i) to imprisonment for twenty years;
- (ii) if the death of any person results from any act prohibited by this section to a sentence of life imprisonment.

## **28. Bombing offences.**

- (1) A person who unlawfully and intentionally delivers, places, discharges, or detonates an explosive or other lethal device in, into or against a place of public use, a State facility, a Government means of public transport, facility, a public transportation system or an infrastructure facility —

- (a) with the intent to cause death or serious bodily injury; or
- (b) with the intent to cause extensive damage to, or destruction of the place, facility or system, where the destruction results in or is likely to result in major economic loss,

commits an offence and is liable, on conviction on indictment, to imprisonment for life.

- (2) This section does not apply to the military forces of The Bahamas —
  - (a) during an armed conflict; or
  - (b) in respect of activities undertaken in the exercise of their official duties.

**29. Protection of internationally protected persons.**

- (1) A person who kidnaps an internationally protected person commits an offence and shall, on conviction on indictment, be liable to imprisonment for life.
- (2) A person who commits any other attack upon the person or liberty of an internationally protected person commits an offence and shall, on conviction on indictment, be liable —
  - (a) where the attack causes death to a sentence of death;
  - (b) where the attack causes grievous bodily harm, to imprisonment for twenty years; or
  - (c) in any other case, to imprisonment for ten years.
- (3) A person who intentionally destroys or damages otherwise than by means of fire or explosive —
  - (a) official premises, private accommodation, means of transport, or accommodation of an internationally protected person; or
  - (b) other premises or property in or upon which an internationally protected person is present, or is likely to be present.commits an offence and shall, on conviction on indictment, be liable to imprisonment for twenty years.
- (4) A person who intentionally destroys or damages by means of fire or explosive—
  - (a) official premises, private accommodation or means of transport, of an internationally protected person; or
  - (b) other premises or property in or upon which an internationally protected person is present, or is likely to be present,with intent to endanger the life of that internationally protected person by that destruction or damage commits an offence and is liable on conviction on indictment to imprisonment for twenty-five years.
- (5) A person who threatens to do anything that would constitute an offence against subsections (1) to (4) commits an offence and shall, on conviction on indictment, be liable to imprisonment for ten years.
- (6) A person who—
  - (a) willfully and unlawfully, with intent to intimidate, coerce, threaten or harass, enters or attempts to enter any building or premises which is used or occupied for official business or for diplomatic, consular, or residential purposes by an internationally protected person within The Bahamas; or

- (b) refuses to depart from such building or premises after a request by an employee of a foreign government or an international organisation, if such employee is authorised to make such request, commits an offence, and is liable on conviction on indictment to a fine of one hundred thousand dollars and to imprisonment for five years.
- (7) For the purposes of this section “internationally protected person” has the meaning assigned to it in the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.

### **30. Offences relating to fixed platforms.**

- (1) A person who unlawfully and intentionally—
  - (a) seizes or exercises control over a fixed platform on the continental shelf, or in the exclusive economic zone or any fixed platform on the high seas while it is located on the continental shelf of The Bahamas, by force or threat thereof or by any other form of intimidation;
  - (b) performs an act of violence against a person on board such a fixed platform if that act is likely to endanger the platform’s safety;
  - (c) destroys such a fixed platform or causes damage to it which is likely to endanger its safety;
  - (d) places or causes to be placed on such a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or likely to endanger its safety;
  - (e) injures or kills any person in connection with the commission or the attempted commission of any of the offences referred to in paragraphs (a) to (d); or
  - (f) damages or destroys any off-shore installation, commits an offence.
- (2) A person convicted of an offence referred to in subsection (1) is —
  - (a) liable, on conviction on indictment, to imprisonment for twenty years; and
  - (b) in the case where death results from the commission of the offence, liable on conviction on indictment to be sentenced to death.
- (3) In this section “fixed platform” means an artificial island, installation or structure attached to the seabed for the purpose of exploration or exploitation of resources or for other economic purposes.

**31. Offences with regard to nuclear matter or facilities.**

- (1) A person who unlawfully and intentionally attempts to acquire or possesses nuclear material or designs or manufactures or possesses a device, or attempts to manufacture or acquire a device, with the intent —
  - (a) to cause death or serious bodily injury; or
  - (b) to cause damage to property or the environment,commits an offence.
- (2) A person convicted of an offence under this section is liable on conviction on indictment to imprisonment for life.
- (3) In this section “device” means a weapon of mass destruction.

**32. Hoaxes involving noxious substances, things, explosives or other lethal material.**

- (1) A person commits an offence if he—
  - (a) places any substance or other thing in any place; or
  - (b) sends any substance or other thing from one place to another by any means whatsoever,with the intention of inducing in a person anywhere in the world a belief that it is likely to be or contain a noxious substance or other noxious thing or a lethal device or chemical, biological or nuclear weapon.
- (2) A person commits an offence if he communicates any information which he knows or believes to be false with the intention of inducing in a person anywhere in the world a belief that a noxious substance or other noxious thing or a lethal device or a weapon of mass destruction is likely to be present, whether at the time the information is communicated or later, in any place.
- (3) A person who commits an offence under this section is liable on conviction on indictment to imprisonment for fifteen years.
- (4) For a person to commit an offence under this section it is not necessary for him to have any particular person in mind as the person in whom he intends to induce the belief in question.
- (5) The Court, in imposing a sentence on a person who has been convicted of an offence under subsection (1), may order that person to reimburse any party incurring expenses incident to any emergency or investigating response to that conduct, for those expenses.
- (6) A person ordered to make reimbursement under subsection (5) shall be jointly and severally liable for such expenses with each other person, if any, who is ordered to make reimbursement under subsection (5) for the same expenses.

- (7) An order of reimbursement under subsection (5) shall, for the purposes of enforcement, be treated as a civil judgement.
- (8) For the purposes of this section “substance” includes any biological agent and any other natural or artificial substance, whatever its form, origin or method of production.

**33. Provision of devices to terrorist groups.**

Every person who knowingly offers to provide, or provides any explosive or other lethal device to –

- (a) a terrorist group;
- (b) a member of a terrorist group;
- (c) any other person for use by, or for the benefit of, a terrorist group or a member of a terrorist group,

commits an offence and is liable on conviction on information to imprisonment for twenty-five years.

**34. Harbours of persons committing terrorist acts.**

Every person who harbours or conceals, or prevents, hinders or interferes with the apprehension of, any other person knowing, or having reason to believe that such other person –

- (a) has committed or is planning or likely to commit a terrorist act; or
- (b) is a member of a terrorist group;

commits an offence and is liable on conviction on information to imprisonment for a term not exceeding twenty years.

**35. Membership of terrorist groups.**

(1) Every person who –

- (a) is a member of;
- (b) professes to be a member of,

a terrorist group commits an offence and is liable on conviction on information to imprisonment for term not exceeding twenty-five years.

(2) It shall be a defence for a person charged with an offence under this section to prove that the entity in respect of which the charge is brought was not a terrorist group at or on the date that he or she—

- (a) became a member of; or
- (b) professed to be a member of,

that entity, and that he was unaware of any change of that entity into a terrorist group or organization.

**36. Recruitment of persons to be members of terrorist groups or to participate in terrorist acts.**

Every 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 on information to imprisonment for a term not exceeding twenty years.

**37. Arrangements of meetings in support of terrorist groups.**

(1) Every person who arranges, manages or assists in arranging or managing a meeting which he or she knows is –

- (a) to support a terrorist group;
- (b) to further the activities of a terrorist group;
- (c) to be addressed by a person who belongs or professes to belong to a terrorist group,

commits an offence and is liable on conviction on information to imprisonment for a term not exceeding twenty years.

(2) In this section, “**meeting**” means a virtual, physical, congress or interaction between two or more persons, whether or not the public are admitted.

**38. Participation in the commission of offences under this Act.**

Every person who –

- (a) aids and abets the commission;
- (b) attempts to commit;
- (c) conspires to commit;
- (d) counsels or procures the commission of,

an offence under this Act, commits an offence and is liable on conviction on information to the same punishment as is prescribed for the first mentioned offence.

**39. Conspiracy to commit offences under this Act.**

(1) Every person who conspires with another person in The Bahamas to do any act in any place outside The Bahamas, being an act, which if done in The Bahamas would have constituted an offence under this Act shall be deemed to have conspired to do that act in The Bahamas.

(2) Every person who conspires with another person in a place outside The Bahamas to do any act in The Bahamas which constitutes an offence

under this Act shall be deemed to have conspired in The Bahamas to do that act.

**40. Penalties.**

A person who commits an offence under sections 14 to 39 is liable on conviction to imprisonment or to imprisonment and a fine not exceeding five million dollars where no penalty is otherwise presented.

**41. Liability of a legal entity.**

Where an offence referred to under sections 5, 6, 7, 8 and 9 and this Part is committed by a person responsible for the management or control of an entity located or registered in The Bahamas or in any other way organized under the laws of The Bahamas, that entity, in circumstances where the person committed the offence while acting in that capacity, commits an offence and is liable on conviction on information to a fine of twenty-five million dollars notwithstanding —

- (a) any criminal liability that may have been incurred by an individual that was directly involved in the commission of the offence; or
- (b) any civil or administrative sanction that may have been or may be capable of being imposed by law.

**42. Liability of director, manager, etc.**

- (1) Where an offence under section 5, 6, 7, 8 and 9 committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable —
  - (a) to a director, manager, secretary or other similar officer of the body corporate; or
  - (b) to any person who was purporting to act in any such capacity, such person as well as the body corporate, commits that offence and is liable on conviction to imprisonment for twenty-five years and a fine not exceeding five million dollars.
- (2) In subsection (1), “**director**”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

## PART IV – IMPLEMENTATION OF UNITED NATIONS SECURITY COUNCIL RESOLUTIONS

### 43. Special provisions for designated entities.

- (1) In this section, sections 44 and 49, the term “designated entities” means individuals or entities and their associates designated as terrorist entities by the Security Council of the United Nations.
- (2) The National Identified Risk Framework Coordinator shall be responsible for —
  - (a) maintaining a list of designated entities;
  - (b) maintaining contact with the Ministry of Foreign Affairs at frequent intervals to ensure that —
    - (i) the list of designated entities remain current;
    - (ii) United Nations Security Council Resolutions are received in a timely manner to be promulgated into law as necessary; and
  - (c) circulating the list referred to in paragraph (a) or (b) immediately, to financial institutions requesting information on whether the designated entities have funds in The Bahamas.
  - (d) maintaining a consolidated list of all orders issued by the court under section 45(3) and circulating the same to all financial institutions.
- (3) Notwithstanding the obligations to circulate the list under subsection (2) (c), the National Identified Risk Coordinator shall, when new information has been obtained, circulate any additions to that list or a new list, as necessary.
- (4) For the purposes of this section, the Financial Intelligence Unit shall be responsible for furnishing the Attorney-General with the information required to facilitate an application under section 45 where the designated entity has funds in The Bahamas.

### 44. Procedure.

When a financial institution receives the list of designated entities referred to in section 43(2)(a) or (d), the following procedures shall apply —

- (a) the financial institution shall without delay —
  - (i) freeze all the funds held by it in the name of a designated entity;
  - (ii) inform the Attorney-General and the Financial Intelligence Unit that a designated entity has funds with the financial institution providing all details of such funds; and



- (iii) inform the designated entity that the funds held at the financial institution have been frozen.
- (b) Within a period of fourteen days after the date on which the designated entity has been informed that the funds held in the account(s) of the designated entity at the financial institution have been frozen, the designated entity may institute proceedings in the Supreme Court for an order releasing the funds that have been frozen in its accounts;
- (c) The Attorney-General may commence proceedings under section 45 leading to the making of an order by the court for the confiscation of the assets held in the account(s) of the designated entity at any time after the passage of fourteen days after the designated entity has been informed that the funds held in the account(s) of the designated entity at the financial institution have been frozen.

#### **45. Listing of terrorist entities.**

- (1) Where the Attorney General receives information that—
  - (a) an individual or entity—
    - (i) committed or participated in the commission of a terrorist act; or
    - (ii) acting on behalf of, at the direction of, or in association with a designated entity or an individual or entity that has knowingly committed or participated in the commission of a terrorist act; or
    - (iii) committed an indictable offence for the benefit of—
      - (aa) a terrorist;
      - (bb) a terrorist organisation; or
      - (cc) a listed entity; or
  - (b) an entity is owned or controlled directly or indirectly by a designated or listed entity,  
he shall cause an investigation to be carried out in respect of that allegation and may for that purpose refer the matter to the Commissioner of Police who shall cause an investigation to be carried out in respect of the individual or entity.
- (2) Where the Commissioner of Police receives a referral from the Attorney General under subsection (1), he shall as soon as the results of the investigation are known, provide the Attorney General with the results of the investigation.
- (3) The Attorney General shall apply to a judge for an order in respect of an individual or entity referred to in subsection (1) —

- (a) an entity, where the entity is a designated entity; or
  - (b) an entity or individual where there are reasonable grounds to believe that the entity or individual—
    - (i) has knowingly committed or participated in, or facilitated the commission of a terrorist act; or
    - (ii) is knowingly acting on behalf of, or at the direction of, or in association with, an entity referred to in paragraph (a) or subparagraph (i);
    - (iii) has knowingly committed an indictable offence for the benefit of or in association with or in respect of—
      - (aa) a terrorist;
      - (bb) a terrorist organisation; or
      - (cc) a listed entity; or
  - (c) in respect of an entity owned or controlled directly or indirectly by a listed entity.
- (4) An application under subsection (3) shall be—
- (a) *ex parte*; and
  - (b) accompanied by an affidavit attesting to the matters referred to in subsection (3).
- (5) Upon an application under subsection (3) the judge shall, by order—
- (a) declare an individual or a designated or legal entity to be a listed entity for the purposes of this Act if the judge is satisfied as to the matters referred to in subsection (3); and
  - (b) freeze the property—
    - (i) that is owned or controlled by the listed entity;
    - (ii) that is wholly or jointly owned or controlled, directly or indirectly, by the listed entity;
    - (iii) derived or generated from funds or other assets owned or controlled directly or indirectly by the listed entity;
    - (iv) of persons or entities acting on behalf of, or at the direction of, the listed entity; or
    - (v) of any entity that is owned or controlled, directly or indirectly by the listed entity.
- (6) A person likely to be affected by an order made under subsection (5) may at any time after the publication of the order under subsection (13), apply to a judge for a review of the order.
- (7) Where an application for review is made under subsection (6), the Attorney General shall be served with a copy of the application and given

the opportunity to make representations to the Court in respect of any proceedings for the review of an order made under subsection (5).

- (8) An order under subsection (5) may —
  - (a) be made subject to any other condition that the Court considers reasonable;
  - (b) prohibit the listed entity from possessing or controlling cash in excess of an amount to be prescribed by the judge; and
  - (c) indicate into which account held in a financial institution any excess cash shall be placed.
- (9) Notwithstanding subsection(5), where a listed entity is in possession of cash in excess of an amount prescribed pursuant to subsection (8) in an order made under subsection (5), the listed entity shall pay the excess amount into a bank account owned by him in The Bahamas as specified by the Court.
- (10) The provisions of section 44(c) shall not apply to a listed entity where he conducts a transaction in accordance with subsection (9).
- (11) Where an order is made under subsection (5), the Court—
  - (a) may serve the order upon the listed entity or the financial institution; and
  - (b) shall serve the Order on the FIU immediately.
- (12) Where an order is served on a financial institution under subsection (9), action shall immediately be taken to restrict the availability of the funds, subject to the order, in accordance with the terms of the order.
- (13) Where an order is made under subsection (3), (1)(d), or (12), the Attorney-General shall, immediately publish the order —
  - (a) by any electronic means; and
  - (b) the *Gazette* and in two newspapers of general in circulation in The Bahamas.
- (14) Where the Attorney General reasonably believes that a listed entity who is the subject of an order under this section, has funds in another jurisdiction, he may apply to the relevant authorities in the jurisdiction for the enforcement of an order made under this section.
- (15) The Attorney General may, where he deems it necessary, make a request to another country to initiate proceedings for the entity or individual to be a listed entity in that country.
- (16) Within sixty days after the date of publication of an order under subsection (8), the entity in respect of which the order is made may apply to a Judge of the Supreme Court for a review of the order and shall notify the Attorney-General of the application.

- (17) Upon an application made under subsection (6), the Judge shall —
  - (a) provide the applicant with a reasonable opportunity to be heard; and
  - (b) determine whether or not the order should be revoked on the basis of the information available to the Judge and, if he determines that the order should be revoked, make an order for such revocation.
- (18) For the purposes of any application or review under this section, the Judge may receive in evidence anything that, in the opinion of the Judge is reliable and relevant, even if it would not otherwise be admissible evidence in law.
- (19) Nothing in this section shall preclude the Attorney General at any time from—
  - (a) conducting a review of the circumstances relative to an order made under subsection (5) to determine whether the circumstances referred to in subsection (1) continue to exist in respect of the listed entity; or
  - (b) applying to a judge for the variation or revocation of the order in respect of the listed entity if he determines that such circumstances no longer exist.
- (20) Upon an application under paragraph (b) of subsection (19), the Judge shall, if satisfied as to the matters referred to in that paragraph, make an order for the revocation.

#### **46. Considerations for listed entities.**

Where an order under section 45(5), in respect of a listed entity which is not a designated entity, is being made the Court may in the order—

- (a) make provision for meeting out of the property or specified part of the property, reasonable living expenses, including but not limited to—
  - (i) mortgage or rent payments;
  - (ii) allowances for food, medicine and medical treatment;
  - (iii) any payments due as a result of an order of the Court;
  - (iv) provision for the reasonable living expenses of dependents including educational expenses; and
  - (v) provision for taxes, insurance premiums and public utilities;
- (b) make provision for reasonable legal expenses, including expenses incurred in defending a criminal charge or any proceedings connected thereto and any proceedings under this Act;
- (c) make provision for expenses necessary to enable a person to carry on any trade, business, profession or occupation;

- (d) make provision for fees or service charges for routine holding or maintenance of frozen funds or other financial assets or economic resources; and
- (e) make the listed entity subject to any other condition that the Court considers reasonable.

**47. Attorney General to propose names to the UNSC.**

- (1) Where the Attorney General receives information that a person or entity may meet the criteria for being placed on the ISIL (Da'esh) and Al- Qaida Sanctions List for the time being in force, he shall cause an investigation to be carried out and may for that purpose refer the matter to the Commissioner of Police who shall cause an investigation to be carried out in respect of the person or entity.
- (2) Where the Commissioner of Police receives a referral from the Attorney General under subsection (1), he shall as soon as the results of the investigation are known, provide the Attorney General with the results of the investigation.
- (3) Where, on the basis of the investigation under subsection (1), the Attorney General is satisfied that there are reasonable grounds to believe that the entity or individual meets the criteria for being placed on the ISIL (Da'esh) and Al- Qaida Sanctions List for the time being in force, he may make a request to the Committee for the individual or entity to be placed on the list.
- (4) Notwithstanding subsection (2), the Attorney General shall not make a request to the Committee for an individual or entity to be placed on the ISIL (Da'esh) and Al-Qaida Sanctions List unless that individual or entity has been listed in accordance with section 45(5)(a).
- (5) Where an individual or entity has been placed on the ISIL (Da'esh) and Al-Qaida Sanctions List on the basis of a request by the Attorney General, and he is satisfied that an entity listed pursuant to section 47(3) no longer meets the criteria for listing, he may petition the Committee for removal of the individual or entity from the list.
- (6) Where an entity or individual has been placed on the ISIL (Da'esh) and Al-Qaida Sanctions List, the Attorney General shall, as far as practicable, inform the entity or individual of the availability of the UN office of the Ombudsperson for the purposes of petitioning the removal from the ISIL (Da'esh) and Al-Qaida Sanctions List.
- (7) For the purposes of this section—  
“the Committee” means the ISIL (Da'esh) & Al-Qaida Sanctions Committee established by the United Nations Security Council pursuant to resolutions 1267 (1999) , 1989 (2011) and 2253 (2015)

concerning ISIL (Da'esh) Al-Qaida and associated individuals, groups, undertakings and entities; and

“ISIL (Da'esh) and Al-Qaida Sanctions List” means the ISIL (Da'esh) and Al-Qaida Sanctions List prepared by the ISIL (Da'esh) & Al-Qaida Sanctions Committee.

**48. Attorney General to receive requests for declaration of a listed entity.**

- (1) The Attorney General shall receive all requests on behalf of another country for the declaration of an individual or entity as a listed entity.
- (2) Where a request is made on behalf of a country for the declaration of an individual or entity as a listed entity, a record of the case shall be furnished, which shall include —
  - (a) a document summarising the evidence available to that country for use in the designation of the individual or entity, including —
    - (i) sufficient identifying information to allow for the accurate and positive identification of the individual or entity; and
    - (ii) evidence that the individual or entity meets the relevant criteria for designation as set out in section 45; and
  - (b) particulars of the facts upon which the request is being made.
- (3) The Attorney General shall, upon receipt of a request made for the purposes of this section on behalf of any country, cause an investigation to be carried out in respect of that allegation and may for that purpose refer the matter to the Commissioner of Police who shall cause an investigation to be carried out in respect of the request.
- (4) Where, on the basis of an investigation under subsection (3), the Attorney General is satisfied that the individual or entity referred to under subsection (1) meets the criteria under section 45(1)(a) or (b), he shall make an application to a judge for an order under section 45(5)(a).

**49. Reporting requirements.**

- (1) Where a financial institution knows or has reasonable grounds to suspect that any funds maintained on its books by any individual entity or legal entity belong to an individual, entity or legal entity who —
  - (a) commits terrorist acts or participates in or facilitates the commission of terrorist acts or the financing of terrorism; or
  - (b) is a designated entity;
  - (c) is a listed entity,the financial institution shall report the existence of such funds to the Financial Intelligence Unit.

- (2) Any attempt to commit any act referred to in subsection (1)(a) shall be reported by a financial institution to the FIU.
- (3) A financial institution which fails to comply with section 44 and subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding two hundred and fifty thousand dollars.
- (4) Where a financial institution knows or has reasonable grounds to suspect that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism, the financial institution shall make a suspicious transaction, or a suspicious activity report to the FIU.

## **PART V – INVESTIGATIONS**

### **50. Investigations.**

- (1) Where any person has reasonable grounds to suspect that funds or financial services are related to or are to be used to facilitate an offence under this Act, it shall be the duty of that person to report the matter to the Commissioner of Police or any police officer.
- (2) Where information is received from any source in or outside The Bahamas that a person who has committed or who is alleged to have committed an offence under this Act may be present in The Bahamas, the Commissioner of Police shall take such measures as may be necessary to investigate the facts contained in the information.
- (3) Where on investigation it is found that the person referred to in subsection (2) is in The Bahamas, the Commissioner of Police shall firstly secure protective custody of such person and shall thereafter make a report to the Director of Public Prosecutions who shall take such measures as are necessary to prosecute the offender as the circumstances warrant.
- (4) Where any person, referred to in subsection (1) fails to report as required under that subsection, that person is guilty of an offence and is liable on conviction on information to a fine of two hundred and fifty thousand dollars or to imprisonment for a term of five years.

### **51. Detention Orders.**

- (1) Subject to subsection (2), a police officer may, for the purpose of preventing the commission of an offence under this Act or preventing interference in the investigation of an offence under this Act, apply ex parte, to a judge for a detention order.
- (2) A police officer may make an application under subsection (1) only with the prior written consent of the Director of Public Prosecutions.

- (3) A judge may make an order under subsection (1) for the detention of the person named in the application if he is satisfied that there are reasonable grounds to believe that the person is—
  - (a) interfering or is likely to interfere with an investigation of;
  - (b) preparing to commit; or
  - (c) facilitating the commission of,  
an offence under this Act.
- (4) An order under subsection (3) shall be for a period not exceeding forty-eight hours in the first instance and may be extended for a further period provided that the maximum period of detention under the order does not exceed fourteen days.
- (5) Every order shall specify the place at which the person named in the order is to be detained and conditions in respect of access to a medical officer.
- (6) An accurate and continuous record shall be kept in accordance with the Schedule, in respect of any detainee for the whole period of his detention.

**52. Power to gather information.**

- (1) Subject to subsection (2), a police officer may, for the purpose of an investigation of an offence under this Act, apply *ex parte* to a judge for an order for the gathering of information from named persons.
- (2) A police officer may make an application under subsection (1) only with the prior written consent of the Director of Public Prosecutions.
- (3) A judge may make an order under subsection (1) for the gathering of information if he is satisfied that the written consent of the Director of Public Prosecutions was obtained and—
  - (a) that there are reasonable grounds to believe that an offence under this Act has been committed and that—
    - (i) information concerning the offence; or
    - (ii) information that may reveal the whereabouts of a person suspected by the police officer of having committed the offence,
    - (iii) is likely to be obtained as a result of the Order, or
  - (b) that—
    - (i) there are reasonable grounds to believe that an offence under this Act will be committed;
    - (ii) there are reasonable grounds to believe that a person has direct and material information that relates to the offence referred to in subparagraph (i); or



- (iii) there are reasonable grounds to believe that a person has direct and material information that may reveal the whereabouts of a person who the police officer suspects may commit the offence referred to in subparagraph (i); and
  - (iv) reasonable attempts have been made to obtain the information referred to in subparagraph (ii) or (iii) from the person referred to therein.
- (4) An order made under subsection (3) may—
  - (a) include conditions or terms which the judge considers reasonable;
  - (b) order the examination on oath of the person named in the order;
  - (c) order the person to attend at a time and place fixed by the judge, for the purpose of being examined; and
  - (d) order the person to bring and produce any, thing, document, computer or electronic device in his control or possession for the purpose of the examination.
- (5) An order made under subsection (3) may be executed anywhere in The Bahamas.
- (6) The judge who made the order under subsection (3), or another judge of the same Court, may vary its terms and conditions.
- (7) A person named in an order made under subsection (3) shall answer questions put to the person by the Director of Public Prosecutions or the Director of Public Prosecution's representative, and shall produce to the presiding judge, any thing, document, computer or electronic device that the person was ordered to bring, but may, subject to the ruling of the judge under subsection (8), refuse to do so if answering a question or producing any thing, document, computer or electronic device would disclose information that is protected by the law relating to non-disclosure of information or privilege.
- (8) The presiding judge shall rule on every objection or issue relating to a refusal to answer any question or to produce any thing, document, computer or electronic device.
- (9) Any —
  - (a) answer given by;
  - (b) thing, document, computer or electronic device produced by
  - (c) evidence obtained from,that person shall not be used or received against him in any criminal proceedings other than in a prosecution for perjury.
- (10) A person may retain and instruct an Attorney-at-law at any stage of the proceedings under this section and the Attorney-at-law so retained may

attend and represent the person named in the order when he is being examined.

- (11) The presiding judge, if satisfied that any, document, computer or electronic device produced during the course of the examination is likely to be relevant to the investigation of any offence under this Act, shall order that the, document, computer or electronic device be given into the custody of the police officer.
- (12) Subject to subsection (7), nothing in this section requires the disclosure of any information which is protected by privilege.

### **53. Authority for search.**

- (1) A police officer may, for the purposes of an investigation into the offence of financing of terrorism apply to a judge for a warrant under this section.
- (2) On such application the judge may issue a warrant authorising a police officer to enter and search the premises specified in the warrant if the judge is satisfied in relation to the offence of financing of terrorism—
  - (a) that there are reasonable grounds for suspecting that an individual or legal entity is linked to the commission of that offence;
  - (b) that there are reasonable grounds for suspecting that there are on the premises material relating to the commission of that offence; and
  - (c) that it would be appropriate to make an order in relation to the material because—
    - (i) it is not practicable to communicate with any person entitled to produce the material;
    - (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or
    - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a police officer could secure immediate access to the material.
- (3) Where a police officer has entered the premises in the execution of a warrant issued under this section, he may seize and retain any material, other than items subject to legal privilege, which is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purposes of which the warrant was issued.
- (4) The person by whom a search warrant is executed shall furnish a report in writing, within ten days after the execution of the warrant or the expiry of the warrant, whichever occurs first, to the judge who issued the warrant—
  - (a) stating whether or not the warrant was executed;

- (b) if the warrant was executed, setting out a detailed description of anything seized; or
- (c) if the warrant was not executed, setting out briefly the reasons why the warrant was not executed.

**54. Rights of an accused person.**

A person against whom measures referred to in section 50(2) or 50(3) are taken is entitled to —

- (a) communicate without delay with the nearest appropriate representative of —
  - (i) the State of which that person is a national;
  - (ii) the State which is otherwise entitled to protect that person's rights;
  - (iii) where that person is a stateless person, the State in which that person ordinarily resides; or
  - (iv) an Attorney who may be a public defender;
- (b) be visited by a representative of the relevant States referred to in paragraph (a); and
- (c) be informed of his rights referred to in paragraphs (a) and (b).

**55. Notification to the appropriate State through United Nations.**

Where a person is taken into custody as a result of an investigation undertaken under section 50, the Attorney-General shall—

- (a) notify through the Secretary General of the United Nations, as the State which established jurisdiction in respect of an application brought under section 73 or 74, of the detention of that person and of the circumstances that warranted the detention; and
- (b) communicate the final outcome of the proceedings to the Secretary General of the United Nations for transmission of the information to the other State.

**56. Conditions for transfer of detained persons.**

- (1) Where a person who is being detained or who is serving a sentence of imprisonment in the territory of one State whose presence in another State is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of the offences for the purposes of this Act, that person may be transferred if the following conditions are met—
  - (a) the person freely gives his informed consent; or

- (b) where the person is not a Bahamian citizen and, the competent authorities of both States agree, subject to such conditions as those States may deem appropriate.
- (2) Unless the State from which a person is to be transferred pursuant to subsection (1) so agrees, that person shall not be prosecuted, detained or subjected to any other restriction of his personal liberty in the territory of the State to which the person is transferred in respect of any acts done or convictions received prior to his departure from the State from which that person was transferred.
- (3) Where a person serving a sentence is transferred under subsection (1) from The Bahamas, the person transferred shall receive credit for service of the sentence being served in The Bahamas for the time spent in the custody of the State to which that person was transferred.
- (4) Unless the Attorney-General otherwise directs, all expenses incurred in respect of any requests made under this section, must be paid by the State making the request.
- (5) For the purposes of this section “transfer of detained persons” includes the surrender of detained persons under section 74.

## **PART VI – RESTRAINT, FORFEITURE AND SEIZURE**

### **PROPERTY FREEZING ORDERS**

#### **57. Property Freezing Order.**

- (1) Where the enforcement authority reasonably believes that property is proceeds or instrumentalities or terrorist property, the enforcement authority may apply to the Court for a property freezing order in respect of such property.
- (2) Where the enforcement authority applies to the Court for an Order in accordance with this section, and the Court is satisfied having regard to the facts and beliefs set out in an affidavit in support of the application, and any other relevant matter, that there are reasonable grounds to believe that the property the subject of the application is proceeds of crime, or instrumentalities, or terrorist property it may make the order.
- (3) An application for a property freezing order may be—
  - (a) made *ex parte* and without notice;
  - (b) heard *in camera*.
- (4) The Court may make a property freezing order to preserve the property the subject of the application where it is satisfied that there are reasonable

grounds to believe that the property, or part of it, is proceeds, or instrumentalities, or terrorist property.

- (5) Within seven days of a property freezing order being granted or such other period as the Court may direct, notice of the order shall be served on all persons known to the enforcement authority to have an interest in the property affected by the order, and such other persons as the Court may direct.

#### **58. Additional property Freezing Orders.**

- (1) Where the Court makes a property freezing order, the Court may, at the time when it makes the order, or at any later time, make any further orders that it considers appropriate upon the application of the enforcement authority or any person affected by the order.
- (2) Without limiting the generality of subsection (1), the Court may make any one or more of the following orders —
  - (a) an order that the property or part of the property specified in the property freezing order shall be seized, taken into possession, delivered up for safe-keeping or otherwise secured by the enforcement authority;
  - (b) an order that the property or part of the property specified in the freezing order shall be dealt with in a particular manner including by an encumbrance which is ordered by the Court on such property in favour of the enforcement authority together with an order that prohibits any other encumbrance, or by a prohibition regarding dealing in or with such property;
  - (c) an order to appoint a Receiver to take custody or control of the property or a part of the property that is specified in the property freezing order, and to manage or otherwise deal with the whole or any part of the property in accordance with any directions of the Court;
  - (d) such other order for the preservation, management or disposition of the property or part of the property specified in the property freezing order as the Court considers appropriate.
- (3) Any costs associated with the appointment of a Receiver and the work subsequently undertaken by him pursuant to the appointment shall be paid from assets over which the Receiver is appointed provided such costs have been approved by the Court.
- (4) Where a Receiver has been appointed under paragraph (c) of subsection (2) in relation to property, he may do anything that is reasonably necessary to preserve the property and its value including, without limiting the generality of this section —

- (a) by becoming a party to any civil proceedings that affect the property;
  - (b) by ensuring that the property is insured;
  - (c) by realising or otherwise dealing with the property if it is perishable, subject to wasting or other forms of loss, its value volatile or the cost of its storage or maintenance likely to exceed its value, subject to the proviso that this power may only be exercised without the prior approval of the Court in circumstances where —
    - (i) all persons known by the Receiver to have an interest in the property consent to the realisation or other dealing with the property;
    - (ii) the delay involved in obtaining such approval is likely to result in a significant diminution in the value of the property; or
    - (iii) the cost of obtaining such approval would, in the opinion of the Receiver, be disproportionate to the value of the property concerned;
  - (d) if the property consists, wholly or partly, of a business —
    - (i) employing, or terminating the employment of persons in the business;
    - (ii) doing any other thing that is necessary or convenient for carrying on the business on a sound commercial basis;
    - (iii) selling, liquidating or winding up the business if it is not a viable concern, subject to obtaining the prior approval of the Court; or
    - (iv) if the property includes shares in a company, exercising rights attaching to the shares as if the trustee were the registered holder of the shares.
- (5) The Court may exclude from the property freezing order—
- (a) such amount as it considers appropriate for the payment of reasonable living expenses to any person whose property is the subject of a property freezing order; and
  - (b) such amount as it considers appropriate for the payment of proportionate, reasonable legal expenses incurred by any person whose property is the subject of a property freezing order.
- (6) The Court shall not exercise its discretion to exclude an amount in subsection (5) unless it is satisfied that the person cannot meet such expenses out of property that is not subject to a property freezing order and the Court determines that it is in the interests of justice to make such an exclusion.

- (7) Where a Court has made a property freezing order, it may upon application by anyone with an interest in the property or by the enforcement authority and at any time make any further order or orders in respect of the property including an order to revoke the freezing order or to vary the order, where it appears to the Court to be in the interests of justice to do so.

## PROPERTY SEIZURE ORDERS

### **59. Property Seizure Order.**

- (1) The Court may make a seizure order under this section on application by the enforcement authority, permitting an authorised officer to search for and seize property that the Court finds could be the subject of a property freezing order under section 57 in the following circumstances—
  - (a) a property freezing order would not be effective to preserve the property; or
  - (b) there is a reasonable suspicion of risk of dissipation or alienation of the property if the order is not granted.
- (2) If during the course of a search under an order granted under this section, an authorised officer finds any property that he believes, on reasonable grounds, is of a kind which could have been included in the order had its existence, or its existence in that place, been known of at the time of application for the order, he may seize that property and the seizure order shall be deemed to authorise such seizure provided notice of the seizure of the property is reported within twenty-four hours to the Court and a record of the seizure of such property is left at the premises from where the property is seized and is given to the occupier of the premises.
- (3) Property seized under an order granted under this section, may only be retained by or on behalf of the enforcement authority for twenty-eight days and the enforcement authority may, prior to the expiration of the time limited by the order, make a further application for a property freezing order in respect of such property.
- (4) If the enforcement authority believes that the execution of an order under this section may give rise to a breach of the peace or to other criminal conduct, it may request that appropriate law enforcement officers accompany the authorised officer.
- (5) An authorised officer for purposes of this section shall be an officer duly appointed for those purpose by the enforcement authority.

## GRANT OF CIVIL FORFEITURE ORDERS

### 60. Preliminary matters regarding civil forfeiture orders.

- (1) An order for civil forfeiture is an order in rem, granted by the Supreme Court in the exercise of its civil jurisdiction to forfeit to the Crown property, both real and personal, that is or represents proceeds or instrumentalities or terrorist property.
- (2) The Court, on an application by the enforcement authority, shall grant a civil forfeiture order in respect of property within the jurisdiction of The Bahamas where it finds, on a balance of probabilities, that such property is proceeds of criminal conduct, an instrumentality or terrorist property.
- (3) In order to satisfy the Court under subsection (2)—
  - (a) that property is proceeds, it is not necessary to show that the property was derived directly or indirectly, in whole or in part, from a particular criminal offence, or that any person has been charged in relation to such an offence; only that it is proceeds from a criminal offence or offences;
  - (b) that property is an instrumentality, it is not necessary to show that the property was used or intended to be used to commit a specific criminal offence, or that any person has been charged in relation to such an offence; only that it was used or intended to be used to commit some criminal offence or offences;
  - (c) that property is terrorist property, it is not necessary to show that the property —
    - (i) was derived from a specific terrorist act;
    - (ii) has been or is being or is intended to be used by a terrorist organisation, or to commit a specific terrorist act, as long it is shown that it has been, is being or is intended to be used by some terrorist organisation or to commit some terrorist act;
    - (iii) is owned or controlled by or on behalf of a specific terrorist organisation, as long as it is shown to be owned or controlled by or on behalf of some terrorist organisation;
    - (iv) has been provided or collected for the purpose of supporting a specific terrorist organisation or funding a specific terrorist act, as long as it is shown to have been provided or collected for the purpose of providing support to some terrorist organisation or funding some terrorist act; or
    - (v) that any person has been charged in relation to such conduct, provided always the evidence reveals that the property is connected to terrorism however evidenced.



- (4) An application for civil forfeiture may be made in respect of property into which original proceeds have been converted either by sale or otherwise.
- (5) For the purposes of making a determination under subsection (2), proof that a person was convicted, found guilty or found not criminally responsible (but was found to have committed the criminal act) is proof that the person committed the conduct.
- (6) Property may be found to be proceeds under subsection (2) even if a person was acquitted of any offence(s), if charges were withdrawn before a verdict was returned, or if the proceedings were stayed for any reason.
- (7) An Order for civil forfeiture —
  - (a) can be sought in respect of property whenever obtained;
  - (b) may be sought where a person now deceased committed the conduct on which the application for forfeiture is based.
- (8) Civil forfeiture proceedings shall not be brought where the value or aggregate value of the property concerned is less than five thousand dollars.

**61. Applications for and granting of a Civil Forfeiture Order.**

- (1) The enforcement authority may apply to the Court for a civil forfeiture order in respect of property which it believes is proceeds or instrumentalities of any offence of any terrorism offence as specified in the Proceeds of Crime Act, 2018 or in this Act.
- (2) An application pursuant to subsection (1) shall be made in accordance with the rules of civil procedure.
- (3) Where the enforcement authority makes an application for a civil forfeiture order against property under this section —
  - (a) it shall serve a copy of the application on any person whom the enforcement authority has reason to believe has an interest in the property;
  - (b) any person claiming an interest in the property may appear and adduce evidence at the hearing of the application; and
  - (c) at any time before the final determination of the application, the Court may direct the enforcement authority to provide such notice as the Court deems appropriate to any person who, in the Court's opinion, appears to have an interest in the property.
- (4) Service of notice under subsection (2) shall be made in accordance with the rules applicable in civil Court proceedings.
- (5) Any person who asserts an interest in the property and who seeks to oppose the making of a civil forfeiture order, or who wishes to exclude his

interest from a civil forfeiture order shall file an appearance in accordance with the civil procedure rules.

- (6) Where an application for a civil forfeiture order is before the Court, the Court may determine by its own procedures the evidence that may be adduced before it and shall in particular ensure that any person with an interest of any nature in the property which is the subject of the application has an opportunity to make representations to the Court as to whether an order for civil forfeiture should be granted.
- (6) Where the Court is satisfied on a balance of probabilities that any property specified in the application is proceeds, or instrumentalities, or terrorist property, it shall grant a civil forfeiture order in respect of such property.
- (7) A civil forfeiture order shall have the effect of vesting the forfeited property in a named representative of the enforcement authority or specified Receiver who shall be responsible for realizing the property in accordance with section 65.

## **62. Orders to protect legitimate owners.**

- (1) If, in the course of a hearing of an application for a civil forfeiture order, the Court is satisfied on a balance of probabilities that any property which is the subject of the application is proceeds, instrumentalities, or terrorist property but that a person is a legitimate owner, the Court shall make any order it considers necessary to protect that person's interest in the property.
- (2) A legitimate owner means —
  - (a) in the case of proceeds, a person who —
    - (i) was the rightful owner of the property before the criminal conduct occurred and was deprived of the property by the criminal conduct; or
    - (ii) acquired the property in good faith and for fair value after the criminal conduct and did not and could not reasonably have known the property was proceeds;
  - (b) in the case of instrumentalities, a person who has done all that can reasonably be done to prevent the property being used as an instrumentality; and
  - (c) in the case of terrorist property, a person who can satisfy the Court that he would be a legitimate owner if the property were proceeds or instrumentalities.
- (3) No order may be made under subsection (1) if the property is property that it is unlawful for the person to possess in The Bahamas.

**63. Prohibited appearance of absconders.**

A person who has absconded from any process of the Court and is still an absconder may not appear through a representative, in a proceeding for civil forfeiture or contest the granting of a civil forfeiture order.

**PROVISIONS RELATIVE TO CIVIL FORFEITURE ORDERS**

**64. Appeals.**

- (1) An appeal will lie to the Court of Appeal by any person affected by a decision of the Supreme Court in relation to a property freezing order.
- (2) An appeal will lie to the Court of Appeal against the grant, or the refusal to grant a civil forfeiture order.

**65. Realisation of forfeited property.**

- (1) Subject to any limits in the civil forfeiture order, the enforcement authority may take such steps to sell, destroy or otherwise deal with property as it sees fit.
- (2) Subject to subsection (1), the enforcement authority—
  - (a) must realise the value of the property vested in it by the civil forfeiture order, so far as practicable, in the manner best calculated to maximise the realised amount;
  - (b) or property manager should dispose of the forfeited property as soon as practicable.
- (3) The enforcement authority may incur reasonable expenditure for the purpose of realising the value of the forfeited property.
- (4) Any expenditure incurred by the enforcement authority under subsection (3) shall be recovered from the amount of money realised by the property forfeited. In the event that the sum realised is not sufficient to cover such expenditure, the enforcement authority should recover the balance from the Confiscated Assets Fund.
- (5) The proceeds of the realisation of any property forfeited as a result of a civil forfeiture order shall be paid into the Confiscated Assets Fund continued under Part IX of the Proceeds of Crime Act.

**66. Compensation and protection of Receiver.**

- (1) If in the case of any property in respect of which an application for a civil forfeiture order has been made and where a property freezing order has been made, the Court does not make a civil forfeiture order or, following

any appeal, the civil forfeiture order is set aside, the person whose property it is, may make an application to the Court for compensation.

- (2) The person making an application referred to in subsection (1) shall provide at least seven clear days' notice of the application to the Office of the Attorney-General.
- (3) If the Court has made a decision by reason of which no forfeiture order could be made in respect of the property, any application for compensation must be made within the period of three months from the date of the decision, or, if there is an appeal against the decision, from the date on which any proceedings on appeal are finally concluded.
- (4) The Court may grant an application made under this section in such amount as the Court thinks reasonable having regard to the loss suffered and any other relevant circumstances provided that the person affected suffered loss due to the unwarranted actions of the enforcement authority.
- (5) Where the Court has appointed a Receiver in relation to property, the Receiver shall not be personally liable for any loss or claim arising out of the exercise of powers conferred upon him by the order or this Part unless the Court in which the claim is made is satisfied that —
  - (a) the applicant has an interest in the property in respect of which the loss or claim is made; and
  - (b) the loss or claim arose by reason of the negligence or reckless or intentional misconduct of the Receiver.

#### **67. Obtaining information from foreign authorities.**

The enforcement authority may make a request to an appropriate foreign authority for information or evidence relevant to a civil forfeiture investigation or proceedings, and may enter into an agreement with such authority relating to such request and the disclosure or use of any information or evidence received.

#### **68. Disclosure of information.**

- (1) Any information obtained or that was obtained on behalf of the Financial Intelligence Unit in connection with the exercise of any of its functions may be disclosed to the enforcement authority in connection with any of the functions of the enforcement authority under this Part.
- (2) Information which is held by any of the following persons may be disclosed to the enforcement authority in connection with the exercise of any of its functions under this Part —
  - (a) Compliance Commission continued under section 31 of the Financial Transaction Reporting Act, 2018;
  - (b) Securities Commission continued under section 10 of the Securities Industry Act (*No. 10 of 2011*);

- (c) Insurance Commission of The Bahamas established under section 4 of the Insurance Act (*Ch. 347*);
  - (d) the Inspector of Financial and Corporate Services appointed under section 11 of the Financial and Corporate Service Providers Act (*Ch.369*);
  - (e) Central Bank of The Bahamas; and
  - (f) The Gaming Board continued under section 3 of the Gaming Act (*No. 40 of 2014*).
- (3) Information which the enforcement authority has obtained in connection with the exercise of any of its functions under this Part may be disclosed by it (notwithstanding any rules of confidentiality to the contrary) if the disclosure is for the purposes of a civil forfeiture investigation or proceeding in another jurisdiction, where the perpetrator of the criminal conduct which has given rise to the civil forfeiture proceedings is dead, or has absconded, his whereabouts are unknown, or his identity is unknown.
- (4) Information which the enforcement authority has obtained in connection with the exercise of any of its functions under this Part may be disclosed by it notwithstanding any rules of confidentiality to the contrary if the disclosure is for any one of the following —
- (a) consideration of and bringing of proceedings for civil forfeiture under this Part or the enforcement of any Court order;
  - (b) a criminal investigation wherever that investigation may be undertaken;
  - (c) criminal proceedings wherever they may have been commenced.

**69. Duty to disclose information relating to offences and terrorist acts.**

- (1) Every financial institution or supervisory authority who has any information which will assist in —
- (a) preventing the commission by another person, of a terrorist act; or
  - (b) securing the arrest or prosecution of another person for an offence under this Act, or an offence under any other law and which also constitutes a terrorist act,
- shall forthwith disclose the information to the Commissioner of Police or the Director of Public Prosecutions.
- (2) Notwithstanding subsection (1) a person referred to in subsection (1), shall not be required to disclose any information which is protected by privilege.
- (3) Civil or criminal proceedings shall not lie against any person for disclosing any information in good faith pursuant to subsection (1).

- (4) Any person who fails to comply with subsection (1) commits an offence and is liable on conviction on indictment to a fine of ten thousand dollars and to imprisonment for two years.
- (5) For the purposes of this section —
  - “**person**” includes a financial institution or supervisory authority; and
  - “**supervisory authority**” means the Central Bank, the Securities Commission of The Bahamas, the Insurance Commission of The Bahamas, the Inspector of Financial and Corporate Services, the Gaming Board, the Compliance Commission and The Bahamas Stock Exchange.

**70. Duty to disclose information relating to property used for commission of offences under this Act.**

- (1) Every financial institution shall forthwith disclose to the FIU—
  - (a) the existence of any property in his possession or control, which to his knowledge is terrorist property or property to which an order made under section 45 applies, or which there are reasonable grounds to believe is terrorist property or property to which an order made under section 45 applies;
  - (b) any information regarding a transaction or proposed transaction in respect of terrorist property or property to which an order made under section 45 applies; or
  - (c) any information regarding a transaction or proposed transaction which there are reasonable grounds to believe may involve terrorist property or property to which an order made under section 45 applies.
- (2) The FIU shall disclose to the appropriate authority, any information in his possession relating to any terrorist property if such information is requested or if the Minister is of the view that the information would be relevant to a foreign State.
- (3) Every financial institution shall report, every three months, to the FIU—
  - (a) if it is not in possession or control of terrorist property, that it is not in possession or control of such property; or
  - (b) if it is in possession or control of terrorist property, that it is in possession or control of such property, and the particulars relating to the persons, accounts and transactions involved and the total value of the property.
- (4) No civil or criminal proceedings shall lie against any person for making a disclosure or report, in good faith, under subsection (1), (2) or (3).

- (5) Every financial institution who fails to comply with subsection (1) or(3) commits an offence and shall, on conviction on indictment, be liable to imprisonment for five years.

## **PART VII – INTERNATIONAL COOPERATION**

### **71. Exchange of information relating to terrorist acts.**

The Minister may, after consultation with the Attorney General, on a request made by the appropriate authority of a foreign State, disclose to that authority, any information in his possession or, with the necessary permission, in the possession of any other government, department or agency, relating to any of the following—

- (a) the actions or movements of persons suspected of involvement in the commission of terrorist acts;
- (b) the use of forged or falsified travel papers by persons suspected of involvement in the commission of terrorist acts;
- (c) traffic in explosives or other lethal devices or sensitive materials by persons suspected of involvement in the commission of terrorist acts; or
- (d) the use of communication technologies by persons suspected of involvement in the commission of terrorist acts,

if the disclosure is not prohibited by any law and will not, in the Minister's view be prejudicial to national security or public safety.

### **72. Sharing of forfeited funds.**

- (1) The Government of The Bahamas may, pursuant to any forfeiture agreement with any State, share with that State on a reciprocal basis, the funds derived from forfeiture pursuant to this Act.
- (2) Funds referred to under subsection (1) may be utilized by the Government of The Bahamas to compensate victims of the offences referred to under this Act.

### **73. Extradition.**

- (1) Offences under this Act shall be extraditable offences under the Extradition Act (*Ch. 96*).
- (2) Where a person who has committed or is alleged to have committed an offence under this Act is present in The Bahamas and it is not intended to extradite that person, the Attorney-General shall prosecute the offender for the offence.

- (3) Notwithstanding the provisions of this Act, no person shall be extradited pursuant to this Act, where the Government of The Bahamas has substantial grounds for believing that a request for extradition for an offence under this Act has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would be prejudicial to that person's rank or status for any of these reasons.

#### **74. Jurisdiction.**

Where a person is alleged to have committed an offence under this Act, proceedings in respect of that offence may be commenced in The Bahamas where the alleged offence—

- (a) is committed by a citizen of The Bahamas;
  - (b) was directed towards or resulted in the carrying out of an offence under this Act against any person in The Bahamas, against a citizen of The Bahamas or any person in The Bahamas;
  - (c) was directed towards or resulted in the carrying out of an offence under this Act against a State or government facility of The Bahamas outside The Bahamas;
  - (d) was directed towards or resulted in the carrying out of an offence under this Act committed in an attempt to compel The Bahamas to do or refrain from doing any act;
  - (e) was committed in The Bahamas and directed against any person or persons, facilities or against any other State;
  - (f) was committed by a stateless person who is ordinarily resident in The Bahamas;
  - (g) was committed on board an aircraft that—
    - (i) is operated by the Government of The Bahamas or a citizen of The Bahamas; or
    - (ii) is registered in The Bahamas;
  - (h) was committed on board a vessel that is flying the flag of The Bahamas or is registered in The Bahamas; or
  - (i) threatens the national security of The Bahamas.
- (2) An act or omission committed outside The Bahamas which would, if committed in The Bahamas, constitute an offence under this Act shall be deemed to have been committed in The Bahamas if the person committing the act or omission is present in The Bahamas and cannot be extradited to a foreign State having jurisdiction over the offence constituted by such act or omission.



- (3) Where the Attorney General receives information that there may be present in The Bahamas a person who is alleged to have committed an offence under this Act, the Attorney General shall—
  - (a) cause an investigation to be carried out in respect of that allegation and may refer the matter to the Commissioner of Police who shall cause an investigation to be carried out in respect of that allegation;
  - (b) inform any other foreign State which might also have jurisdiction over the alleged offence promptly of the findings of the investigation; and
  - (c) indicate promptly to other foreign States which might also have jurisdiction over the alleged offence whether to the best of his knowledge, information and belief a prosecution is intended by the Director of Public Prosecutions.
- (4) Where the Commissioner of Police receives a referral from the Attorney-General under subsection (3), he shall as soon as the results of the investigation are known, provide the Attorney General with the results of the investigation.
- (5) In furtherance of subsection (3), in deciding whether to prosecute, the Director of Public Prosecutions shall take into account the adequacy of evidence against the accused.
- (6) The Attorney General and the Director of Public Prosecutions shall consult in relation to the exercise of powers under subsection (5) in respect of—
  - (a) considerations of international law, practice and comity;
  - (b) international relations; and
  - (c) any prosecution that is being or might be taken by a foreign State.
- (5) If a person has been taken into custody to ensure the person's presence for the purpose of prosecution or surrender to a foreign State in terms of this section, the Director of Public Prosecutions shall, immediately after the person is taken into custody, notify the Attorney General.
- (6) The Attorney General shall inform any foreign State which might have jurisdiction over the offence concerned, and any other State that he considers it advisable to inform or notify either directly or through the Secretary-General of the United Nations, of—
  - (a) the fact that the person is in custody; and
  - (b) the circumstances that justify the person's detention.
- (7) When the Director of Public Prosecutions declines to prosecute, and another foreign State has jurisdiction over the offence concerned, he shall inform such foreign State, accordingly with the view to the surrender of such person to such foreign State for prosecution by that State.

**75. Request for assistance.**

Section 6 of the Criminal Justice (International Co-operation) Act (*Ch. 105*) applies to the procedure to be adopted in respect of a request made from another State for assistance in obtaining a freezing or forfeiture order under this Act with such modifications as are necessary to give effect to such requests.

## **PART VIII - MISCELLANEOUS**

**76. Competent Authority.**

The Attorney-General is the Competent Authority for —

- (a) proposing persons or entities to the United Nations Security Council 1267/1989 Committee, the United Nations Security Council 1988 Committee; and
- (b) designating persons or entities that meet the criteria specified in United Nations Security Council Resolution 1373 for designation; and
- (c) the exchange of information relating to criminal investigations or proceedings in respect of an offence under this Act.

**77. Regulations.**

- (1) The Attorney-General may, subject to affirmative resolution make Regulations to give effect to this Act.
- (2) The Attorney-General may by Order amend—
  - (a) the Annex to the International Convention for the Suppression of the Financing of Terrorism adopted by the General Assembly of the United Nations on 9<sup>th</sup> December, 1999, in accordance with the terms of Article 23 of the Convention; or
  - (b) the *Schedule*.

**78. Savings.**

Any proceedings commenced or orders made pursuant to the Anti-Terrorism Act (*No. 25 of 2014*) shall not be affected by the coming into force of this Act and shall be continued.

**79. Repeal.**

This Act repeals the Anti-Terrorism Act (*Ch. 107*).

## **SCHEDULE**

### **(section 14(1) and 77)**

#### **TREATIES RESPECTING TERRORISM**

- (a) Convention on Offences and certain Other Acts committed on Board Aircraft signed at Tokyo on 14 September 1963;
- (b) Convention for the Suppression of Unlawful Seizure of Aircraft done at The Hague on 16 December 1970;
- (c) Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on 23 September 1971;
- (d) Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973;
- (e) International Convention against the taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979;
- (f) Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980;
- (g) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988;
- (h) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at the Rome on 10 March 1988;
- (i) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988;
- (j) Convention on the Marking of Plastic Explosives for the Purposes of Detection, signed at Montreal, on 1 March 1991;
- (k) International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997;
- (l) International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999.
- (m) The Biological Weapons Convention entered into force on 26 March 1975; and
- (n) The Chemical Weapons Convention (CWC) adopted by the Conference on Disarmament in Geneva on 3 September 1992.