

# **CHAPTER 3.16**

## **ANTI-TERRORISM ACT**

### **Revised Edition**

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• Act • Subsidiary Legislation •

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### **ACT**

#### **(Act 36 of 2008 and 5 of 2010)**

Act 36 of 2003 .. in force 5 December 2008 (S.I. 114/2008)

Amended by Act 5 of 2010 .. in force 1 February 2010

#### **ARRANGEMENT OF SECTIONS**

##### **PART 1**

##### **PRELIMINARY**

1. Short title
2. Interpretation
3. Orders declaring certain entities to be specified entities
4. Orders etc. to give effect to resolutions of the security council

##### **PART 2**

##### **OFFENCES**

5. Provision or collection of property to commit terrorist acts
6. Provision of service for commission of terrorist acts
7. Use of property for commission of terrorist acts
8. Arrangements for retention or control of terrorist property
9. Dealing with terrorist property
10. Soliciting and giving of support to terrorist groups or for the commission of terrorist act
11. Habouring of persons committing terrorist acts
12. Provision of devices to terrorist groups
13. Recruitment of persons to be members of terrorist groups or to participate in terrorist acts
14. Provision of training and instruction to terrorist groups and persons committing terrorist acts
15. Incitement, promotion or solicitation of property for the commission of terrorist acts
16. Providing facilities in support of terrorist acts
17. Conspiracy to commit offences under this act
18. Membership of terrorist groups
19. Arrangements of meetings in support of terrorist groups
20. Participation in the commission of offences under this act

##### **PART 3**

##### **INVESTIGATION OF OFFENCES**

21. Powers of arrest
22. Detention orders
23. Power to gather information
24. Power to intercept communications and the admissibility of intercepted

communications

**PART 4  
TRIAL OF OFFENCES**

- 25. Jurisdiction to try offences under this Act
- 26. Evidence by certificate

**PART 5  
INFORMATION SHARING, EXTRADITION AND MUTUAL  
ASSISTANCE IN CRIMINAL MATTERS**

- 27. Exchange of information relating to terrorist groups and terrorist acts
- 28. Conventions to be used as basis for extradition
- 29. Convention to be used as basis for mutual assistance in criminal matters
- 30. Offences deemed not to be offences of a political character

**PART 6  
DISCLOSURE AND SHARING OF INFORMATION**

- 31. Duty to disclose information relating to offences and terrorist acts
- 32. Duty to disclose information relating to property of terrorist groups etc.

**PART 7  
SEIZURE AND FORFEITURE OF TERRORIST PROPERTY**

- 33. Power to seize property used in commission of terrorist acts
- 34. Order for forfeiture of property on conviction
- 35. Orders for seizure and restraint of property
- 35A. Review of search warrants and restraining orders
- 35B. Expiry of restraining orders
- 35C. Disposal of property seized or dealt with
- 36. Orders for forfeiture of property
- 37. Refusal and revocation of registration of charities linked to terrorist groups

**PART 8  
MISCELLANEOUS**

- 38. Provision of information relating to passengers of vessels and aircraft
- 39. Power to prevent entry and order the removal of persons
- 40. Power to refuse refugee application
- 41. Regulations

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**CHAPTER 3.16  
ANTI-TERRORISM ACT**

AN ACT to implement the United Nations Convention respecting the Suppression of the Financing of Terrorism and the United Nations Security Council Resolution 1373 on terrorism; generally to make provision for preventing and combating terrorism and to provide for matters incidental thereto.

Commencement [5 December 2008]

**PART 1  
PRELIMINARY**

**1. Short title**

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

**2. Interpretation**

In this Act, unless the context otherwise requires—

**“communication”** means a communication received or transmitted by post or a telegraphic, telephonic or other communication received or transmitted by electricity, magnetism, or other means;

**“communications service provider”** means a person who provides services for the transmission or reception of communications;

**“counter terrorism convention or convention”** means any of the following Conventions—

- (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 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 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 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 Inter-American Convention Against Terrorism adopted by the OAS General Assembly in Barbados on 3<sup>rd</sup> June, 2002;

**“entity”** means a person, group, trust, partnership, fund or an unincorporated association or organisation;

**“explosive or other lethal device”** means—

- (a) an explosive or incendiary weapon or device that is designed or has the capability to cause death, serious bodily injury or substantial material damage;
- (b) a weapon or device that is designed or has the capability to cause death, serious bodily injury or substantial material damage;

**“financial institution”** means a commercial bank, or any other institution which makes loans, advances or investments or accepts deposits of money from the public;

**“Financial Intelligence Authority”** means the Financial Intelligence Authority established under section 3 of the Financial Intelligence Authority Act or any enactment replacing it;

**“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 justice;

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

**“property”** means any asset of every kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible and legal documents or instruments in any form including electronic or digital, evidencing title to, or interest in, such assets, including but not limited to bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit;

**“specified entity”** means an entity in respect of which an Order under section 3 has been made, or is deemed by reason of the operation of section 4(2) to have been made, and is for the time being in force;

**“terrorist act”** means—

- (a) an act or omission in or outside Saint Lucia which constitutes an offence within the scope of a counter terrorism convention;
- (b) an act or threat of action in or outside Saint Lucia which—
  - (i) involves serious bodily harm to a person,
  - (ii) involves serious damage to property,
  - (iii) endangers a person’s life,
  - (iv) creates a serious risk to the health or safety of the public or a section of the public,
  - (v) involves the use of firearms or explosives,
  - (vi) involves releasing into the environment or any part thereof or distributing or exposing the public or any part thereof—
    - (aa) any dangerous, hazardous, radioactive or harmful substance,
    - (ab) any toxic chemical,
    - (ac) any microbial or other biological agent or toxin,
  - (vii) is designed or intended to disrupt any computer system by the provision of services directly related to communications infrastructure, banking or financial services, utilities transportation or other essential infrastructure,
  - (viii) is designed or intended to disrupt the provision of essential emergency services such as police, civil defence or medical services,
  - (ix) involves prejudice to national security or public safety, and is intended, or by its nature and context, may reasonably be regarded as being intended to—
    - (aa) intimidate the public or a section of the public, or
    - (ab) compel a government or an international organization to do, or refrain from doing, any act, and
    - (ac) is made for the purpose of advancing a political, ideological, or religious cause;
- (c) an act which—

- (i) disrupts any services, and
- (ii) is committed in pursuance of a protest, demonstration or stoppage of work,

shall be deemed not to be a terrorist act within the meaning of this definition, so long and so long only as the act is not intended to result in any harm referred to in sub-paragraphs (i), (ii), (iii) or (iv) of paragraph (b);

**"terrorist group"** means—

- (a) an entity that has as one of its activities and purposes, the committing of, or the facilitation of the commission of, a terrorist act; or
- (b) a specified entity;

**"terrorist property"** means—

- (a) proceeds from the commission of a terrorist act;
- (b) property which has been, is being, or is likely to be used to commit a terrorist act;
- (c) property which has been, is being, or is likely to be used by a terrorist group;
- (d) property owned or controlled by or on behalf of a terrorist group; or
- (e) property which has been collected for the purpose of providing support to a terrorist group or funding a terrorist act;

**"vessel"** means any thing made or adapted for the conveyance by water, or people or property;

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

### **3. Orders declaring certain entities to be specified entities**

(1) Where the Attorney General has reasonable grounds to believe that—

- (a) an entity has knowingly-
  - (i) committed,
  - (ii) attempted to commit,
  - (iii) participated in committing, or
  - (iv) facilitated the commission of a terrorist act; or
- (b) an entity is knowingly acting-
  - (i) on behalf of,
  - (ii) at the direction of,
  - (iii) in association with,

the Attorney General by order in the Gazette may declare the entity to be a specified entity.

(2) Within 30 days of publication in the Gazette, a specified entity may make an application in writing to the Attorney General for the revocation of an Order made under subsection (1), or deemed under section 4 to have been made, in respect of that entity.

(3) If, on an application made under subsection (2), the Attorney General—

- (a) decides that there are reasonable grounds for revocation, he or she shall revoke the Order, and publish a notice of revocation in the Gazette;
- (b) decides that there are no reasonable grounds for revocation, he or she shall refuse the application and shall, within 60 days of receiving the application, inform the applicant of his or her decision.

(4) Within 30 days of receiving information of the decision referred to in subsection (5), the applicant may apply, on notice to the Attorney General, to a Judge of the High Court for a review of that decision.

(5) Upon an application being made under subsection (4), the judge shall—

- (a) examine in chambers, any security or intelligence reports considered in recommending or making an Order under subsection (1) in respect of the applicant and hear any other evidence or information that may be presented by or on behalf of the Attorney General and may, at the request of the Attorney General, hear all or part of the evidence or information in the absence of the applicant or any counsel representing the applicant, if the judge is of the opinion that the disclosure of the information would be prejudicial to national security or endanger the safety of any person;
- (b) provide the applicant with a statement summarizing the information available to the judge, so as to enable the applicant to be reasonably informed of the reasons for the decision, without disclosing any information the disclosure of which would, in the judge's opinion, be prejudicial to national security or endanger the safety of any person;
- (c) provide the applicant with a reasonable opportunity to be heard;
- (d) determine whether the decision is reasonable on the basis of the information available to the judge and, if found not to be reasonable, make an order compelling the Attorney General to revoke the Order made, or deemed to have been made, under subsection (1), in respect of the applicant.

(6) The judge may receive in evidence, anything (including information obtained from the government or institution or agency of a foreign state or an international organisation), that, in the opinion of the judge, is reliable and relevant, even if the thing would not otherwise be admissible in law, and may base his or her decision on that evidence.

(7) The Attorney General shall review all the Orders made under subsection (1), every 6 months to determine whether there are still reasonable grounds for any such Order to continue to apply to a specified entity, and if he or she determines that there are no such reasonable grounds, shall recommend the revocation of the Order made under subsection (1), in respect of that specified entity.

## **5. Orders etc. to give effect to resolutions of the security council**

(1) Where the Security Council of the United Nations decides, in pursuance of Article 41 of the Charter of the United Nations, on the measures to be employed to give effect to any of its decisions and calls upon the Government of Saint Lucia to apply those measures, the Minister responsible for External Affairs may, with the approval of Cabinet, by Order in the Gazette, make such provision as may appear to him or her to be necessary or expedient to enable those measures to be effectively applied.

(2) Where an Order under subsection (1) makes provision to the effect that there are reasonable grounds to believe that an entity specified in the Order is engaged in terrorist activity, that entity shall be deemed, with effect from the date of the Order, to have been declared a specified entity under section 3.

## **PART 2 OFFENCES**

### **5. Provision or collection of property to commit terrorist acts**

Any person who—

- (a) provides;
- (b) collects; or
- (c) makes available,

by, any means, directly or indirectly, any property, intending, knowing or having reasonable grounds to believe that the property will be used in full or in part to carry out a terrorist act commits an offence and is on conviction on indictment, liable to imprisonment for a term of 25 years.

### **6. Provision of service for commission of terrorist acts**

Any person who, directly or indirectly, provides or makes available, financial or other related services—

- (a) intending that they be used, in whole or in part, for the purpose of committing or facilitating the commission of a terrorist act or for the purpose of benefiting any person who is committing or facilitating the commission of a terrorist act; or
- (b) knowing that in whole or part, they will be used by, or will benefit, a terrorist group,

commits an offence and is on conviction on indictment, liable to imprisonment for a term of 25 years.

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

Any 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 on conviction on indictment, liable to imprisonment for a term of 25 years.

### **8. Arrangements for retention or control of terrorist property**

Any 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 removal out of jurisdiction;
- (c) by transfer to a nominee; or
- (d) in any other way,

commits an offence and is on conviction on indictment, liable to imprisonment for a term of 25 years.

## **9. Dealing with terrorist property**

Any 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;
- (e) provides financial or other services in respect of terrorist property at the direction of a terrorist group,

commits an offence and is, on conviction on indictment, liable to imprisonment for a term of 25 years.

## **10. Soliciting and giving of support to terrorist groups or for the commission of terrorist act**

(1) Any 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, on conviction on indictment, liable to imprisonment for a term of 25 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 or at the direction of or in association with a terrorist group.

## **11. Harbours of persons committing terrorist acts**

Any 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, on conviction on indictment, liable to imprisonment for a term of 15 years.

## **12. Provision of devices to terrorist groups**

Any 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, on conviction on indictment, liable to imprisonment for a term of 25 years.

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

Any 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, on conviction on indictment, liable to imprisonment for a term of 15 years.

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

Any person who knowingly agrees to provide training or instruction, 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, on conviction on indictment, liable to imprisonment for a term of 25 years.

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

Any 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, on conviction on indictment, liable to imprisonment for a term of 15 years.

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

Any 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, agent, or master of a vessel or the owner, charterer, lessee, operator, agent or pilot in charge of an aircraft knowingly permits that vessel or aircraft to be used;
- (c) 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 15, or planning, promoting or supporting the commission of a terrorist act, commits an offence and is, on conviction on indictment, liable to imprisonment for a term of 15 years.

## **17. Conspiracy to commit offences under this act**

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

(2) Any person who conspires with another in a place outside Saint Lucia to do any act in Saint Lucia which constitutes an offence under this Act shall be deemed to have conspired in Saint Lucia to do that act.

## **18. Membership of terrorist groups**

(1) Any person who—

(a) is a member of;

(b) professes to be a member of,

a terrorist group commits an offence and is, on conviction on indictment, liable to imprisonment for a term of 15 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, or that he or she has not taken part in the activities of that entity, after it became a terrorist group.

## **19. Arrangements of meetings in support of terrorist groups**

(1) Any 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, on conviction on indictment, liable to imprisonment for a term not exceeding 10 years.

(2) For the purposes of subsection (1), “**meeting**” means a meeting of 2 or more persons, whether or not the public is admitted.

## **20. Participation in the commission of offences under this act**

Any 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 on conviction on indictment, liable to the same punishment as is prescribed for the first mentioned offence.

**PART 3**  
**INVESTIGATION OF OFFENCES**

**21. Powers of arrest**

Any police officer may arrest without warrant any person who has committed or is committing or whom he or she has reasonable grounds for suspecting to have committed or to be committing an offence under this Act.

**22. 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 of the High Court for a detention order.

(2) A police officer may make an application under subsection (1) only with the prior written consent of the Attorney General.

(3) A judge to whom an application is made under subsection (1) may make an order for the detention of the person named in the application if the judge is satisfied that the written consent of the Attorney General has been obtained as required by subsection (2) and, that there are reasonable grounds to believe that—

- (a) the person is preparing to commit an offence under this Act; or
- (b) is interfering or is likely to interfere with, an investigation into an offence under this Act.

(4) An order under subsection (3), shall be for a period not exceeding 48 hours in the first instance and may, on application made by a police officer, be extended for a further period, provided that the maximum period of detention under the order does not exceed 5 days.

(5) An order under subsection (3), shall specify the place at which the person named in the order is to be detained and the conditions subject to which he or she is to be detained including conditions relating to access to a medical officer and an accurate, continuous and uninterrupted record of his or her detention for the whole period of his or her detention.

**23. 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 of the High Court for an order for the gathering of information.

(2) A police officer may make an application under subsection (1), only with the prior written consent of the Attorney General.

(3) A judge to whom an application is made under subsection (1), may make an order for the gathering of information if the judge is satisfied that the written consent of the Attorney General has been obtained as required under subsection (2) and—

- (a) that there are reasonable grounds to believe that—
  - (i) an offence under this Act has been committed, and
  - (ii) information concerning the offence, or information that may reveal the whereabouts of a person suspected by the police officer of having committed the offence, 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 an offence referred to in subparagraph (i), or that may reveal the whereabouts of a person who the police officer suspects may commit the offence referred to in this paragraph, and
- (iii) reasonable attempts have been made to obtain the information referred to in subparagraph (ii), from the person referred to in that subparagraph.

(4) An order under subsection (3) may—

- (a) order the examination, on oath or not, of a person named in the order;
- (b) order the person to attend at the place fixed by the judge, or by the judge designated under paragraph (d), as the case may be, for the examination and to remain in attendance until excused by the presiding judge;
- (c) order the person to bring to the examination any document or thing in his or her possession or control, and produce it to the presiding judge;
- (d) designate another judge as the judge before whom the examination is to take place; and
- (e) include any other terms or conditions that the judge considers desirable, including terms or conditions for the protection of the interests of the person named in the order and of third parties or for the protection of any ongoing investigation.

(5) An order made under subsection (3), may be executed anywhere in Saint Lucia.

(6) The judge who made the order under subsection (3), or another judge of the same court, may vary the terms and conditions of the order.

(7) A person named in an order made under subsection (3), shall answer questions put to the person by the Attorney General or the Attorney General's representative, and shall produce to the presiding judge documents or things that the person was ordered to bring, but may refuse to do so if answering a question or producing a document or thing would disclose information that is protected by the law relating to non disclosure of information or privilege.

(8) The presiding judge shall rule on an objection or other issue relating to a refusal to answer a question or to produce a document or thing.

(9) No person shall be excused from answering a question, producing a document or thing under subsection (7), on the ground that the answer or document or thing may tend to incriminate the person or subject the person to any proceedings or penalty, but—

- (a) no answer given or document or thing produced under subsection (7), shall be used or received against the person in any criminal proceedings against that person, other than in a prosecution for perjury or giving false evidence; and
- (b) no evidence derived from the evidence obtained from the person shall be used or received against the person in any criminal proceedings against that person, other than in a prosecution for perjury or giving false evidence.

(10) A person has the right to retain and instruct counsel at any stage of the proceedings under this section.

(11) The presiding judge, if satisfied that any document or thing 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 or thing be given into the custody of the police officer or someone acting in the police officer's behalf.

## **24. Power to intercept communications and the admissibility of intercepted communications**

(1) Subject to subsection (2), a police officer may, for the purpose of obtaining evidence of the commission of an offence under this Act, apply, *ex parte*, to a Judge of the High Court, for an interception of communications order.

(2) A police officer may make an application under subsection (1), only with the prior written consent of the Attorney General.

(3) A judge to whom an application is made under subsection (1) may make an order—

- (a) requiring a communications service provider to intercept and retain a specified communication or communications of a specified description received or transmitted, or about to be received or transmitted by that communications service provider;
- (b) authorizing the police officer to enter any premises and to install on such premises, any device for the interception and retention of a specified communication or communications of a specified description and to remove and retain such device,

if the judge is satisfied that the written consent of the Attorney General has been obtained as required by subsection (2) and, that there are reasonable grounds to believe that material information relating to—

- (i) the commission of an offence under this Act, or
- (ii) the whereabouts of the person suspected by the police officer to have committed the offence,

is contained in that communication or communications of that description.

(4) Any information contained in a communication—

- (a) intercepted and retained pursuant to an order under subsection (3);
- (b) intercepted and retained in a foreign state in accordance with the law of that foreign state and certified by a Judge of that foreign state to have been so intercepted and retained,

shall be admissible in proceedings for an offence under this Act, as evidence of the truth of its contents notwithstanding any other law relating to hearsay.

## **PART 4 TRIAL OF OFFENCES**

### **25. Jurisdiction to try offences under this act**

(1) The High Court shall have jurisdiction to try an offence under this Act if the act or omission constituting the offence is committed in Saint Lucia.

(2) For the purposes of subsection (1), an act or omission committed outside Saint Lucia and which would, if committed in Saint Lucia constitute an offence under this Act, shall be deemed to have been committed in Saint Lucia if—

- (a) the person committing the act or omission is—
  - (i) a citizen of Saint Lucia,
  - (ii) not a citizen of any country but is ordinarily resident in Saint Lucia;
- (b) the person committing the act or omission is present in Saint Lucia and cannot be extradited to a foreign State having jurisdiction over the offence constituted by such act or omission;

- (c) the act or omission is committed against a citizen of Saint Lucia;
- (d) the act or omission is committed against property belonging to the Government of Saint Lucia outside Saint Lucia; or
- (e) the person who commits the act or omission is after its commission, present in Saint Lucia.

## **26. Evidence by certificate**

(1) Where in any proceedings for an offence under this Act, a question arises as to whether any thing or substance is a weapon, a hazardous, radioactive or a harmful substance, a toxic chemical microbial or other biological agent or toxin, a certificate purporting to be signed by an appropriate authority to the effect that the thing or substance described in the certificate is a weapon, hazardous, radioactive or harmful substance, a toxic chemical or microbial or other biological agent or toxin, shall be admissible in evidence without proof of the signature or authority of the person appearing to have signed it and shall, in absence of evidence to the contrary, be proof of the facts stated therein.

(2) For the purposes of subsection (1) “**appropriate authority**” includes any person who is competent to issue a certificate of the kind referred to in that subsection.

## **PART 5 INFORMATION SHARING, EXTRADITION AND MUTUAL ASSISTANCE IN CRIMINAL MATTERS**

### **27. Exchange of information relating to terrorist groups and terrorist acts**

The Commissioner of Police may, on a request made by the appropriate authority of a foreign State, disclose to that authority, any information in his or her possession or in the possession of any other government department or agency, relating to any of the following—

- (a) the actions or movements of terrorist groups or 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 terrorist groups or persons suspected of involvement in the commission of terrorist acts;
- (d) the use of communication technologies by terrorist groups,  
if the disclosure is not prohibited by any provision of law and will not, in the Commissioner’s view, be prejudicial to national security or public safety.

### **28. Conventions to be used as basis for extradition**

(1) Where Saint Lucia becomes a party to a counter terrorism convention and there is in force, an extradition arrangement between the Government of Saint Lucia and another State which is a party to that counter terrorism Convention, the extradition arrangement shall be deemed, for the purposes of the Extradition Act, to include provision for extradition in respect of offences falling within the scope of that counter terrorism convention.

(2) Where Saint Lucia becomes a party to a counter terrorism convention and there is no extradition arrangement between the government of Saint Lucia and another State which is a party to that counter terrorism convention, the Minister may, by Order published in the Gazette, treat the counter terrorism convention, for the purposes of the Extradition Act, as an extradition arrangement between the

Government of Saint Lucia and that State, providing for extradition in respect of offences falling within the scope of that counter terrorism convention.

### **29. Convention to be used as basis for mutual assistance in criminal matters**

(1) Where Saint Lucia becomes a party to a counter terrorism convention and there is in force, an arrangement between the government of Saint Lucia and another State which is a party to that counter terrorism convention, for mutual assistance in criminal matters, the arrangement shall be deemed, for the purposes of the Mutual Criminal Matters Act, to include provision for mutual assistance in criminal matters in respect of offences falling within the scope of that counter terrorism convention.

(2) Where Saint Lucia becomes a party to a counter terrorism convention and there is no arrangement between the government of Saint Lucia and another State which is a party to that counter terrorism convention for mutual assistance in criminal matters, the Minister may, by Order published in the Gazette, treat the counter terrorism convention as an arrangement between the Government of Saint Lucia and that State providing for mutual assistance in criminal matters in respect of offences falling within the scope of that counter terrorism convention.

### **30. Offences deemed not to be offences of a political character**

(1) Notwithstanding anything in the Extradition Act or Mutual Assistance Act, an offence under this Act or an offence under any other Act where the act or omission constituting the offence also constitutes a terrorist act, shall, for the purposes of extradition or mutual assistance be deemed not to be—

- (a) an offence of a political character or an offence connected with a political offence or an offence inspired by political motives; or
- (b) a fiscal offence.

(2) Notwithstanding anything in the Mutual Assistance Act, no request for mutual assistance in relation to an offence under this Act or an offence under any other Act where the act or omission also constitutes a terrorist act, may be declined solely on the basis of bank secrecy.

## **PART 6 DISCLOSURE AND SHARING OF INFORMATION**

### **31. Duty to disclose information relating to offences and terrorist acts**

(1) Any person who has any information which will be of assistance in—

- (a) preventing the commission by another person of a terrorist act;
- (b) securing the arrest or prosecution of another person for an offence under this Act, or an offence under any other act where the act or omission also constitutes a terrorist act,

shall forthwith disclose the information to a police officer not below the rank of inspector.

(2) Nothing in subsection (1), requires the disclosure of any information which is protected by privilege.

(3) No civil or criminal proceedings shall lie against any person for disclosing any information in good faith, under subsection (1).

(4) Any person who fails to comply with subsection (1) commits an offence and is, on conviction on indictment, liable to imprisonment for a term not exceeding 5 years.

### **32. Duty to disclose information relating to property of terrorist groups etc.**

(1) A person shall forthwith disclose to the Financial Intelligence Authority—

- (a) the existence of any property in his or her possession or control, which to his or her knowledge is terrorist property, or for which there are reasonable grounds to believe is terrorist property;
- (b) the existence of any property in his or her possession or control, owned or controlled by or on behalf of a specified entity or for which there are reasonable grounds to believe is owned or controlled by or on behalf of a specified entity;
- (c) any information regarding a transaction or proposed transaction in respect of terrorist property; or
- (d) any information regarding a transaction or proposed transaction for which there are reasonable grounds to believe may involve terrorist property.

(2) The Financial Intelligence Authority may disclose to the Financial Intelligence Unit of a foreign State or the appropriate authority of a foreign State, as the case may be, any information in its possession relating to any property owned or controlled by or on behalf of a terrorist group, if such information is requested or if the Financial Intelligence Authority in Saint Lucia is of the view that the information would be relevant to a foreign State.

(3) Every financial institution shall report, every 6 months, to the Financial Intelligence Authority and any body authorized by law to supervise and regulate its activities—

- (a) that it is not in possession or control of any property owned or controlled by or on behalf of a terrorist group;
- (b) 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) In addition to the requirements of subsection (3), every financial institution shall report to the Financial Intelligence Authority, every transaction which occurs within the course of its activities, and in respect of which there are reasonable grounds to suspect that the transaction is related to the commission of a terrorist act.

(5) No civil or criminal proceedings shall lie against any person for making a disclosure or report, in good faith, under subsection (1) or (2) or (3) or (4).

(6) Every person who fails to comply with subsection (1) or (3) or (4) commits an offence and is on conviction on indictment, liable to imprisonment for a term not exceeding 10 years.

(7) Where an offence under this section is committed by a body of persons, whether corporate or incorporate, a person who at the time of the commission of the offence, acted or purported to act in an official capacity for or on behalf of the body of persons, is regarded as having committed the offence and shall be tried and punished accordingly.

(8) The provisions of this section are without prejudice to the provisions of the Financial Intelligence Authority Act or any enactment replacing it.

## **PART 7**

### **SEIZURE AND FORFEITURE OF TERRORIST PROPERTY**

#### **33. Power to seize property used in commission of terrorist acts**

(1) Where the Commissioner of Police has reasonable grounds to believe that any property has been, is being, or may be used to commit an offence under this Act, he or she may seize the property.

(2) The Commissioner of Police may exercise his or her powers under subsection (1) whether or not any proceedings have been instituted for an offence under this Act in respect of that property.

(3) The Commissioner of Police, shall as soon as practicable after seizing any property under subsection (1), and in any event within 10 days, make an application, *ex parte*, to a Judge of the High Court for a detention order in respect of that property.

(4) A judge to whom an application is made under subsection (3) shall not make a detention order in respect of the property referred to in the application unless he or she—

- (a) has given every person appearing to have an interest in the property a reasonable opportunity of being heard;
- (b) has reasonable grounds to believe that the property has been, is being, or may be used to commit an offence under this Act.

(5) Subject to subsection (6), every detention order made under subsection (4) shall be valid for a period of 60 days and may, on application, be renewed by a Judge of the High Court, for a further period of 60 days until such time as the property referred to in the order is produced in court in proceedings for an offence under this Act in respect of that property.

(6) A Judge of the High Court may release any property referred to in a detention order made under subsection (4), if—

- (a) he or she no longer has reasonable grounds to believe that the property has been, is being or will be used to commit an offence under this Act; or
- (b) no proceedings are instituted in the High Court for an offence under this Act in respect of that property within 6 months of the date of the detention order.

(7) No civil or criminal proceedings shall lie against the Commissioner of Police for a seizure of property, made in good faith, under subsection (1).

#### **34. Order for forfeiture of property on conviction**

(1) Where any person is convicted of an offence under this Act, or of property—

- (a) used for, or in connection with; or
  - (b) obtained as proceed from,
- the commission of that offence, be forfeited to the State.

(2) Before making an order under subsection (1), the court shall give every person appearing to have an interest in the property in respect of which the order is proposed to be made, an opportunity of being heard.

(3) Property forfeited to the State under subsection (1), shall vest in the State—

- (a) if no appeal has been made against the order at the end of the period within which an appeal may be made against the order; and
- (b) if an appeal has been made against the order, on the final determination of the appeal.

#### **35. Orders for seizure and restraint of property**

(1) Where a judge of the High Court is satisfied, on an *ex parte* application made to the judge in chambers, that there are reasonable grounds to believe that there is in any building, place or vessel, any property in respect of which an order of forfeiture may be made under section 36 the judge may issue—

- (a) a warrant authorising a police officer to search the building, place or vessel for that property and to seize that property if found, and any other property in respect of which that police officer believes, on reasonable grounds, that an order of forfeiture may be made under section 36;

- (b) a restrain order prohibiting any person from disposing or otherwise dealing with any interest in that property, other than as may be specified in the order.

(2) On an application made under subsection (1), the judge may, at the request of the Attorney General and if the judge is of the opinion that the circumstances so require—

- (a) appoint a person to take control of, and manage or otherwise deal with the whole or a part of the property, in accordance with the directions of the judge;
- (b) require any person having possession of the property to give possession thereof to the person appointed under paragraph (a).

(3) The power to manage or otherwise deal with property under subsection (2) includes—

- (a) in the case of perishable or rapidly depreciating property, the power to sell that property; and
- (b) in the case of property that has little or no value, the power to destroy that property.

(4) Before a person appointed under subsection (2) destroys any property referred to in subsection (3)(b), he or she shall apply to a judge of the High Court for a destruction order.

(5) Before making a destruction order in relation to any property, the judge shall require notice to be given, in such manner as the judge may direct, to any person who, in the opinion of the judge, appears to have an interest in the property and may provide that person with a reasonable opportunity to be heard.

(6) A judge may order that any property in respect of which an application is made under subsection (4), be destroyed if he or she is satisfied that the property has little or no financial or other value.

(7) A management order under subsection (2) shall cease to have effect when the property which is the subject of the management order is returned to an applicant in accordance with the law or forfeited to the State.

(8) The Attorney General may at any time apply to a Judge of the High Court to cancel or vary a warrant or order issued under this section.

### **35A. Review of search warrants and restraining orders**

(1) A person who has an interest in property that was seized under a warrant issued under section 35 or in respect of which a restraining order was made may, at any time, apply to the Court—

- (a) for an order under subsection (4); or
- (b) for permission to examine the property.

(2) An application under subsection (1) shall not be heard by the Court unless the applicant gives to the Director of Public Prosecutions at least 3 days clear notice in writing of the application.

(3) The Court may require notice of the application to be given to, and may hear, any person who, in the opinion of the Court, appears to have an interest in the property.

(4) On an application made under subsection (1)(a) in respect of any property, the Court may, after hearing the applicant, the Director of Public Prosecutions and any other person to whom notice was given under subsection (3), order that the property or any part of the property be returned to the applicant or, in the case of a restraining order, revoke the order or vary the order to exclude the property or any interest in the

property or any part of the property from the application of the order, or make the order subject to such conditions as the Court thinks fit—

- (a) if the applicant enters into a recognizance before the Court, with or without sureties, in such amount and with such conditions, as the Court directs and, where the Court considers it appropriate, deposits with the Court such sum of money or other valuable security as the Court directs;
- (b) if the conditions referred to in subsection (5) are satisfied; or
- (c) for the purpose of—
  - (i) meeting the reasonable living expenses of the person who was in possession of the property at the time the warrant was executed or the order was made or any person who, in the opinion of the Court has an interest in the property and of the dependants of that person, or
  - (ii) meeting the reasonable business or legal expenses of a person referred to in subparagraph (i).

(5) An order under subsection (4)(b) in respect of property may be made by the Court if the Court is satisfied—

- (a) that a warrant should not have been issued under section 24 or a restraining order should not have been made, in respect of that property; or
- (b) that the applicant is the lawful owner of, or lawfully entitled to possession of, the property and appears innocent of any complicity in a scheduled offence or of any collusion in relation to such an offence; and
- (c) that the property will no longer be required for the purpose of any investigation or as evidence in any proceedings.

(6) On an application made to the Court under subsection (1)(b), the Court may order that the applicant be permitted to examine property subject to such terms as may appear to the Court to be necessary or desirable to ensure that the property is safeguarded and preserved for the purpose for which it may subsequently be required.

*(Inserted by Act 5 of 2010)*

### **35B. Expiry of restraining orders**

(1) Subject to this section, where a restraining order is made in relation to property, the restraining order does not continue in force for a period of more than 6 months after the time of the making of the order unless before the expiration of that period, the Director of Public Prosecutions applies to the Court that made the order for an extension of the period of operation of the order.

(2) Where the Director of Public Prosecutions applies under subsection (1) for an extension of the period of operation of a restraining order and the Court is satisfied—

- (a) that a forfeiture order may be made in respect of the property or part of it; or
- (b) that a confiscation order may be made against a person in relation to property which is the subject of a restraining order;

the Court may extend for a specific period the period of operation of the restraining order and make such other order as it considers appropriate in relation to the operation of the restraining order.

*(Inserted by Act 5 of 2010)*

### **35C. Disposal of property seized or dealt with**

Subject to this section, where the Court is satisfied that property will no longer be required for the purposes of sections 34 and 36 or any enactment providing for forfeiture or for the purpose of any investigation or as evidence in any proceeding, the Court shall, on the application of the Director of Public Prosecutions or any person having an interest in the property or on the Court's own motion—

- (a) where a restraining order is made in relation to any property, revoke the order;
- (b) where a recognizance has been entered into under section 35A(4)(a), cancel the recognizance; and
- (c) where property has been seized under a warrant issued under section 35 or where the property is under the control of a person appointed under section 35A—
  - (i) if possession of it by the person from whom it was taken is lawful, order that it be returned to that person,
  - (ii) if possession of it by the person from whom it was taken is unlawful and the lawful owner or person who is lawfully entitled to its possession is known, order that it be returned to the lawful owner or the person who is lawfully entitled to its possession, or
  - (iii) if possession of it by the person from whom it was taken is unlawful and the lawful owner or person who is lawfully entitled to its possession is not known, may order that it be forfeited to the Crown, to be disposed of or otherwise dealt with in accordance with law.

*(Inserted by Act 5 of 2010)*

### **36. Orders for forfeiture of property**

(1) The Attorney General may make an application to a Judge of the High Court for an order of forfeiture in respect of terrorist property.

(2) The Attorney General shall be required to name as respondents to an application under subsection (1), only those persons who are known to own or control the property that is the subject of the application.

(3) The Attorney General shall give notice of an application under subsection (1), to the respondents named in the application in such manner as the judge may direct.

(4) If a judge is satisfied, on a balance of probabilities, that the property which is the subject of the application is terrorist property, the judge shall order that the property be forfeited to the State to be disposed of as directed by the judge.

(5) Where a judge refuses an application under subsection (1), the judge shall make an order that describes the property and declare it is not property referred to in that subsection.

(6) On an application under subsection (1), a judge may require notice to be given to any person, who in the opinion of the judge, appears to have an interest in the property and any such person shall be entitled to be added as a respondent to the application.

(7) If a judge is satisfied that a person referred to in subsection (6)—

- (a) has an interest in the property which is the subject of the application;
- (b) has exercised reasonable care to ensure that the property is not the proceeds of a terrorist act, would not be used to commit or facilitate the commission of a terrorist act and would not be used by a terrorist group; and
- (c) is not a member of a terrorist group,

the judge shall order that the interest shall not be affected by the order and the order shall also declare the nature and extent of the interest in question.

(8) A person who claims an interest in property that has been forfeited and who has been given notice under subsection (6), may make an application to the Court of Appeal to vary or set aside an order made under subsection (4), not later than 30 days after the day on which the forfeiture order was made.

(9) Pending the determination of an appeal against an order for forfeiture made under this section, property restrained under section 35 shall continue to be restrained, property seized under a warrant issued under that section shall continue to be detained, and any person appointed to manage, control or otherwise deal with the property under that section shall continue in that capacity.

(10) The provisions of this section shall not affect the operation of any other provision of this Act respecting forfeiture.

### **37. Refusal and revocation of registration of charities linked to terrorist groups**

(1) The Registrar of Companies may sign a certificate refusing or revoking registration of a charity, based on information received including any security or criminal intelligence reports, where there are reasonable grounds to believe that an applicant for registration as a registered charity (in this section referred to as "the applicant") or a registered charity has made, is making, or is likely to make available, any resources, directly or indirectly, to a terrorist group.

(2) A copy of the signed certificate shall be served on the applicant or the registered charity, personally or by registered letter sent to its last known address, with a copy of the certificate.

(3) The certificate or any matter arising out of it shall not be subject to review or be restrained, prohibited, removed, set aside or otherwise dealt with, except in accordance with this section.

(4) Within 30 days of receipt of the copy of the notice under subsection (2), the applicant or the registered charity may make an application to the High Court to review the decision of the Registrar of Companies.

(5) Upon filing of an application under subsection (4), a judge of that court shall—

- (a) examine in chambers, the information, including any security or criminal or intelligence reports, considered by the Registrar of Companies before signing the certificate and hear any evidence or information that may be presented by or on behalf of the Registrar of Companies, whether or not such information is admissible in a court of law, and may, on the request of the Registrar of , Companies, hear all or part of that evidence or information in the absence of the applicant or registered charity, or any counsel representing the applicant or the registered charity, if the judge is of the opinion that the disclosure of the information would be prejudicial to national security or endanger the safety of any person;
- (b) provide the applicant or the registered charity with a statement summarising the information available to the judge so as to enable the applicant or the registered charity to be reasonably informed of the circumstances giving rise to the certificate without disclosing any information the disclosure of which would, in the judge's opinion, be prejudicial to national security or endanger the safety of any person;
- (c) provide the applicant or registered charity with a reasonable opportunity to be heard; and
- (d) determine whether the certificate is reasonable on the basis of all the information available to the judge or if found not reasonable, quash it.

(6) A determination under subsection (5), shall not be subject to appeal or review by any court.

(7) Where the judge determines, under subsection (5), that a certificate is reasonable, or if no application is brought upon the expiry of 30 days from the date of service of the notice, the Registrar of Companies shall cause the certificate to be published in the Gazette.

(8) A certificate determined to be reasonable under subsection (5) shall be deemed for all purposes to be sufficient grounds for the refusal of the application for registration of the charity referred to in the certificate or the revocation of the registration of the charity referred to in the certificate.

(9) Where the judge determines that the certificate is not reasonable, he or she shall order the registration or continued registration of the charity.

(10) For the purposes of this section, “**charity**” includes a company registered as a non-profit company under the Companies Act or any enactment replacing it.

## **PART 8 MISCELLANEOUS**

### **38. Provision of information relating to passengers of vessels and aircraft**

(1) The—

- (a) operator of an aircraft or master of a vessel, departing from Saint Lucia;
- (b) operator of an aircraft registered in Saint Lucia or master of a vessel registered in Saint Lucia, departing from any place outside Saint Lucia,

may, subject to regulations made under subsection (5), provide—

- (i) to the Chief Immigration Officer any information in his or her possession, relating to persons on board, or expected to be on board, the aircraft or vessel, as the case may be,
- (ii) to the competent authority in a foreign state, any information in his or her possession, relating to persons on board, or expected to be on board, the aircraft or vessel, as the case may be, and required by the laws of that foreign state.

(2) The provision of any information under subsection (1) subject to guidelines made under subsection (4), shall be deemed not to be a contravention of any provision of law prohibiting the disclosure of the information.

(3) No information provided to the Chief Immigration Officer under subsection (1), shall be used or disclosed by the Chief Immigration Officer except for the purpose of protecting national security or public safety.

(4) The Attorney General may issue guidelines generally to give effect to the purposes of this section, including guidelines respecting the types or classes of information that may be provided under this section.

### **39. Power to prevent entry and order the removal of persons**

(1) The Chief Immigration Officer or other authorized officer under the laws relating to immigration shall not grant an endorsement or other authority permitting a person to enter Saint Lucia if he or she has reasonable grounds to believe that that person has been, is, or will be, involved in the commission of a terrorist act.

(2) Where the Minister with the responsibility for Immigration has reasonable grounds to believe that a person in Saint Lucia has b

(3) Subject to subsection (1), where further detention is authorised ten, is or will be, involved in the commission of a terrorist act, he or she may make an order requiring that person to leave Saint Lucia and remain thereafter out of Saint Lucia.

(4) A person with respect to whom an order under subsection (2), is made shall leave Saint Lucia and shall, so long as the order is in force, remain out of Saint Lucia.

(5) A person with respect to whom an order under subsection (2) is made may be detained in such manner as may be directed by the Minister with the responsibility for Immigration and may be placed on a vessel or aircraft leaving Saint Lucia.

(6) The provisions of this section shall not apply to citizens of Saint Lucia.

#### **40. Power to refuse refugee application**

The Minister with the responsibility for Immigration may, having regard to the interest of national security and public safety, refuse the application of any person applying for status as a refugee, if he or she has reasonable grounds to believe that the applicant has committed a terrorist act or is or is likely to be, involved in the commission of a terrorist act.

#### **41. Regulations**

The Minister may make regulations to give effect to this Act.

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### **CHAPTER 3.16 ANTI-TERRORISM ACT**

#### **SUBSIDIARY LEGISLATION**

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##### *List of Subsidiary Legislation*

1. Anti-Terrorism (Guidance Notes) Regulations – Section 41
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#### **Anti-Terrorism (Guidance Notes) Regulations – Section 41**

##### **(Statutory Instrument 56/2010)**

Statutory Instrument 56/2010 .. in force 26 May 2010

##### ARRANGEMENT OF REGULATIONS

1. Citation
  2. Guidance Notes
- Schedule
- 

#### **ANTI-TERRORISM (GUIDANCE NOTES) REGULATIONS – SECTION 41**

Commencement [26 May 2010]

##### **1. Citation**

These Regulations may be cited as the Anti-Terrorism (Guidance Notes) Regulations.

##### **2. Guidance notes**

- (1) The Guidance Notes set out in the Schedule regulates financial institutions.

(2) A breach of the Guidance Notes by a financial institution constitutes an offence and the financial institution is liable to a fine not exceeding \$1million.

(3) A financial institution is deemed to have notice of the provisions of the Guidance Notes for the registration of a ship shall be in the form set out in Form 1 of the Schedule.

## **Schedule**

(Regulation 2)

### **ANTI-TERRORISM FINANCING**

#### **GUIDANCE NOTES FOR FINANCIAL INSTITUTIONS**

##### **PART I**

These Guidelines have been issued by the Financial Intelligence Authority (FIA) in recognition of the risks the financial sector in Saint Lucia is exposed to with regard to the financing of terrorism.

The Guidelines reflect best practice internationally and implement the recommendations of the Financial Action Task Force (FATF) and the Caribbean Financial Action Task Force (CFATF).

The Guidelines are directed to all financial institutions and are designed to assist with the enforcement of the Anti-Terrorism Act (ATA), as they

represent good industry practice. It is recommended that financial institutions should adopt internal procedures which are of equivalent standard.

Institutions should be aware that business dealings with terrorists or terrorist organizations could result in the institution facing significant legal, operational and reputation risks. These risks increase significantly if there is a lack of effective monitoring which may enable persons to carry out acts of terrorism.

All financial institutions are therefore required to establish and implement programmes, policies, procedures and controls in order to prevent and deter the financing of terrorism as specified in the ATA.

These Guidelines should be read in conjunction with the FIA's Revised Anti-Money Laundering Guidelines, particularly with regard to "Verification" or "Know Your Customer" procedures.

The FIA recognizes that institutions may have systems and procedures in place which, whilst not identical to these outlined in the Guidelines, nevertheless impose controls and procedures, that are at least equal if not higher to those contained in the Guidelines.

The Authority actively encourages all institutions to develop and maintain links with it to ensure that the internal systems and procedures are effective and up to date, so enabling them to implement their duty of vigilance.

##### **WHAT IS TERRORISM?**

Under the Anti-Terrorism Act a terrorist act is defined as—

- (a) an act or omission in or outside Saint Lucia which constitutes an offence within the scope of a counter terrorism convention;
- (b) an act or threat of action in or outside Saint Lucia which—
  - (i) involves serious bodily harm to a person,
  - (ii) involves serious damage to property,
  - (iii) endangers a person's life,

- (iv) creates a serious risk to the health or safety of the public or a section of the public,
- (v) involves the use of firearms or explosives,
- (vi) involves releasing into the environment or any part thereof or distributing or exposing the public or any part thereof to—
  - (aa) intimidate the public or a section of the public; or
  - (ab) compel a government or an international organization to do, or refrain from doing, any act; and
  - (ac) is made for the purpose of advancing a political, ideological, or religious cause;
- (c) an act which—
  - (i) disrupts any services, and
  - (ii) is committed in pursuance to a protest, demonstration or stoppage of work,

shall be deemed not to be a terrorist act within the meaning of this definition, so long as the act is not intended to result in any harm referred to in sub-paragraphs (i),(ii), (iii) or (iv) of paragraph (b).

### **WHAT IS FINANCING OF TERRORISM?**

Financing of terrorism is the term used to describe the accommodating or facilitating of financial transactions that may be directly related to terrorist groups or organizations and their activities.

Financing of terrorism may involve funds raised from criminal activity e.g. fraud (credit cards and cheques), prostitution, smuggling, intellectual property theft (e.g. CD piracy), kidnapping and extortion.

Some terrorists operations, however, do not depend on outside sources of money and may be self funding either through legitimate sources such as employment, personal donations and profits from charitable organizations.

Money laundering and terrorist financing often share similar transactional features mostly in relation to the concealment and disguise of funds. It should be noted, however, that terrorist financing tends to be in smaller amounts than in the case with money laundering, and when terrorist raise funds from legitimate sources, the detection and tracking of these funds becomes more difficult.

### **RELEVANT OFFENCES UNDER THE ATA**

#### **Provision of Services for Commission of Terrorist Acts**

Any person who, directly or indirectly, provides or makes available financial or other related services—

- (a) intending that they be used, in whole or in part, for the purpose of committing or facilitating the commission of a terrorist act or for the purpose of benefiting any person who is committing or facilitating the commission of a terrorist act; or
- (b) knowing that in whole or part, they will be used by or will benefit, a terrorist group, commits an offence and is on conviction on indictment, liable to imprisonment for a term of twenty-five (25) years.

#### **Dealing with Terrorist Property**

Any 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;
- (e) provides financial or other services in respect of terrorist property at the direction of a terrorist group;

commits an offence and is on conviction on indictment, liable to imprisonment for a term of twenty-five (25) years.

### **Financial Institutions**

A financial institution which engages in the financing of terrorist acts commits an offence and is liable on conviction on indictment to a fine of one million dollars (\$1,000,000.00).

A director, general manager, secretary or other like officer or an employee of the financial institution engages, in the financing of a terrorist act commits an offence and is liable to conviction on indictment to a fine of five hundred thousand dollars (\$500,000.00) or to imprisonment for a term of years or both.

## **PART II**

### **SCOPE OF THE GUIDELINES**

The guidelines apply to all financial institutions defined as commercial banks or any other institution which makes loans, advances or investments or accepts deposits of money from the public.

## **PART III**

As indicated previously money laundering and terrorist financing share similar transactional features, the systems and procedures used to deter and prevent money laundering apply equally to terrorist financing.

For the purpose of implementing Anti Terrorism Financing systems and measures, financial institutions should refer to and apply Part IV particularly as it relates to—

- (a) Vigilance;
- (b) Verification;
- (c) Reporting;
- (d) Record Keeping; and
- (e) Training.

## **PART IV**

### **TERRORISM FINANCING RED FLAGS**

#### **Potentially Suspicious Activity that may Indicate Terrorist Financing**

The following examples of potentially suspicious activity that may indicate terrorist financing are primarily based on "Guidance for Financial Institutions in Detecting Terrorist Financing" provided by the Financial Action Task Force (FATF). The FATF is an intergovernmental body whose purpose is the development and promotion of policies, both at national and international levels, to combat money laundering and terrorist financing.

#### **Activity Inconsistent with the Customer's Business**

- (a) Funds are generated by a business owned by persons of the same origin or by a business that involves persons of the same origin from high-risk countries (e.g., countries designated by national authorities and FATF as non-cooperative countries and territories);

- (b) The stated occupation of the customer is not commensurate with the type or level of activity;
- (c) Persons involved in currency transactions share an address or phone number, particularly when the address is also a business location or does not seem to correspond to the stated occupation (e.g. a student, an unemployed, or self-employed);
- (d) Regarding nonprofit or charitable organizations, financial transactions occur for which there appears to be no logical economic purpose or in which there appears to be no link between the stated activity of the organization and the other parties in the transaction;
- (e) A safe deposit box opened on behalf of a commercial entity when the business activity of the customer is unknown or such activity does not appear to justify the use of a safe deposit box.

### **Funds Transfers**

- (i) A large number of incoming or outgoing funds transfers take place through a business account, and there appears to be no logical business or other economic purpose for the transfers, particularly when this activity involves high-risk locations,
- (ii) Funds transfers are ordered in small amounts in an apparent effort to avoid triggering identification or reporting requirements,
- (iii) Funds transfers do not include information on the originator, or the person on whose behalf the transaction is conducted, when the inclusion of such information would be expected,
- (iv) Multiple personal and business accounts or the accounts of nonprofit organizations or charities are used to collect and funnel funds to a small number of foreign beneficiaries,
- (v) Foreign exchange transactions are performed on behalf of a customer by a third party, following by funds transfers to locations having no apparent business connection with the customer or to high-risk countries.

### **Other Transactions that Appear Unusual or Suspicious**

- (1) Transactions involving foreign currency exchanges are followed within a short time by funds transfers to high-risk locations;
- (2) Multiple accounts are used to collect and funnel funds to a small number of foreign beneficiaries, both persons and businesses, particularly in high-risk locations;
- (3) A customer obtains a credit instrument or engages in commercial financial transactions involving the movement of funds to or from high-risk locations when there appear to be no logical business reasons for dealing with those locations;
- (4) Banks from high-risk locations open accounts;
- (5) Funds are sent or received via international transfers from or to high-risk location;
- (6) Insurance policy loans or policy surrender values that are subject to a substantial surrender charge.

### **Red Flags – Non Government Organization (NGO) Terrorist Financing**

The red flags most often associated with NGO terrorist financing are—

- (a) Foreign bank accounts, where the NGO's stated aims and activities have no connection with that area;
- (b) The NGO has a high volume of wire transfers;

- (c) Transfers are made to regions where there is a high risk of terrorist activity;
- (d) The NGO has multiple accounts without a satisfactory explanation for their use;
- (e) The NGO receives third party cheques for deposit into its account;
- (f) Multiple cheques are received from the same individual;
- (g) Donations are diverted from their intended purpose or application;
- (h) Cash deposits are followed by immediate ATM withdrawals;
- (i) Donation cheques are cashed rather than deposited in the NGO account;
- (j) Transfers are received from intermediary organizations;
- (k) There are multiple transfers to the same recipient;
- (l) The NGO has a hoard of cash available that is not deposited into its account;
- (m) There is evidence of laying of funds;
- (n) The account history is inconsistent with typical NGO activity.

Many NGO officers who are involved in terrorist financing have had prior experience with other NGO's that were also fronts. All NGO staff, as well as officers and directors, should be vetted when the organization is periodically checked.

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