



*EXTRAORDINARY*  
**OFFICIAL GAZETTE**  
**THE BAHAMAS**  
PUBLISHED BY AUTHORITY

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NASSAU

31<sup>st</sup> December, 2004

(B)

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No. 25 of 2004

**AN ACT TO IMPLEMENT  
THE UNITED NATIONS CONVENTION  
RESPECTING THE SUPPRESSION OF  
THE FINANCING OF TERRORISM,  
THE UNITED NATIONS SECURITY COUNCIL  
RESOLUTION 1373  
ON TERRORISM AND GENERALLY TO MAKE  
PROVISION FOR PREVENTING AND  
COMBATING TERRORISM**

[Date of Assent — 31st December, 2004]

**Enacted by the Parliament of The Bahamas.**

**Short title.**

1. This Act may be cited as the Anti-Terrorism Act, 2004.

**Interpretation.**

2. In this Act -

“Convention” means 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;

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

“funds” means -

(a) assets of every kind whether tangible or intangible, movable or immovable, however acquired; and

(b) legal documents or instruments in any form; including electronic or digital, evidencing title to or interest in such assets as bank credits, travelers cheques, bank cheques, money orders, shares, securities, bonds, drafts, or letters of credit;

“listed entity” means an entity in respect of which an Order under section 4 has been made;

“Minister” means the Minister responsible for National Security;

“state or government facility” means any permanent or temporary facility or conveyance that is used or occupied 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.

**Offence  
of  
terrorism.  
First  
Schedule.**

- 3.(1) A person 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 First 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 organization to do or to refrain from doing any act; and
    - (ii) that is intended to cause –
      - (A) 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;
      - (B) serious risk to health or safety of the public or any segment of the public;

- (C) substantial property damage; whether to public or private property, where the damage involves a risk of the kind mentioned in sub-paragraph (B) or an interference or disruption of the kind mentioned in sub-paragraph (D); or
- (D) 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,

is guilty of 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, prior to the commencement of this act, shall be sentenced to death; or in any other case, is liable to imprisonment for life.

(2) A person who –

- (a) aids, abets, counsels, procures, incites or solicits the commission of an offence; or
- (b) conspires with another or others to commit an offence

under subsection (1) is liable on conviction on information to be punished as a principal offender under that subsection.

make an order, in this Part referred to as a "freezing order", freezing the funds in the possession of or under the control of that person.

(2) An application for a freezing order under subsection (1), may be made *ex parte* and shall be in writing and be accompanied by an affidavit stating -

- (a) where the person referred to in subsection (1) has been charged, the offence for which he is charged;
- (b) the person has been declared a listed entity under this Act;
- (c) where the person has not been charged, the grounds for -
  - (i) believing that the person committed the offence; or
  - (ii) having a reasonable suspicion that the person committed the offence;
- (d) a description of the funds in respect of which the freezing order is sought;
- (e) the name and address of the person who is believed to be in possession of the funds; and
- (f) the grounds for believing that the funds are related to or are used to facilitate an offence referred to in subsection (1) and that the funds are subject to the effective control of the person.

(3) Where the Court makes an order under subsection (1), the Court shall require that -

- (a) the Order be published within such time and manner as the Court directs;
- (b) the applicant, within twenty-one days of the making of the Order, serve notice of the Order together with a copy of the Order on any person whom, in the opinion of the Court, appears to have an interest in the funds referred to in

subsection (2); and

- (c) the person referred to in paragraph (b) or any other person that appears to have interest in the funds, be afforded an opportunity to be heard by the Court within such time as the Court determines,

unless in respect of paragraph (b) the Court is of the opinion that giving such notice would result in the disappearance, dissipation or reduction in the value of the funds.

(4) Where an application for a freezing order made under subsection (1) is made as a result of a request from another State, the Court shall not make the order unless it is satisfied that reciprocal arrangements exist between The Bahamas and that other State whereby that other State is empowered to make a similar order in respect of a request for a freezing order from The Bahamas.

(5) The Court may, in making an order under subsection (1), give directions with regard to -

- (a) the duration of the freezing order; or
- (b) the disposal of the funds for the purpose of -
  - (i) determining any dispute relating to the ownership of or other interest in the funds or any part thereof;
  - (ii) its proper administration during the period of the freezing order;
  - (iii) the payment of debts incurred in good faith prior to the making of the order;
  - (iv) the payment of moneys to the person referred to in subsection (1) for the reasonable subsistence of that person and his family; or
  - (v) the payment of the costs of the person referred to in subparagraph (iv) to defend criminal proceedings against him.

- or endanger the safety of any person;
- (c) provide the applicant with a reasonable opportunity to be heard; and
- (d) 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.

(8) 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.

- (9) The Attorney General shall, every six months -
  - (a) review all orders made under subsection (4) so as to determine whether the circumstances referred to in subsection (1) (a) or (b) continue to exist in respect of the listed entity; and
  - (b) if he determines that such circumstances no longer exist, apply to a Judge of the Supreme Court for the revocation of the order in respect of the listed entity.

(10) Upon an application under paragraph (b) of subsection (9), the Judge shall, if satisfied as to the matters referred to in that paragraph, make an order for the revocation.

**Providing  
or  
collecting  
funds for  
criminal  
purposes.**

5.(1) A person who in or outside The Bahamas directly or indirectly, unlawfully and willfully;

- (a) provides or collects funds; or
- (b) provides financial services or makes such services available to persons,

with the intention that the funds or services are to be used or with the knowledge that the funds or services are to be used in full or in part in order to carry out-

- (i) an act that constitutes an offence under or defined in any of the Treaties listed in the First Schedule; or
- (ii) any other act –
  - a. 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
  - b. 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 (B), (C) or (D) of section 3 (1) as the case may be

is guilty of an offence and is liable on conviction on information to imprisonment for a term of 25 years.

(2) For an act to constitute an offence under subsection (1), it is not necessary to prove that the funds or the financial services were used to carry out the offence.

- (3) A person who –
- a. aids, abets, counsels, procures, incites or solicits the

compliance with the request would be prejudicial to that person's rank or status for any of these reasons.

**Juris-  
diction.**

13. 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 in The Bahamas or against a citizen of 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 by a stateless person who is ordinarily resident in The Bahamas;
- (f) 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;
- (g) was committed on board a vessel that is flying the flag of The Bahamas or is registered in The Bahamas; or
- (h) threatens the national security of The Bahamas.

**Notifi-  
cation to  
the appro-**

14. Where a person is taken into custody as a result of an investigation undertaken under section 7, the Attorney General shall-

- (a) notify through the Secretary General of the

**priate  
State  
through  
United  
Nations.**

United Nations as, the State which established jurisdiction in respect of an application brought under section 9 or 10, 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.

**Condi-  
tions for  
transfer  
of  
persons  
detained.**

15.(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; and
- (b) 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 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

Order in respect of listed entities.

4.(1) The Attorney General shall apply to a judge of the Supreme Court, in Chambers, for an order under subsection (4) in respect of an entity, if -

- (a) the entity is included on a list of entities designated as terrorist entities by the United Nations Security Council; and
- (b) the Attorney General has reasonable grounds to believe that the entity -
  - (i) has knowingly committed or participated in the commission of a terrorism offence; or
  - (ii) is knowingly acting on behalf of, at the direction of, or in association with, an entity referred to in paragraph (a).

(2) Before acting under subsection (1), the Attorney General shall make such investigations as he considers necessary.

(3) An application under subsection (1), shall be -

- (a) ex parte; and
- (b) accompanied by an affidavit deposing to the matters referred to in-
  - (i) subsection (1) (a); and
  - (ii) subsection (1) (b) (i) or (ii)

(4) Upon an application under subsection (1), the Judge shall, by order, declare an entity to be a listed entity for the purposes of this Act if the Judge is satisfied as to the matters referred to in -

- (i) subsection (1) (a); and
- (ii) subsection (1) (b) (i) or (ii).

(5) Where an order is made under subsection (4), (7) (d), or (10), the Attorney General shall, within seven days after the date of the order, cause to be published in a daily newspaper in circulation in The Bahamas-

- (a) a copy of the order; and
- (b) in the case of an order under subsection (4) a statement that the matter will be reviewed every six months.

(6) Within sixty days after the date of publication of an order under subsection (5), 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.

(7) Upon an application made under subsection (6), the Judge shall -

- (a) hear any evidence or other information that may be presented by the Attorney General and may, at the request of the Attorney General hear all or part of that 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 making of the order, without disclosing any information the disclosure of which would, in the opinion of the Judge, be prejudicial to national security

(6) Notwithstanding subsection (5), a freezing order made under this section shall cease to have effect at the end of the period of six months after the order was made where the person against whom the order was made has not been charged with an offence under this Act within that period.

(7) An order made under subsection (1) may be renewed for a period not exceeding six months in each particular case but in no case shall the entire period of the order exceed eighteen months.

(8) A freezing order granted by the Court under this section shall not prejudice the rights of any third party acting in good faith.

(9) Where the Court makes an order for the administration of frozen funds the person charged with the administration of the funds is not liable for any loss or damage to the funds or for the costs of proceedings taken to establish a claim to the funds or to an interest in the funds unless the court in which the claim is made is of the opinion that the person has been guilty of negligence in respect of the taking of custody and control of the funds.

**Forfeiture  
Order.**

10.(1) Where a person is convicted of an offence section 3 or 5, the Attorney General may apply to the Court for a forfeiture order against the funds that are the subject of the offence.

(2) The court may upon application by the Attorney General, forfeit any funds of or in the possession or under the control of any person who is convicted of an offence of terrorism or any funds of that person that are the subject of a freezing order, unless it is proved that the funds did not derive from the commission by that person of an offence under section 3 or 5.

(3) For the purposes of subsection (2) the burden of proof lies on the person who owns, or is in possession or control of, the funds.

(4) In determining whether or not any funds are derived from an offence under section 3 or 5, the standard of proof required for the purposes of subsection (2) is the same as in criminal proceedings and for the purposes of subsection (3) is the

same as in civil proceedings.

(5) In making a forfeiture order the Court may give directions -

- (a) for the purposes of determining any dispute as to the ownership of or other interest in the funds or any part thereof; and
- (b) as to the disposal of the funds.

(6) Upon application to the Court by a person against whom a forfeiture order has been made under this section, the Court may order that an amount deemed by the Court to be the value of the funds so ordered to be forfeited, be paid by that person to the Court and upon satisfactory payment of that sum by that person the funds ordered to be forfeited shall be returned to him.

**Sharing  
of  
forfeited  
funds.**

11.(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.

**Extra-  
dition.**

12.(1) 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.

(2) 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

commission of an offence;

b. conspires with another or others to commit an offence under section (1) is liable on conviction on information to be punished as a principal offender under that subsection.

**Liability  
of a legal  
entity.**

6. Where an offence referred to under section 3 or 5 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, is guilty of an offence and is liable on conviction on information to a fine of \$2,000,000 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 imposed by law.

**Investiga-  
tion.**

7.(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.

(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 make a report to the Attorney General 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 \$250,000 or to imprisonment for a term of 5 years.

**Rights  
of an  
offender.**

8. A person against whom measures referred to in section 7(2) or 7(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; or
  - (iii) where that person is a stateless person, the State in which that person ordinarily resides;
- (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).

**Freezing  
of funds.**

9.(1) Subject to subsection (4), the Court may where it is satisfied on the application by the Attorney-General that -

- (a) a person has been charged or is about to be charged with an offence under this Act;
- (b) a person has been declared a listed entity under this Act;
- (c) a request has been made by the appropriate authority of another State in accordance with section 17, in respect of a person-
  - (i) who has been charged or is about to be charged with an offence described in this Act; or
  - (ii) in respect of whom there is reasonable suspicion that the person has committed an offence referred to in sub paragraph (i);

incurred in respect of any requests made under this section, must be paid by the State making the request.

**Attorney-  
General  
to be the  
competent  
Authority.**

16. The Attorney-General is the competent Authority in The Bahamas for the exchange of information relating to criminal investigations or extradition proceedings in respect of an offence under this Act.

**Appli-  
cation  
Ch. 98.**

17. Section 6 of the Mutual Legal Assistance (Criminal Matters) Act applies to the procedure to be adopted in respect of a request made from another State for mutual assistance in obtaining a freezing or forfeiture order under this Act with such modifications as are necessary to give effect to such requests.

**Regu-  
lations.**

18.(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 Convention in accordance with the terms of Article 23 of the Convention; or
  - (b) the First Schedule.

**First  
Schedule.**

**Amend-  
ments to  
Acts.**

19. The Acts specified in the Second Schedule are amended to the extent so specified in that Schedule.

**Second  
Schedule.**

**FIRST SCHEDULE** (Sections 2 & 18)  
**TREATIES RESPECTING TERRORISM**

1. Convention on offences and certain other Acts committed on Board Aircraft signed at Tokyo 14<sup>th</sup> September, 1963.
2. Convention for the Suppression of Unlawful Seizure of Aircraft, done at the Hague on 16<sup>th</sup> December, 1970.
3. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23<sup>rd</sup> September, 1971.
4. 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<sup>th</sup> December, 1973.
5. International Convention against the taking of Hostages, adopted by the General Assembly of the United Nations 17<sup>th</sup> December, 1979.
6. 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.
7. Inter-American Convention Against Terrorism adopted at the Second Plenary Session of the Organization of American States held June 3, 2002.

**SECOND SCHEDULE** (section 19)

**Enactment**

**Amendment**

Extradition Act  
Ch. 96

In section 7 insert immediately after subsection (2) the following subsection as subsection (3):

“(3) Paragraph (a) of subsection (1) shall not apply to a crime referred to

under section (3) and (5) of the Anti-Terrorism Act, 2004".

Financial Intelligence  
Unit Act  
Ch. 367

In the Schedule, insert the following -  
"Offences under the Anti-Terrorism Act,  
2004."

Proceeds of Crime Act  
Ch. 93

In the Schedule, insert immediately after  
item (2) the following new item -

" (3) An offence under the Anti-Terrorism Act, 2004."