

A BILL

for

**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**

Enacted by the Parliament of the Bahamas

Short title.

1. This Act may be cited as the Anti-Terrorism Act, 2003.

Interpretation.

2. In this Act -

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

“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;

“Minister” means the Minister responsible for National Security;

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

“terrorist act” means -

- (a) an act or threat of action in or outside The Bahamas 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) any dangerous, hazardous, radioactive or harmful substance;
 - (bb) any toxic chemical;
 - (cc) any microbial or other biological agent or toxin;
 - (vii) is designed or intended to disrupt any computer

system or the provision of services directly related to communications infrastructure, banking or financial services, utilities, transportation or other essential infrastructure;

(viii) is designed or intended to disrupt the provision of essential emergency services such as police, civil defence or medical services;

(ix) involves prejudice to national security or public safety;

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

(bb) compel a government or an international organization to do, or refrain from doing, any act; and

(cc) is made for the purpose of advancing a political, ideological, or religious cause;

(b) an act which -

(i) disrupts any services; and

terrorism. liable to suffer death and in any other case shall be liable to life imprisonment.

Orders 4.(1) Where the Attorney-General has reasonable grounds to believe that -
declaring (a) an entity has knowingly -
certain (i) committed;
entities to (ii) attempted to commit;
be specified (iii) participated in committing; or
entities. (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,

an entity referred to in paragraph (a),

the Attorney-General may recommend to the Minister that an Order be made under subsection (2) in respect of that entity.

(2) If the Minister is satisfied that there is evidence to support a recommendation made under subsection (1), he may, by Order published in the Gazette, declare the entity in respect of which the recommendation has been made, to be a specified entity.

(3) Within sixty days of publication in the Gazette, a specified entity may make an application in writing to the Minister for the revocation of an Order made under subsection (2).

(4) Prior to deciding on an application made under subsection (3) the Minister shall consult with the Attorney-General.

(5) If, on an application made under subsection (3), the Minister -

(a) decides that there are reasonable grounds for revocation he shall revoke the Order, and publish a notice of revocation in the Gazette;

(b) decides that there are no reasonable grounds for revocation, he shall refuse the application and shall, within sixty days of receiving the application, inform the applicant of his decision.

(6) Within sixty 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 Supreme Court for a review of that decision.

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

(a) examine in chambers, any security or intelligence reports considered in recommending or making an Order under

subsection (2) 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, 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, hear all or part of that evidence or information in the absence of the applicant;

- (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; and
- (d) determine whether the Minister's 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 Minister to revoke the Order made in respect of the applicant.

(8) The judge may receive in evidence, anything (including information obtained from the government or institution or agency of a foreign state or an international organization), that, in the opinion of the judge, is reliable and relevant, and the judge may base his decision on that evidence.

(9) The Attorney-General shall review all the Orders made under subsection (2) every six months to determine whether there are still reasonable grounds, as set out in subsection (1), for any such Order to continue to apply to a specified entity, and if he determines that there are no such reasonable grounds, shall recommend to the Minister, the revocation of the Order made under subsection (2) in respect of that specified entity.

**Provision
of services for
commission of
terrorist acts.**

5. Every 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 benefitting any person or specified entity 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 liable on conviction to imprisonment for a term of twenty years.

**Dealing
with
Terrorist
Property.**

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

commits an offence and shall on conviction, be liable to imprisonment for a term of twenty years.

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

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

terrorist act,

commits an offence and shall on conviction be liable to imprisonment for a term of twenty years.

Provision or

8. Every person who -

collection of

(a) provides,

property to

(b) collects; or

commit

(c) makes available,

terrorist acts.

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 shall on conviction be liable to imprisonment for a term of twenty years.

Arrangements

9. Every person who knowingly enters into, or becomes concerned in,

for retention

an arrangement which facilitates the acquisition, retention or control by or on

or control of

behalf of another person of terrorist property -

terrorist

(a) by concealment,

property.

(b) by a removal out of the jurisdiction,

(c) by transfer to a nominee, or

(d) in any other way,

commits an offence and shall on conviction, be liable to imprisonment for a term of twenty years.

Soliciting and giving of support to terrorist groups or for the terrorist acts. 10.(1) Every person who knowingly, and in any manner -

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

commits an offence and shall on conviction, be liable to imprisonment for a term of twenty years.

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

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

Harbouring of persons committing 11. Every person who harbours or conceals, or prevents, hinders or interferes with the apprehension of, any other person knowing, or having reason to believe that such other person -

terrorist acts.

- (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 shall on conviction, be liable to imprisonment for a term of twenty years.

Provision of

12. Every person who, knowingly agrees to provide training or

training and

instruction, or provides training or instruction -

instruction to

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

terrorist groups

- (b) in carrying out a terrorist act;

and persons

- (c) in the practice of military exercises or movements,

committing

to a member of a terrorist group or a person engaging in, or preparing to engage

terrorist acts.

in, the commission of a terrorist act commits an offence and shall on conviction, be liable to imprisonment for twenty years.

Freezing of

13.(1) Subject to subsection (4), the Court may where it is satisfied on the

funds.

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 request has been made by the appropriate authority of another State 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),

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) where the person has not been charged, the grounds for -
 - (i) believing that the person commits the offence; or
 - (ii) having a reasonable suspicion that the person committed the offence;
- (c) a description of the funds in respect of which the freezing order is sought;
- (d) the name and address of the person who is believed to be in possession of the funds; and
- (e) 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 who, 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.

(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.

**Confiscation
orders.**

13. Upon conviction for one or more offences committed after the coming into operation of this Act, a person shall, in addition to any penalty prescribed by any law for that offence be liable at the time of sentencing in respect of that conviction at anytime thereafter to have a confiscation order made against him relating to have a confiscation order made against him relating to terrorist

property obtained from the commission of an offence under this Act.

Extradition.

14. Notwithstanding anything in the Extradition Act, or any other

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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 be deemed not be an offence of a political character or an offence connected with a political offence or an offence inspired by political motives.

Jurisdiction.

15. 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.

**Conditions
for transfer
of persons
detained.**

16. 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 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.

Regulations.

17. The Attorney-General may, subject to affirmative resolution make Regulations to give effect to this Act.

**Amendment
to Acts.**

18. The enactments specified in the Schedule are amended to the extent so specified in that Schedule.

Schedule.

SCHEDULE**(section 18)****Enactment****Amendment**

Proceeds of Crime Act

In the Schedule, insert immediately after item

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(2) the following new item -

“ (3) An offence under the Anti-Terrorism Act, 2003.”.

Financial Intelligence

In the Schedule, insert the following -

Unit Act

“Offences under the Anti-Terrorism Act, 2003.”.

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OBJECTS AND REASONS

The purpose of the Bill is to provide for the prevention and combating of terrorism.

Clause 1 of the Bill provides for the short title.

Clause 2 of the Bill provides for the interpretation of certain expressions to be used in the Bill, for example the definition of “terrorism act”.

Clause 3 of the Bill creates an offence of terrorism where any person in or outside The Bahamas commits a terrorist act.

Clause 4 of the Bill provides for the Minister responsible for National Security to

make an Order declaring an entity a specified entity upon the recommendation by the Attorney-General. The clause further provides for an application to be made to the Minister for revocation of the Order and for a review of that decision to a judge of the supreme court.

Clause 5 of the Bill creates the offence of providing financial and or other related services for the commission of a terrorist act.

Clause 6 of the Bill creates the offence of dealing with terrorist property.

Clause 7 of the Bill creates the offence of the use of property directly or indirectly, in whole or in part for the purpose of committing or facilitating the commission of a terrorist act. The clause further creates the offence of possessing property intending to be used or knowing that it will be used for the purpose of committing or facilitating the commission of a terrorist act.

Clause 8 of the Bill creates the offence for providing, collecting or making available property, by any means, intending, knowing or having reasonable grounds that the property will be used to carry out a terrorist act.

Clause 9 of the Bill creates the offence for knowingly entering into arrangements which facilitates the acquisition, retention or control by or on behalf of another person of terrorist property, by concealment, removal out of the jurisdiction, transfer to a nominee or any other way.

Clause 10 of the Bill creates an offence for soliciting support for or giving support to terrorist groups for the commission of a terrorist act.

Clause 11 of the Bill creates an offence of harbouring a person who has

committed a terrorist act or is a member of a terrorist group or hindering, preventing or interfering with the apprehension of such person.

Clause 12 of the Bill creates the offence for knowingly agreeing to or providing training or instruction to terrorist groups and persons committing terrorist acts.

Clause 13 of the Bill provides for the making of confiscation orders where a person has been convicted of an offence under this Act.

Clause 14 of the Bill provides that an offence under the Bill shall for the purposes of the Extradition Act be deemed not to be an offence of a political character or connected with an offence inspired by political motives.

Clause 15 of the Bill provides for extra-territorial jurisdiction in relation to terrorist offences.

Clause 16 of the Bill provides for the conditions of transfer of persons detained or who is serving a sentence of imprisonment in the territory of one state and 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 offences for the purposes of this Act.

Clause 17 of the Bill provides for the making of Regulations by the Minister to give effect to the Act subject to affirmative resolution.

Clause 18 of the Bill provides for the necessary consequential amendments to the Proceeds of Crime Act, 2000 and the Financial Intelligence Unit Act, 2000 as specified in the Schedule.