



**PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA**

**CONVENTION ON THE SUPPRESSION OF
TERRORIST FINANCING (AMENDMENT)
ACT, No. 41 OF 2011**

[Certified on 06th October, 2011]

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*Convention on the Suppression of Terrorist
Financing (Amendment) Act, No. 41 of 2011*

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L.D.—O. 8/2010.

AN ACT TO AMEND THE CONVENTION ON THE SUPPRESSION OF
TERRORIST FINANCING ACT, NO. 25 OF 2005

BE it enacted by the Parliament of the Democratic Socialist
Republic of Sri Lanka as follows:—

1. This Act may be cited as the Convention on the
Suppression of Terrorist Financing (Amendment) Act,
No. 41 of 2011. Short title.

2. The following new section is hereby inserted
immediately after section 2 of the Convention on the
Suppression of Terrorist Financing Act, No. 25 of 2005
(hereinafter referred to as the “principal enactment”) and
shall have effect as section 2A of that enactment:- Insertion of new
section 2A in
Act, No. 25 of
2005.

“Application
of the Act. 2A. (1) The provisions of this Act shall apply
in relation to a person who being a citizen of
Sri Lanka or a person who not being a citizen
of Sri Lanka, commits an offence under this
Act,

(a) while present in Sri Lanka; or

(b) outside Sri Lanka and such offence is an
offence under the law for the time being
in force, in the country in which such
offence is committed.

(2) For the purpose of the implementation
of the provisions of this Act, the expression
“person” shall include a body of persons,
whether corporate or unincorporated within or
outside Sri Lanka.”.

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Amendment of
section 3 of the
principal
enactment.

3. Section 3 of the principal enactment is hereby amended as follows:-

- (1) by the repeal of subsection (1) thereof and the substitution therefor of the following subsection:-

“(1) Any person who, by any means, directly or indirectly, unlawfully and wilfully provides or collects funds or property with the intention that such funds or property should be used, or in the knowledge that they are to be used or having reason to believe that they are likely to be used, in full or in part, in order to commit-

- (a) an act which constitutes an offence within the scope of, or within the definition of any one of the Treaties specified in Schedule I hereto;
- (b) any other act, intended to cause death or serious bodily injury, to civilians or to any other person not taking an active part in the hostilities, in a situation of armed conflict or otherwise and the purpose of such act, by its nature or context is to intimidate a population, or to compel a government or an international organization, to do or to abstain from doing any act; or
- (c) any terrorist act,

shall be guilty of the offence of financing of a terrorist act, a terrorist or terrorists, or a terrorist organization:

Provided that, for an act to constitute the offence set out above, it shall not be necessary to show that the funds or property provided or collected were actually used in the commission of an offence.”;

- (2) in subsection (2) by the substitution for the words “the offence of financing of terrorists or terrorist organization” of the words “the offence of financing of a terrorist act, a terrorist or terrorists or a terrorist organization”;
- (3) by the insertion immediately after subsection (2) thereof of the following new subsection :—

“(2A) Any person who unlawfully and wilfully by any direct or indirect means provides or conspires to provide, material support or resources to any terrorist or terrorists or a terrorist organization shall be guilty of an offence under this Act:

Provided however that, providing assistance on humanitarian grounds by a person or body of persons, shall not amount to an offence within the meaning of this Act.”.

4. Section 4 of the principal enactment is hereby repealed and the following section is substituted therefor :—

Replacement of section 4 of the principal enactment.

“Freezing of property &c.

4. (1) A police officer not below the rank of an Assistant Superintendent of Police may, where there are reasonable grounds to believe that any person is involved in the commission of any act which constitutes an offence under section 3 of this Act and it is necessary for preventing the commission of any further acts in connection with such offence, issue an Order (hereinafter referred to as a “Freezing Order”) freezing all funds or property provided or collected in contravention of the provisions of section 3, any income or profit earned on such funds or property or any instrumentalities used in the commission of such offence.

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(2) The Freezing Order obtained under subsection (1) shall be issued on –

- (a) the person who is believed to be involved in the commission of any act which constitutes an offence in terms of section 3; and
- (b) on any other person or institution who or which may be required to give effect to such Order.

(3) A Freezing Order issued under subsection (1) shall, subject to the provisions of section 4A, be in force for a period of seven days of the making thereof.

(4) Any person who or institution which uses such fund, property, income, profit or instrumentality which is subject to a Freezing Order, in contravention of such Freezing Order issued on him or such institution, shall be guilty of an offence and shall on conviction after trial before the High Court be liable to a fine not exceeding one hundred thousand rupees or one and a half times the value of the money in such funds, property, income, profit or instrumentality which has been dealt with in contravention of the Freezing Order, whichever is higher or to imprisonment of either description for a period not exceeding one year or to both such fine and imprisonment.”.

Insertion of new sections 4A, 4B, 4C, 4D, 4E, 4F, 4G, 4H and 4I in the principal enactment.

5. The following new sections are hereby inserted immediately after section 4 of the principal enactment and shall have effect as sections 4A, 4B, 4C, 4D, 4E, 4F, 4G, 4H and 4I of that enactment :—

“Confirmation of Freezing Order by Court.

4A. (1) The police officer issuing the Freezing Order in terms of section 4 shall, within the seven days during which such Order shall be in force, make an *ex parte* application

to the High Court seeking confirmation of such Freezing Order and also if the circumstances so necessitate, request an extension to the original period of seven days.

(2) Where the High Court is satisfied that there is sufficient reason for the making of such Freezing Order, the Court may subject to any Orders which may be made under section 4E, confirm the Freezing Order and also grant the application made for the extension thereof, for such periods as it considers necessary:

Provided that the maximum period of any extension so granted shall not exceed three months at any given time and in any event shall not in the aggregate exceed a period of two years from the date of the issuing of the Freezing Order by the police officer:

Provided further that where indictment is filed for the commission of an offence under section 3 of this Act in respect of the fund, property, income, profit or instrumentality which is subject to the Freezing Order, such Freezing Order shall unless vacated by Court for reasons to be recorded, remain in force until the conclusion of the trial in respect of such offence, or where an appeal is preferred against a conviction for such offence, until the determination of the appeal.

(3) Where the High Court confirms a Freezing Order under subsection (2) it shall cause a Notification of the Freezing Order to be published in at least one newspaper circulating in the Sinhala, Tamil and English languages, in order to facilitate *bona fide* third parties to make application to Court in support of their claims to the fund, property, income, profit or instrumentality which is subject to the Freezing Order.

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Transactions in contravention of the Freezing Order to be null and void. 4B. No transaction shall, except with the sanction of the Court as provided for in section 4c be effected in relation to such funds, property, income, profit or instrumentalities while the Freezing Order is in force and any transaction so effected shall be null and void.

High Court to sanction essential and legitimate transactions. 4c. Where any legitimate business or other interests of any person affected by the Freezing Order could be damaged by the prohibition imposed thereby, such person may make an application to High Court stating such facts in support thereof, and the Court may, on a consideration of such application before it, if it is of opinion that such an Order could damage legitimate business or other interests of such person and that essential transactions relating to such funds, property, income, profit or instrumentalities as may have been prohibited by such Freezing Order may be legitimately carried out, confirm the Order made under section 4 and make further Order, sanctioning the carrying on of such transactions subject to the supervision and direction of, either a person appointed in that behalf by Court, or of a Receiver appointed in that behalf by Court under section 4D.

Appointment of Receiver. 4D. Upon an application made in that behalf by a police officer not below the rank of an Assistant Superintendent of Police, the High Court may appoint a Receiver, in accordance with the provisions of the Civil Procedure Code (Chapter 101), to take possession of and otherwise deal with the fund, property, income, profit or instrumentality which has been subjected to the Freezing Order, in accordance with such directions as may be given by Court in that behalf.

Property tracking and monitoring.

4E. (1) Any police officer not below the rank of an Assistant Superintendent of Police shall take possession of, and otherwise deal with, any fund, property, income, profit or instrumentality which is subject to a Freezing Order, and the Court may on application made by the said police officer and for the purpose of determining who owns, possesses or is in control of such fund, property, income, profit or instrumentality to which the Freezing Order relates, order-

(a) that any document relevant to –

- (i) identifying, locating or quantifying such funds, property, income, profit or instrumentalities;
- (ii) establishing the ownership, possession or control of such funds, property, income, profit or instrumentalities;
- (iii) obtaining any other information pertaining to such funds, property, income, profit or instrumentalities,

be delivered forthwith to such police officer; and

(b) that a named institution furnish to the Receiver all information obtained by the institution about any business transaction conducted by, or for, that person with the institution during such period before or after the date of such order, as the Court may direct.

(2) Where it appears to the Court making an order under subsection (1) that any person has failed to or delayed in complying with or is otherwise obstructing the execution of, an order made under subsection (1), such Court may make order authorizing the police officer to enter and search any premises of that person, and remove any document, material or other thing therein for the purpose of executing such order.

(3) Upon determining who owns, possesses or is in control of any funds, property, income, profit or instrumentalities to which the Freezing Order relates, the police officer shall report the same to the Court making the Freezing Order, along with all documents establishing and supporting such ownership, possession or control, as the case may be.

Forfeiture of
property etc.
in relation to
which an
offence
under this
Act has been
committed.

4F. (1) Subject to the provisions of subsection (4), where a person is convicted of an offence under section 3 of this Act, the Court convicting such person shall, make order that any funds or property provided or collected in contravention of the provisions of section 3, any income or profit earned on such funds or property or any instrumentalities used in the commission of such offence, be forfeited to the State, free from all encumbrances.

(2) Where such funds, property, income, profit or instrumentalities cannot be found or traced the Court convicting such person shall order to pay to the State the equivalent value of such funds, property, income, profit or instrumentalities.

(3) Where such person fails to pay such equivalent value, the Court, shall, in accordance with the provisions of the Code of Criminal Procedure Act, No. 15 of 1979, order him to pay a such value fine within such period as may be specified by Court.

(4) In determining whether an Order of Forfeiture should be made under subsection (1), the Court shall be entitled to take into consideration the fact whether such an Order is likely to prejudice the rights of a *bona fide* purchaser for value or any other person who has acquired, for value, a *bona fide* interest in such funds, property, any income or profit earned on such funds or property or such instrumentality.

(5) An order made under subsection (1) shall take effect -

- (a) where an appeal has been preferred to the Court of Appeal or the Supreme Court against the Order of Forfeiture, upon the determination of such appeal confirming or upholding the Order of Forfeiture;
- (b) where no appeal has been preferred to the Court of Appeal against the Order of Forfeiture within the period allowed therefor, after the expiration of the period within which an appeal may be preferred to the Court of Appeal, against such Order of Forfeiture.

(6) For the purposes of subsection (1), the Court making the Order of Forfeiture may presume that any funds or property belonging to the person convicted of an offence under

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section 3 of this Act is derived or realized, directly or indirectly from the commission of such offence, if the value of such funds or property is not commensurate with the known sources of income of such person, and the holding of which cannot be explained on a balance of probabilities, to the satisfaction of the Court.

Restoring the
rights of
bona fide
claimants.

4G. (1) Any person, being a person to whom the provisions of section 3 do not apply, and who owns, possesses or is in control of any funds or property or any income or profit earned on such funds or property, or any instrumentalities, to which the Freezing Order made under section 4 relates, may within thirty days of the making of such Order apply to the Court making the same, seeking the intervention of Court to exclude from such Order any fund, property, income, profit or instrumentalities which such person owns, possesses or is in control of.

(2) Where an application is made under subsection (1), the Court shall upon being satisfied on the information before Court that -

- (a) such funds or property is not derived or realized directly or indirectly from the commission of such offence or such funds or property is not an instrumentality used in the commission of such offence;
- (b) the applicant was not in any way involved in the commission of an offence under section 3 in relation to which the Freezing Order was made;

(c) the applicant had acquired an interest in such funds or property at any time prior to the commission of such offence, and the applicant was unaware of the fact that the defendant had used or had intended to use such funds or property in or in connection with the commission of such offence; or

(d) the applicant had acquired an interest in such funds or property at the time of, or after the commission or alleged commission of the offence, and that such interest was acquired in circumstances which would not give rise to a reasonable suspicion that such fund or property was proceeds or instrumentalities of such offence,

make order for the release of such fund, property income, profit or instrumentality which is the subject of the application before it, from the Freezing Order made under section 4, and restore the rights of the applicant in respect of the same.

Appointment
of a Receiver
upon
Forfeiture.

4H. Where any fund, property, income, profit or instrumentality has been forfeited to the State under section 4F of this Act, the Court making the Order of Forfeiture may, appoint a Receiver in accordance with the provisions of the Civil Procedure Code (Chapter 101), to be in charge of the fund, property, income, profit or instrumentality so forfeited.

Secrecy
obligation
overridden.

4I. The provisions of sections 4 to 4H of this Act shall have effect notwithstanding any obligation as to secrecy or other restriction imposed upon the disclosure of information

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by any written law or otherwise, and accordingly any disclosure of information by any person in compliance with the provisions of sections 4 to 4H of this Act shall be deemed not to be a contravention of, any such obligation or restriction.”.

Amendment of
section 5 of the
principal
enactment.

6. Section 5 of the principal enactment is hereby amended as follows:-

- (1) by the repeal of subsection (1) thereof and the substitution therefor of the following subsection:-

“(1) On the conviction of any person under subsection (4) of section 3, the Court may order that any funds or property provided or collected in contravention of the provisions of section 3, any income or profit earned on such funds or property or any instrumentalities used in the commission of such offence, be forfeited to the State.”;

- (2) in subsection (2) thereof by the substitution for the words “Any funds forfeited to the State” of the words “Any funds, property, income profit or instrumentalities forfeited to the State”;

- (3) by the repeal of subsection (3) thereof and the substitution therefor of the following subsection:-

“(3) Where the Court is satisfied on the evidence adduced at a trial for an offence under subsection (1) or subsection (2) of section 3, that any funds, property, income, profit or instrumentalities standing to the credit of any account of any institution are the proceeds of such offence, it may, by written order prohibit the Head of such institution from permitting or allowing the withdrawal of any funds from such account, until the conclusion of the trial.”.

7. Section 6 of the principal enactment is hereby amended in subsection (2) of that section as follows:-

Amendment of section 6 of the principal enactment.

- (1) by the repeal of paragraph (a) thereof, and the substitution therefor of the following paragraph:-

“(a) any person who committed such act is present in Sri Lanka;”;

- (2) by the insertion immediately after paragraph (e) thereof, of the following new paragraph:-

“(ee) the person in relation to whom the offence is alleged to have been committed is a national of a Convention State;”.

8. The following new section is hereby inserted immediately after section 16 of the principal enactment and shall have effect as section 16A of that enactment:-

Insertion of new section 16A in the principal enactment.

“Interpretation. 16A. In this Act unless the context otherwise requires-

“finance business” includes any one of the following business or activities:-

- (a) banking, as defined in the Banking Act, No. 30 of 1988, including the acceptance of deposits or other repayable deposits from members of the public;
- (b) finance business as defined in the Finance Companies Act, No. 78 of 1988 or any Act enacted in place thereof;
- (c) lending, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions;

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- (d) financial leasing other than transactions relating to consumer products;
- (e) the transfer of money or value;
- (f) money and currency changing services;
- (g) issuing and managing means of payment (*i.e.* credit cards, travelers' cheques, money orders and bankers' drafts and electronic money);
- (h) issuing financial guarantees and commitments, including but not limited to, consumer credit, factoring with or without recourse and financing of commercial transactions including forfeiting;
- (i) trading for its own account or for the account of customers in money market instruments (*i.e.* cheques, bills of exchange, certificates of deposit and derivatives), foreign exchange, exchange, interest rate and index instruments, commodity futures trading and transferable securities;
- (j) participating in the issue of securities and the provision of financial services related to such issue;
- (k) banking business carried on by a company, to whom a licence to

carry on banking business is issued under the Banking Act, No. 30 of 1988;

- (l) any finance business carried on by any society registered under the Co-operative Societies Law, No. 5 of 1972 or any Act enacted in place thereof;
- (m) any finance business carried on by the Samurdhi Authority of Sri Lanka, established by the Samurdhi Authority of Sri Lanka Act, No. 30 of 1995; and
- (n) underwriting and placement of insurance as well as insurance intermidation by agents and brokers;

“funds or property” means-

- (a) any currency including also, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit; or
- (b) any asset, whether-
 - (i) corporeal or incorporeal, movable or immovable, tangible or intangible;
 - (ii) kept or situated within or outside Sri Lanka,

and where title or legal or equitable interest in such funds or property, or any income or proceeds of such

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funds or property, is evidenced by
any legal document or instrument
in any form whatsoever, including
any electronic or digital form;

“institution” means any person or body of
persons engaged in or carrying on finance
business;

“material support or resources” includes any
tangible, movable or immovable
property or service, including currency
or monetary instruments or financial
services, lodging, training, expert advice
or assistance, safe houses, false
documentation or identification,
communications equipment or facilities,
weapons, lethal substances, explosives,
personnel and transportation, but shall
not include medicines or religious
material;

“person” includes a body of persons; and

“terrorist act” includes, the use of threat of
action, which involves-

(a) the use of threat of action which is
designed to influence the
government, or to intimidate the
public or a section of the public;

(b) the use of threat of action which is
made for the purpose of advancing
a political, religious or ideological
cause,

and such action,

(i) involves serious violence against
a person;

- (ii) involves serious damage to property;
- (iii) endangers the life of another person, other than the person committing the action;
- (iv) creates a serious risk to health or safety of the public or a section of the public; or
- (v) is designed seriously to interfere with or seriously to disrupt an electronic system.”.

9. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

Sinhala text to prevail in case of inconsistency.

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