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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Financing (Amendment) Act, No. 41 of 2011

[Certified on 06th October, 2011]

L.D.—O. 8/2010.

ANACT 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 Short title.

Suppression of Terrorist Financing (Amendment) Act,

No. 41 of 2011.

2. The following new section is hereby inserted Insertion of new

section 2A in

immediately after section 2 of the Convention on the

Act, No. 25 of

Suppression of Terrorist Financing Act, No. 25 of 2005 2005.

(hereinafter referred to as the “principal enactment”) and

shall have effect as section 2A of that enactment:-

“Application 2A. (1) The provisions of this Act shall apply

of the Act. 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 3. Section 3 of the principal enactment is hereby

section 3 of the amended as follows:-

principal

enactment.

(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.”;

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(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 Replacement of

repealed and the following section is substituted section 4 of the

principal

therefor :—

enactment.

“Freezing of 4. (1) A police officer not below the rank of

property &c.

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 5. The following new sections are hereby inserted

sections 4A, 4B, immediately after section 4 of the principal enactment and

4C, 4D, 4E, 4F, 4G,

shall have effect as sections 4A, 4B, 4C, 4D, 4E, 4F, 4G, 4H and

4H and 4I in the

principal 4I of that enactment :—

inactment.

“Confirmation 4A. (1) The police officer issuing the

of Freezing Freezing Order in terms of section 4 shall,

Order by

within the seven days during which such Order

Court.

shall be in force, make an exparte application

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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 4B. No transaction shall, except with the

in

contravention sanction of the Court as provided for in section

of the 4C be effected in relation to such funds,

Freezing

Order to be property, income, profit or instrumentalities

null and while the Freezing Order is in force and any

void.

transaction so effected shall be null and

void.

High Court 4C. Where any legitimate business or other

to sanction interests of any person affected by the Freezing

essential and

Order could be damaged by the prohibition

legitimate

transactions. 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 4D. Upon an application made in that behalf

of Receiver. 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.

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Property 4E. (1) Any police officer not below the rank

tracking and

of an Assistant Superintendent of Police shall

monitoring.

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.

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(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 4F. (1) Subject to the provisions of

property etc. subsection (4), where a person is convicted of

in relation to

which an an offence under section 3 of this Act, the Court

offence convicting such person shall, make order that

under this any funds or property provided or collected in

Act has been

committed. 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.

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(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 4G. (1) Any person, being a person to whom

rights of

the provisions of section 3 do not apply, and

bona fide

claimants. 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;

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(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 4H. Where any fund, property, income,

of a Receiver profit or instrumentality has been forfeited to

upon

the State under section 4F of this Act, the Court

Forfeiture.

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 4I. The provisions of sections 4 to 4H of

obligation this Act shall have effect notwithstanding any

overridden.

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 6. Section 5 of the principal enactment is hereby

section 5 of the amended as follows:-

principal

enactment.

(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.”.

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7. Section 6 of the principal enactment is hereby Amendment of

amended in subsection (2) of that section as follows:- 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 Insertion of new

immediately after section 16 of the principal enactment and section 16A in

shall have effect as section 16A of that enactment:- 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

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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;

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(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 Sinhala text to

and Tamil texts of this Act, the Sinhala text shall prevail. prevail in case

of inconsistency.

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Financing (Amendment) Act, No. 41 of 2011

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