

THE PREVENTION OF TERRORISM (AMENDMENT) BILL
(No. XXV of 2016)

Explanatory Memorandum

The object of this Bill is to amend the Prevention of Terrorism Act to provide for the reinforcement of the legal framework against terrorism, and for related matters.

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*Prime Minister, Minister of Defence, Home Affairs, Minister for
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ARRANGEMENT OF CLAUSES

Clause

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A BILL

To amend the Prevention of Terrorism Act

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Prevention of Terrorism (Amendment) Act 2016.

2. Interpretation

In this Act –

“principal Act” means the Prevention of Terrorism Act.

3. Section 2 of principal Act amended

Section 2 of the principal Act is amended by inserting, in the appropriate alphabetical order, the following new definitions –

“Committee” means the Committee set up under section 21;

“control order” means an order issued under section 28A;

“Director” means Director of the Counterterrorism Unit referred to in section 18;

4. Section 3 of principal Act amended

Section 3 of the principal Act is amended, in subsection (1) –

(a) by repealing paragraph (a) and replacing it by the following paragraph –

(a) does, participates in, collaborates in, consents to, threatens to do, or does an act preparatory to, or in furtherance of, an act of terrorism;

(b) by inserting, after paragraph (a), the following new paragraph –

(aa) promotes, encourages or exhorts one or more persons to commit an act of terrorism; or

5. Section 4 of principal Act amended

Section 4 of the principal Act is amended –

(a) by repealing subsection (1) and replacing it by the following subsection –

(1) Where any 2 or more persons associate for the purpose of, or where an organisation engages in –

- (a) participating, or collaborating, in an act of terrorism;
- (b) promoting, encouraging or exhorting others to commit an act of terrorism; or
- (c) setting up or pursuing acts of terrorism,

the Judge in Chambers may, on an application made by the Commissioner, declare the association or organisation to be a proscribed organisation.

- (b) in subsection (2), by deleting the word “order” and replacing it by the word “declaration”;
- (c) by inserting, after subsection (4), the following new subsection –

(4A) Any person who receives training from, or in any manner participates in training with, a proscribed organisation shall commit an offence.

- (d) by repealing subsection (5) and replacing it by the following subsection –

(5) It shall be a defence for a person charged under subsection (4) or (4A) to prove that –

- (a) the organisation had not been declared a proscribed organisation at the time he –
 - (i) became, or began to profess to be, a member of the organisation; or
 - (ii) received training from, or in any manner participated in training with, the organisation; or
- (b) he had not taken part in the activities of the organisation at any time after it had been declared to be a proscribed organisation.

- (e) in subsection (6), by deleting the word “ordered” and replacing it by the word “made”.

6. New section 5A inserted in principal Act

The principal Act is amended by inserting, after section 5, the following new section –

5A. Terrorist training

Any person who knowingly attends a place in or outside Mauritius for the purpose of receiving instructions or training in relation to acts of terrorism shall commit an offence.

7. Section 6 of principal Act amended

Section 6 of the principal Act is amended by adding the following new subsection –

(3) A police officer may, without warrant, arrest a person who, in a public place –

- (a) wears an item of clothing; or
- (b) carries or displays an object,

in such a way or in such circumstances as to arouse reasonable suspicion that he belongs to a proscribed organisation.

8. New section 8A inserted in principal Act

The principal Act is amended by inserting, after section 8, the following new section –

8A. Terrorism hoax

(1) Any person who communicates to another person any information, which he knows or should have known to be false, with the intention of inducing in that other person or any other person a belief that an act of terrorism will take place shall commit an offence.

(2) Any person who does any other act with the intention of inducing in any other person a false belief that an act of terrorism will take place shall commit an offence.

9. New Part IIA inserted in principal Act

The principal Act is amended by inserting, after Part II, the following new Part –

PART IIA – TERRORIST GROUPS

12A. Recruiting persons in terrorist groups

Any person who recruits another person so that he belongs to a group or an organisation, knowing that the group or organisation –

- (a) is a proscribed organisation; or
- (b) carries out, or participates in the carrying out of one or more acts of terrorism,

shall commit an offence.

12B. Participating in terrorist groups

Any person who participates in a group or an organisation, knowing that the group or organisation –

- (a) is a proscribed organisation; or
- (b) carries out, or participates in the carrying out of one or more acts of terrorism,

shall commit an offence.

10. New Part IV inserted in principal Act

The principal Act is amended by inserting, after Part III, the following new Part –

PART IV – COUNTERTERRORISM UNIT AND COUNTERTERRORISM COMMITTEE

18. Counterterrorism Unit

There shall be for the purposes of this Act within the Prime Minister's Office a Counterterrorism Unit which shall be headed by a Director.

19. Functions of Counterterrorism Unit

The Counterterrorism Unit shall –

- (a) collect, collate and analyse terrorism-related intelligence;
- (b) disseminate to investigatory authorities such intelligence concerning any suspicious person or activity or terrorism-related offence;
- (c) transmit terrorism-related information to the Commissioner;
- (d) educate the public against terrorism;
- (e) enlist and foster public support in combating terrorism.

20. Staff of Counterterrorism Unit

(1) The Secretary to Cabinet and Head of the Civil Service may, on the recommendation of the Prime Minister's Office and subject to the Public Service Commission Regulations –

- (a) designate such public officers as may be necessary to assist the Counterterrorism Unit;
- (b) enlist, as may be necessary, the services of suitable counterterrorism experts to advise the Counterterrorism Unit.

(2) Any officer designated or expert enlisted under subsection (1) shall be under the administrative control of the Director.

21. Counterterrorism Committee

(1) There is set up for the purposes of this Act a Committee which shall consist of –

- (a) a Chairperson, who shall be the Secretary to Cabinet and Head of the Civil Service;
- (b) the Secretary for Home Affairs;
- (c) the Commissioner of Police;
- (d) the National Security Advisor;

- (e) the Solicitor-General or his representative;
- (f) the Director-General of the National Security Service; and
- (g) the Director of the Counterterrorism Unit.

(2) The Prime Minister may appoint any such other person as he may determine to form part of the Committee.

22. Meetings of Committee

(1) The Committee shall meet at least once every 3 months and at such time and place as the Chairperson of the Committee may determine.

(2) At any meeting of the Committee, 4 members, including the Chairperson, shall constitute a quorum.

(3) Where the Chairperson is absent from a meeting the members present shall elect from among themselves a member to chair the meeting.

(4) The Committee shall regulate its meetings and proceedings, in such manner as it may determine.

22A. Functions of Committee

The functions of the Committee shall be to –

- (a) ensure that the Counterterrorism Unit discharges its functions under section 19 of the Act;
- (b) ensure that general preparedness plans in relation to counterterrorism are activated at all levels;
- (c) review the adequacy of counterterrorism legislation in Mauritius;
- (d) advise the Minister on counterterrorism issues; and
- (e) take such other measures as may be appropriate in the circumstances.

22B. Disclosure of interest

(1) Where a member of the Committee or a person related to the member by blood or marriage, has a pecuniary or other material interest in relation to any matter before the Committee, the member shall –

- (a) disclose the nature of the interest before or at the meeting convened to discuss that matter; and
- (b) not take part in any deliberation relating to that matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of proceedings of the meeting of the Committee convened to discuss that matter.

22C. Dissemination of information by Director

(1) Where there are grounds to suspect any terrorism-related activity, the Director shall disseminate information and the results of the analysis to the Commissioner or, where appropriate, to the overseas intelligence agencies, for appropriate action.

(2) Notwithstanding any other enactment, where the Director becomes aware of any information which gives rise to a reasonable suspicion that a terrorism-related activity might have been committed or is about to be committed, the Director may request any such information from any institution that may provide useful elements relevant to the terrorism-related activity, and the institution shall, as soon as practicable, furnish the Director with the requested information.

(3) In this section –

“institution” means any Government or non-government organisation, financial or non-financial institution, law enforcement authority or any other regulatory body.

11. New part IVA inserted in principal Act

The principal Act is amended by inserting, after Part IV, the following new Part –

PART IVA – PROTECTION MEASURES

22D. Protection of informers

(1) (a) Where any information is received by any person other than a police officer concerning an act of terrorism, any other activity relating to terrorism or any preparatory act in that connection in Mauritius or elsewhere, that person shall –

- (i) forthwith report the matter to a police officer at the nearest police station; and
- (ii) not disclose the information or the name of the informer to any other person.

(b) Any matter relating to information referred to in paragraph (a) which is received by a person other than a police officer shall –

- (i) be privileged; and
- (ii) not be disclosed in any proceedings before any Court, tribunal or other authority.

(2) Where any record which is given in evidence, or liable to inspection in any proceedings contains an entry relating to the informer or the information given by the informer, the person having custody of the record shall cause every part relating to the informer or the information given to be concealed from view so as to protect the identity of the informer.

(3) Any person who contravenes this section shall commit an offence.

(4) Any person who commits an act of victimisation against a person who makes a report under subsection (1) shall commit an offence.

(5) In this section –

"victimisation" means an act –

- (a) which causes injury, damage or loss;
- (b) of intimidation or harassment;
- (c) of discrimination, disadvantage or adverse treatment in relation to a person's employment; or

(d) amounting to a threat of reprisals.

12. Section 25 of principal Act amended

Section 25 of the principal Act is amended –

(a) by repealing subsection (1) and replacing it by the following subsection –

(1) Notwithstanding any other enactment, the Minister may, for the purpose of the prevention or detection of offences, or the prosecution of offenders, under this Act, give such directions as may be necessary to –

- (a) communication service providers generally;
- (b) communication service providers of a specified description;
- (c) any particular communication service provider –
 - (i) not to disclose any data or data of any description;
 - (ii) to retain any data subject to such requirements or restrictions as he may determine.

(b) in subsection (3), by inserting, after the word “required”, the words “not to disclose or, as the case may be,”;

(c) by inserting, after subsection (3), the following new subsection –

(3A) Any person who fails to comply with a direction issued under this section shall commit an offence.

13. New section 25A inserted in principal Act

The principal Act is amended by inserting, after section 25, the following new section –

25A. Special powers of enquiry

(1) Notwithstanding any other enactment, where the Commissioner has reasonable ground to believe that an offence under this Act has been, is being or is likely to be committed by any person, he may apply to a Judge in Chambers for an order authorising a police officer not below the rank of Superintendent to use such electronic and technical device as may be required for the purpose of intelligence gathering or surveillance.

(2) Where, on an application under subsection (1), the Judge in Chambers is satisfied that the Commissioner has reasonable ground to suspect that an offence has been, is being or is likely to be committed, the Judge may grant the order.

14. New Part VA inserted in principal Act

The principal Act is amended by inserting, after Part V, the following new Part –

PART VA – CONTROL ORDER

28A. Control order

(1) The Commissioner may apply to the Judge in Chambers for a control order to be issued to any person to –

- (a) protect the public from an act of terrorism;
- (b) prevent the provision of support for, or the facilitation of, an act of terrorism; or
- (c) prevent the provision of support for, or the facilitation of the engagement in, an act of terrorism in another State.

(2) A control order may, for such time as may be specified in the order –

- (a) prevent the person from –
 - (i) remaining in any locality or leaving Mauritius;
 - (ii) communicating or associating with certain persons;
 - (iii) purchasing or otherwise requiring provision of such object as may be specified in the order;

- (iv) carrying out a specified activity; or
- (v) accessing certain forms of technology, including the Internet; or
- (b) require that person to –
 - (i) remain on specified premises for not more than 12 hours within any period of 24 hours;
 - (ii) wear a tracking device;
 - (iii) report to a police officer at a certain time and place; or
 - (iv) allow himself to be photographed and his fingerprints to be taken.

(3) The Judge in Chambers may, on an application made under subsection (1), grant the order where he is satisfied that –

- (a) making the order would assist in preventing or detecting an act of terrorism;
- (b) the person has provided training to, received training from or participated in training with, a proscribed organisation;
- (c) the person has engaged in an act of terrorism in another State;
- (d) the person has been convicted in Mauritius of an offence relating to terrorism;
- (e) the person has been convicted in another State of an offence that, if engaged in Mauritius, would constitute an offence relating to terrorism; or
- (f) every obligation, prohibition or restriction to be imposed on the person by the order is, having regard to the person's financial and other circumstances, reasonably necessary for any purpose specified in subsection (1).

(4) No control order shall take effect unless the person subject to it is notified personally of the order.

(5) Any person to whom a control order has been issued may apply to a Judge in Chambers for the revocation or variation of the order on giving notice in writing to the Commissioner of the application and the grounds on which the revocation or variation is sought, and the Judge in Chambers may, on such application, make such order as he may determine.

(6) Any person who contravenes a control order shall commit an offence.

(7) In any proceeding under this section, the Judge in Chambers may require the attendance of the *Ministère Public*.

15. Section 32 of principal Act amended

Section 32 of the principal Act is amended, in subsection (1) –

- (a) in paragraph (a), by deleting the words “section 3” and replacing them by the words “sections 3 and 8A”;
- (b) in paragraph (b), by deleting the words “6, 7, 12 and 15” and replacing them by the words “5A, 6, 7, 12, 12A, 12B and 15”;
- (c) in paragraph (d), by deleting the words “26 and 29” and replacing them by the words “22D, 25, 26, 28A and 29”.

16. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.
