



Tonga

COUNTER TERRORISM AND  
TRANSNATIONAL ORGANISED CRIME  
ACT 2013

**Act 23 of 2013**





# COUNTER TERRORISM AND TRANSNATIONAL ORGANISED CRIME ACT 2013

## Arrangement of Sections

### Section

<b>PART 1 - PRELIMINARY</b>	<b>7</b>
1 Short title and principle objects .....	7
2 Definitions .....	8
3 Definition of terrorist act .....	17
<b>PART 2 – SPECIFIED ENTITIES</b>	<b>19</b>
4 United Nations listed entities to be specified entities .....	19
5 Declarations that certain entities are specified entities .....	19
6 Revocation of declaration .....	20
7 Judicial Review .....	20
8 Procedure .....	20
9 Appeal .....	21
<b>PART 3 – OFFENCES</b>	<b>21</b>
10 Terrorism financing .....	21
11 Terrorist act .....	22
12 Provision of property or services to specified entity .....	22
13 Dealing with terrorist property .....	22
14 Harboursing of persons committing terrorist acts .....	23
15 Provision of weapons to terrorist groups .....	23
16 Participation in terrorist group .....	23
17 Recruitment of persons to terrorist groups .....	23

---

**PART 4 - MANAGEMENT AND FORFEITURE OF PROPERTY OF SPECIFIED ENTITIES** **24**


---

**DIVISION 1 - MANAGEMENT** **24**

18	Direction to take control of property .....	24
19	Notice of direction .....	24
20	Variation, revocation, or expiry of direction .....	24
21	Judicial review and appeal .....	25
22	Further provisions on management of property of specified entities .....	25
23	Third parties may apply for relief .....	25
24	Court may grant relief to third party .....	26

**DIVISION 2 - FORFEITURE** **26**

25	Application for forfeiture order .....	26
26	Making forfeiture order .....	27
27	Effect of forfeiture order .....	27
28	Protection of third parties .....	28
29	Return of property .....	28
30	Appeal .....	29

**DIVISION 3 - INFORMATION** **29**

31	Disclosure of information .....	29
----	---------------------------------	----

**PART 5 - GENERAL POWERS** **30**


---

32	Controlled delivery of property .....	30
33	Provision of information relating to persons, goods or craft .....	30
34	Power to prevent entry and order the removal of persons .....	31
35	Exchange of information relating to terrorist groups and terrorists acts .....	32
36	Regulations .....	32
37	Detention of goods suspected to be terrorist property .....	32
38	Return of cash necessary to satisfy essential human needs .....	33
39	Further provisions about detention under section 37 .....	33
40	Return of goods detained under section 37 .....	34
41	Extension of detention period .....	34
42	Custody of certain goods detained under section 37 .....	35
43	Offences in relation to certain detained goods .....	35

**PART 6 - COUNTER-TERRORISM CONVENTIONS** **35**


---

**DIVISION 1 - TOKYO CONVENTION — AIRCRAFT** **35**

44	Criminal act in aircraft .....	35
45	Specified aircraft .....	36
46	General powers of commander of aircraft .....	36
47	Restraint of persons on aircraft .....	37
48	Disembarkation and delivery of restrained person .....	37

49	Reporting and notification obligations.....	38
50	Indemnity for actions under this Division .....	39
<b>DIVISION 2 - HAGUE CONVENTION — HIJACKING</b>		<b>39</b>
51	Offence of hijacking .....	39
<b>DIVISION 3 - MONTREAL CONVENTION AND PROTOCOL — CIVIL AVIATION</b>		<b>40</b>
52	Offence to destroy, damage or endanger safety of aircraft.....	40
53	Other acts endangering aircraft.....	40
54	Violence at international airports.....	41
<b>DIVISION 4 - INTERNATIONALLY PROTECTED PERSONS</b>		<b>41</b>
55	Offences against internationally protected persons .....	41
<b>DIVISION 5 - HOSTAGES</b>		<b>42</b>
56	Offences of taking hostages.....	42
<b>DIVISION 6 - NUCLEAR MATERIAL</b>		<b>42</b>
57	Movement of nuclear material.....	42
58	Offences relating to nuclear material.....	43
<b>DIVISION 7 - MARITIME SAFETY</b>		<b>43</b>
59	Offences regarding maritime safety.....	43
60	Protocol offences .....	44
61	Arrest and delivery.....	45
<b>DIVISION 8 - PLASTIC EXPLOSIVES</b>		<b>46</b>
62	Plastic explosives offences .....	46
63	Power of entry.....	47
<b>DIVISION 9 - TERRORIST BOMBING</b>		<b>47</b>
64	Terrorist bombing offences.....	47
<b>DIVISION 10 - NUCLEAR TERRORISM</b>		<b>48</b>
65	Nuclear terrorism .....	48
<b>PART 7 - TRANSNATIONAL ORGANISED CRIME</b>		<b>49</b>
66	Participation in organised criminal group.....	49
67	Corruption.....	50
<b>PART 8 - PEOPLE TRAFFICKING</b>		<b>50</b>
68	Offence of trafficking in persons .....	50
69	Offence of trafficking in children .....	50
70	Exploitation of people not legally entitled to work.....	51
71	Consent of trafficked person.....	51

72	Fraudulent travel documents for people or child trafficking.....	51
73	Protection of trafficked persons .....	52

**PART 9 - PEOPLE SMUGGLING** **52**

74	Offence of people smuggling .....	52
75	Offence to facilitate stay of an unauthorised person .....	52
76	Fraudulent travel or identity documents for people smuggling.....	53
77	Aggravated offences.....	53
78	Protection of smuggled persons .....	53
79	Obligation on commercial carriers.....	53
80	Boarding, search and detention of craft.....	54

**PART 10 - GENERAL PROVISIONS** **55**

81	Jurisdiction .....	55
82	Aiding, abetting, counselling and procuring the commission of an offence .....	56
83	Incitement to commit an offence.....	56
84	Conspiring to commit an offence .....	56
85	Attempt to commit an offence.....	57
86	Liability of a company .....	57
87	Obligation to extradite or prosecute .....	57
88	Consent of Attorney General.....	57
89	Restricted grounds for refusal to extradite or provide mutual assistance .....	58
90	Transnational Crimes Act repealed .....	58
91	Consequential amendments.....	58

**SCHEDULE** **59**  
**EXPLANATORY NOTES** ERROR! BOOKMARK NOT DEFINED.



# COUNTER TERRORISM AND TRANSNATIONAL ORGANISED CRIME ACT 2013

Act 23 of 2013

AN ACT TO GIVE EFFECT TO THE KINGDOM'S INTERNATIONAL  
OBLIGATIONS CONCERNING CERTAIN UNITED NATIONS COUNTER  
TERRORISM CONVENTIONS AND INSTRUMENTS AND THE  
TRANSNATIONAL ORGANISED CRIME CONVENTION AND  
PROTOCOLS AND FOR RELATED PURPOSES

I assent,  
TUPOU VI,  
5<sup>th</sup> November 2013.

BE IT ENACTED by the King and Legislative Assembly of Tonga in the  
Legislature of the Kingdom as follows:

## PART 1 - PRELIMINARY

### 1 Short title and principle objects

- (1) This Act may be cited as the Counter Terrorism and Transnational Organised Crime Act 2013.
- (2) The principal objects of this Act are –
  - (a) to implement United Nations Security Council Resolutions and Conventions dealing with terrorism and transnational organised crime;
  - (b) to prevent terrorists from operating in the Kingdom;

- (c) to prevent persons in the Kingdom from taking part in terrorist activities or supporting terrorism; and
- (d) dealing with transnational organised crime.

## 2 Definitions

- (1) In this Act, unless the contrary intention appears –

“act of violence” means an act or omission outside of the Kingdom that, if done or committed in the Kingdom would constitute an offence involving violence under Part IX of the Criminal Offences Act;

“aircraft” means any aircraft, whether or not a Tongan-controlled aircraft, other than a Government aircraft, including an aircraft belonging to the military, customs or police services;

“authorised officer” means –

- (a) the Police Commissioner; or
- (b) any person authorised by the Police Commissioner to perform the provisions of this Act;

“cash dealer” means -

- (a) a person who carries on a business of an insurer, an insurance intermediary, a securities dealer or a futures broker;
- (b) a person who carries on a business of dealing in bullion, of issuing, selling or redeeming travellers' cheques, money orders or similar instruments, or of collecting, holding and delivering cash as part of a business of providing payroll services;
- (c) an operator of a gambling house, casino or lottery;
- (d) a trustee, or manager of a unit trust;
- (e) casinos, including internet casinos, gambling houses or lotteries;
- (f) real estate agents or real estate brokers;
- (g) dealers in precious metals and dealers in precious stones, and other dealers in high value goods;
- (h) law practitioners, notaries, and other independent legal professionals when they prepare for, engage in or carry out transactions for their client concerning the following activities-
  - (i) buying and selling of real estate;
  - (ii) managing of client money, securities or other assets;
  - (iii) management of bank, savings or securities accounts;
  - (iv) organisation of contributions for the creation, operation or management of companies;



- (v) creation, operation or management of legal persons or arrangements, and buying and selling of business entities;
- (vi) accountants, auditors and tax advisors; or
- (vii) trust and company service providers not otherwise covered by this Act, which as a business, provide any of the following services to third parties-
  - (aa) acting as a formation agent of legal persons;
  - (bb) acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or similar position in relation to other legal persons;
  - (cc) providing a registered office, business address, accommodation, correspondence or administrative address for a company, a partnership, any other legal person or arrangement;
  - (dd) acting as (or arranging for another person to act as) a trustee of an express trust; or
  - (ee) acting as (or arranging for another person to act as) a nominee shareholder for another person;

“child” means a person under the age of 18 years;

“commander”, for an aircraft, means the person who is for the time being in direct command of the aircraft;

“commercial carrier” includes a company, or the owner, operator, or person in charge of any means of transport that engages in the transport of goods or people for commercial gain;

“consular officer” means a consular officer of the Kingdom, including a consul-general, consul, pro-consul and consular agent;

“Convention country” means a country that is declared by the Attorney General, by Order published in the Gazette, to be a party to a Convention;

“counter terrorism convention” means the international conventions and instruments set out in the Schedule to this Act;

“Court” means the Supreme Court of Tonga;

“craft” includes any aircraft, ship, boat or other machine or vessel used or capable of being used for the carriage or transportation of persons or goods, or both, by air or water or over or under water;

“detection agent” means a substance mentioned in the table to Part 2 of the Technical Annex to the Plastic Explosives Convention;

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

“exploitation” includes all forms of sexual exploitation (including sexual servitude and exploitation of another person’s prostitution), forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs;

“explosive or other lethal device” means -

- (a) an explosive or other incendiary weapon or device that is designed or has the capability to cause death, serious bodily injury or substantial material damage; or
- (b) a weapon or device that is designed or has the capability to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents, toxins or similar substances or radiation or radioactive materials;

“financial institution” means any person who carries on a business of —

- (a) acceptance of deposits and other repayable funds from the public including for life insurance and investment related insurance;
- (b) lending, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions;
- (c) financial leasing;
- (d) money transmission services;
- (e) issuing and administering means of payment (such as credit cards, travellers' cheques and bankers' drafts);
- (f) entering into guarantees and commitments;
- (g) trading on its own account or on account of customers in money market instruments (such as cheques, bills, certificates of deposit), foreign exchange, financial futures and options, exchange and interest rate instruments, and transferable securities;
- (h) underwriting share issues and participation in such issues;
- (i) giving advice to undertakings on capital structure, industrial strategy and related questions, and advice and services relating to mergers and the purchase of undertakings;
- (j) money-broking;
- (k) portfolio management and advice;
- (l) safekeeping and administration of securities;
- (m) providing credit reference services; or
- (n) providing safe custody services;

“fixed platform” means an artificial island, installation or structure permanently attached to the sea bed for the purposes of exploration or exploitation of resources or for other economic purposes;

“forfeiture order” means an order made by the Court under section 26 of this Act;

“fraudulent travel or identity document” means a travel or identity document that –

- (a) has been made, or altered in any way, by a person other than a person or agency lawfully authorised to make or issue the travel or identity document on behalf of a country;
- (b) has been issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or
- (c) is being used by a person other than the lawful holder;

“Hague Convention” means the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970;

“Hostage Convention” means the International Convention Against the Taking of Hostages adopted by the General Assembly of the United Nations on 17 December 1979;

“illegal entry” means entering the Kingdom or any other country without complying with the requirements for lawful entry of that country;

“international nuclear transport” means the carriage of a consignment of nuclear material by any means of transportation intended to go beyond the territory of the country where the shipment originates -

- (a) beginning with the departure from a facility of the shipper in the country; and
- (b) ending with the arrival at a facility of the receiver within the country of ultimate destination;

“international organisation” means any organisation of States or Governments of States or any organ or any agency of any organisation of that kind;

“internationally protected person” means -

- (a) any of the following persons while in a foreign country, including a member of the person’s family accompanying him -
  - (i) a Head of State (including any member of a collegial body performing the functions of a Head of State);
  - (ii) a Head of Government;
  - (iii) a Minister responsible for Foreign Affairs; or
- (b) a representative or official of a country or an official or other agent of an international organisation of an inter-governmental character who, when and where a crime against the person or the person’s official premises, private accommodation or means of transport is committed, is entitled under international law to special protection from attack on the

person's freedom or dignity, as well as on the person's family forming part of that person's household;

“landing” includes alighting on water;

“material benefit” includes any type of financial or non-financial inducement, payment, bribe, reward, advantage or service;

“means of delivery” means missiles, rockets and other unmanned systems capable of delivering nuclear, chemical and biological weapons that are specifically designed for delivering those weapons;

“military aircraft” means an aircraft of the naval, military or air forces of any country;

“military device” includes a shell, bomb, projectile, mine, missile, rocket, charge, grenade or perforator, lawfully manufactured exclusively for military or police purposes;

“military service” includes naval and air force service;

“Montreal Convention” means the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on 23 September 1971;

“New York Convention” means the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, done at New York on 14 December 1973;

“Nuclear, chemical, or biological weapon” means -

- (a) nuclear weapons and other nuclear explosive devices;
- (b) chemical weapons which are, together or separately –
  - (i) toxic chemicals and their precursors, except where intended for -
    - (aa) industrial, agricultural, research, medical, pharmaceutical, or other peaceful purposes;
    - (bb) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons;
    - (cc) military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare; or
    - (dd) law enforcement including domestic riot control purposes, as long as the types and quantities are consistent with such purposes;
  - (ii) munitions and devices specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in subparagraph (i), which would be released as a result of the employment of such munitions and devices;

- (iii) any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (ii);
- (c) biological weapons which are -
  - (i) microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective, or other peaceful purposes; or
  - (ii) weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict;

“nuclear facility” means -

- (a) any nuclear reactor, including reactors installed on vessels, vehicles, aircraft (whether or not used for military, customs or police services) or space objects for use as an energy source in order to propel the vessels, vehicles, aircraft or space objects of for any other purpose; or
- (b) any plant or convenience being used for the production, storage or processing or transport of radioactive material;

“nuclear material” means any of the following -

- (a) plutonium with an isotopic concentration of not more than 80% in plutonium-238;
- (b) uranium-233;
- (c) uranium containing uranium-233 or uranium-235 or both;
- (d) uranium with a naturally occurring isotopic concentration, other than uranium in the form of ore or ore residue; or
- (e) a substance containing nuclear material;

“Nuclear Material Convention” means the Convention for the Physical Protection of Nuclear Material, done at Vienna and New York on 3 March 1980;

“Nuclear Terrorism Convention” means the International Convention for the Suppression of Acts of Nuclear Terrorism, adopted by the General Assembly of the United Nations on 13 April 2005;

“operator”, for a craft, means the owner, operator or person having for the time being command or charge of the craft, other than a pilot of a ship, a harbour master or a law enforcement officer acting in the course of his duties;

“organised criminal group” means a group of at least 3 persons, existing for a period of time, that acts together with an objective of obtaining material benefits from the commission of offences that are punishable by a maximum penalty of at least 4 years imprisonment;

“people smuggling” means the arranging or assisting of an unauthorised person’s illegal entry into any country;

“People Smuggling Protocol” means the Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organised Crime;

“People Trafficking Protocol” means the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organised Crime;

“plastic explosive” means an explosive that -

- (a) is formulated with 1 or more high explosives that in their pure form have a vapour pressure less than  $10^{-4}$  Pa at a temperature of 25°C; (b) is formulated with a binder material; and
- (c) is, when mixed, malleable or flexible at normal room temperature;

“Plastic Explosives Convention” means the Convention on the Marking of Plastic Explosives for the Purpose of Identification, done at Montreal on 1 March 1991;

“premises” includes the whole or any part of a structure, building, craft or vehicle;

“privileged communication” means a confidential communication, whether made directly or indirectly through an agent -

- (a) between -
  - (i) a lawyer in his professional capacity and another lawyer in the same capacity; or
  - (ii) a lawyer in his professional capacity and his client;
- (b) to obtain or give legal advice or assistance; and
- (c) not for the purpose of committing or assisting the commission of an illegal or wrongful act;

“property” includes -

- (a) assets of every kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible; and
- (b) legal documents or instruments in any form including electronic or digital, evidencing title to, or interest in, such assets, including but not limited to bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit;

“public official” has the same meaning as provided in the Anti- Corruption Commissioner Act;

“radioactive device” means -

- (a) any nuclear explosive device; or
- (b) any radioactive material dispersal or radiation-emitting device which may, owing to its radiological properties, cause death, serious bodily injury or substantial damage to property or to the environment;

“radioactive material” means nuclear material and other radioactive substances which contain nuclides which undergo spontaneous disintegration (a process accompanied by emission of one or more types of ionising radiation, such as alpha-, beta-, neutron particles and gamma rays) and which may, owing to their radiological or fissile properties, cause death, serious bodily injury or substantial damage to property or to the environment;

“receiving country” means -

- (a) for people smuggling — the country into which the unauthorised person’s entry is arranged; or
- (b) for people trafficking — the country into which a trafficked person is brought as part of an act of trafficking in persons;

“registrable property” means property the title to which is passed by registration on a register kept under a law in force in the Kingdom;

“ship” means a vessel that is not permanently attached to the sea bed -

- (a) including a hovercraft, hydrofoil, submarine or other floating craft; but
- (b) not including a warship, a ship owned or operated by a state and being used as a naval auxiliary or for customs or police purposes or a ship that has been withdrawn from navigation;

“specified entity” means a person or entity -

- (a) that is a United Nations listed entity as described in section 4; or
- (b) for which a declaration under section 5 has been made;

“specified means” means any of the following -

- (a) threat;
- (b) use of force or other forms of coercion;
- (c) abduction;
- (d) fraud;
- (e) deception;
- (f) abuse of power or of a position of vulnerability; or
- (g) giving or receiving payments or benefits to achieve the consent of a person having control over another person;

“terrorist” means any natural person who -

- (a) commits or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and wilfully;

- (b) participates as an accomplice in terrorist acts;
- (c) organises or directs others to commit terrorist acts; or
- (d) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act;

“terrorist act” has the meaning given by section 3 of this Act;

“terrorist group” means -

- (a) an entity that has as one of its activities or purposes committing, or facilitating the commission of, a terrorist act;
- (b) a group that is a specified entity;
- (c) participates as an accomplice in terrorist acts;
- (d) organises or directs others to commit terrorist acts; or
- (e) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act;

“terrorist property” means -

- (a) property that has been, is being, or is likely to be used to commit a terrorist act;
- (b) property that has been, is being, or is likely to be used by a terrorist or a terrorist group; or
- (c) property owned or controlled, or derived or generated from property owned or controlled, by or on behalf of a specified entity;

“Tokyo Convention” means the Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Tokyo on 14 September 1963;

“Kingdom” means the Kingdom of Tonga;

“Tongan-controlled aircraft” means an aircraft that is for the time being registered in the Kingdom;

“trafficked person” means a person who is the victim of trafficking in persons;

“trafficking in persons” means the recruitment, transportation, transfer, harbouring or receipt of a person for the purpose of exploitation;

“Transaction Reporting Authority” means the Transaction Reporting Authority established under the Money Laundering and Proceeds of Crime Act;



“unauthorised person”, for a country, means a person who is not a citizen of the country and is not in possession of all the documents required by the law of the country for the person’s lawful entry into the country;

“unlawful employee”, for an employer, means a person whom the employer knows, or ought reasonably to know, is not entitled under relevant laws of the Kingdom to undertake employment in the employer’s service;

“unmarked plastic explosive” means a plastic explosive that -

- (a) does not contain a detection agent; or
- (b) at the time of manufacture, does not contain the minimum concentration level of a detection agent mentioned in the table to Part 2 of the Technical Annex to the Plastic Explosives Convention; and

“weapon” includes a firearm, chemical, biological or nuclear weapon.

(2) For this Act -

(a) the period during which an aircraft is in flight is taken to include -

- (i) any period from the moment when all its external doors are closed following embarkation until the moment when any door is opened for disembarkation; and
- (ii) for a forced landing — any period until the competent authorities take over responsibility for the aircraft and for persons and property on board; and

(b) an aircraft is taken to be in service -

- (i) during the whole of the period that begins with the pre-flight preparation of the aircraft for a flight and ends 24 hours after the aircraft lands having completed that flight; and
- (ii) at any time (outside that period) while, in accordance with paragraph (a), the aircraft is in flight.

(3) For this Act, a reference to an aircraft in flight includes a reference to an aircraft during any period when it is on the surface of the sea or land but not within the territorial limits of any country.

(4) For this Act, unless the context otherwise requires, a reference to a country or the territorial limits of a country is taken to include a reference to the territorial waters, if any, of the country.

### 3 Definition of terrorist act

(1) For this Act -

“terrorist act” means an act or omission in or outside the Kingdom that -

- (a) constitutes an offence within the scope of a counter terrorism convention; or

- (b) is mentioned in subsection (2).
- (2) For sub-section (1)(b), the act or omission -
  - (a) shall -
    - (i) involve death or serious bodily injury to a person;
    - (ii) involve serious damage to property;
    - (iii) endanger a person's life;
    - (iv) create a serious risk to the health or safety of the public or a section of the public;
    - (v) involve the use of weapons;
    - (vi) involve introducing into the environment, distributing or exposing the public to any -
      - (aa) dangerous, hazardous, radioactive or harmful substance;
      - (bb) toxic chemical; or
      - (cc) microbial or other biological agent or toxin;
    - (vii) involve serious disruption to any system or the provision of services directly related to essential infrastructure; or
    - (viii) an act which constitutes an offence within the scope of, and as defined in one of the following treaties: Convention for the Suppression of Unlawful Seizure of Aircraft (1970), Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (1971), Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents (1973), International Convention Against the Taking of Hostages (1979), Convention on the Physical Protection of Nuclear Material (1980), Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (1988), Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (1988), Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms located on the Continental Shelf (1988), and the International Convention for the Suppression of Terrorist Bombings (1997);
  - (b) shall be intended or, by its nature and context, reasonably be regarded as being intended -
    - (i) to intimidate the public or a section of the public; or
    - (ii) to compel a government or an international organisation to do, or refrain from doing, any act; and

- (c) shall be made for the purpose of advancing a political, ideological, or religious cause.
- (3) However, an act or omission mentioned in subsection (2) does not include an act or omission that -
  - (a) is committed as part of an advocacy, protest, demonstration, dissent or industrial action and is not intended to result in any harm mentioned in subsections (2)(i), (ii), (iii), (iv), (v), or (vi); or
  - (b) occurs in a situation of armed conflict and is, at the time and in the place it occurred, in accordance with rules of international law applicable to the conflict.

## **PART 2 – SPECIFIED ENTITIES**

### **4 United Nations listed entities to be specified entities**

- (1) For the purposes of this Act, the entities listed from time to time by the Security Council of the United Nations as terrorist entities are “specified entities”.
- (2) The Attorney General shall, by notice published in the Gazette, give notice of the list of terrorist entities referred to in subsection (1), and continue to give notice as and when the Security Council of the United Nations adds or removes any terrorist entity from that list.
- (3) A list of the United Nations terrorist entities prepared and certified by the Attorney General is deemed to be sufficient evidence that the list is a correct list of entities by the Security Council of the United Nations as terrorist entities.

### **5 Declarations that certain entities are specified entities**

- (1) Subject to subsection (2), the Attorney General may declare an entity to be a specified entity.
- (2) In acting under subsection (1) the Attorney General shall have reasonable grounds to believe that -
  - (a) an entity has knowingly committed, attempted to commit, participated in committing or facilitated the commission of a terrorist act;
  - (b) an entity is knowingly acting on behalf of, at the direction of, or in association with an entity mentioned in paragraph (a); or
  - (c) an entity (other than an individual) is wholly owned or effectively controlled directly or indirectly by an entity mentioned in paragraph (a) or (b).

- (3) The declaration shall be published in the Gazette.
- (4) Any property, assets or funds of the specified entity identified in the Kingdom shall be frozen without delay and without prior notice to the specified entity.

## **6 Revocation of declaration**

- (1) The Attorney General shall revoke a declaration under section 5 where there are reasonable grounds to do so.
- (2) A revocation under subsection (1) shall be published in the Gazette.

## **7 Judicial Review**

- (1) Upon application by a specified entity the Court may revoke a declaration under section 5 concerning the specified entity.
- (2) The Court shall -
  - (a) if the Court decides that there are reasonable grounds for the Attorney General's actions under section 5, dismiss the application; or
  - (b) if the Court decides that there are no reasonable grounds for the Attorney General's actions under section 5, revoke the declaration.
- (3) Where the Court revokes a declaration, the Attorney General shall publish notice of the revocation in the Gazette.

## **8 Procedure**

For a hearing under this Part -

- (a) the specified entity shall give reasonable written notice of the application to the Attorney General; and
- (b) the Court shall -
  - (i) hear from the Attorney General;
  - (ii) may hear any evidence or information presented by the Attorney General in the absence of the specified entity or counsel representing the specified entity, or the public, if the Court thinks that disclosure of the information would prejudice national security or endanger the safety of any person;
  - (iii) may receive in evidence anything that would not otherwise be admissible as evidence (including information from any source) that the Court thinks is reliable and relevant; and
  - (iv) where the Court acts under sub-paragraph (ii), give the specified entity a statement summarising the information available to the Court, without

disclosing any information that the Court thinks could prejudice national security or endanger the safety of any person.

## 9 Appeal

The Attorney General or a specified entity may appeal to the Court of Appeal against a decision made by a Court under this Part.

## PART 3 – OFFENCES

### 10 Terrorism financing

- (1) Any person who by any means, directly or indirectly, wilfully provides or collects funds, or attempts to do so, with the intention that they should be used or in the knowledge that they are to be used in whole or in part:
  - (a) in order to carry out a terrorist act;
  - (b) by a terrorist to facilitate that person's activities related to terrorist acts or membership in a terrorist group; or
  - (c) by a terrorist group,  
commits an offence.
- (2) An offence under subsection (1) of this section is committed -
  - (a) even if the terrorist act referred to in subsection (1) does not occur or is not attempted;
  - (b) even if the funds were not actually used to commit or attempt the terrorist act referred to in subsection (1); and
  - (c) regardless of the State or territory in which the terrorist act is intended to or does occur.
- (3) It shall also be an offence to -
  - (a) participate as an accomplice in an offence within the meaning of subsection (1);
  - (b) organise or direct others to commit an offence within the meaning of subsection (1);
  - (c) intentionally contribute to the commission of an offence under subsection (1) by a group of persons acting with a common purpose, where the contribution is to further the criminal activity or purpose of the group that includes commission of an offence under subsection (1) or where the contribution is made knowing the intention of the group is to commit an offence under subsection (1).

- (4) An intentional element of the terrorist financing offences may be inferred from objective factual circumstances.
- (5) The offences set forth in subsections (1) and (3) shall be punishable upon conviction in the case of a natural person by imprisonment not exceeding 25 years or fine not exceeding \$500,000 or both, and in the case of a legal person by a fine not exceeding \$1,000,000.

## **11 Terrorist act**

- (1) A person commits an offence who engages in a terrorist act.
- (2) Any person who commits an offence under this section is liable upon conviction to imprisonment not exceeding 25 years.

## **12 Provision of property or services to specified entity**

- (1) A person shall not, directly or indirectly, knowingly make available property or financial or other related services to, or for the benefit of, a specified entity.
- (2) Any person who commits an offence under this section shall be liable upon conviction to imprisonment not exceeding 15 years.
- (3) Sub-section (1) does not apply if the provision of the property or service is of a kind that is authorised by a resolution of the United Nations Security Council.

## **13 Dealing with terrorist property**

- (1) A person shall not knowingly -
  - (a) deal, directly or indirectly, in any terrorist property;
  - (b) collect or acquire or possess terrorist property;
  - (c) enter into, or facilitate, directly or indirectly, any transaction in respect of terrorist property; or
  - (d) convert, conceal or disguise terrorist property.
- (2) Any person who commits an offence under this section shall be liable upon conviction to imprisonment not exceeding 15 years.
- (3) A person does not commit an offence under sub-section (1)(a), (b) or (c) if the person -
  - (a) informs the Attorney General, in writing, as soon as the person becomes aware that the property is terrorist property; and
  - (b) acts in accordance with any directions of the Attorney General for the property.

#### **14 Harboursing of persons committing terrorist acts**

- (1) A person shall not harbour or conceal, or prevent, hinder or interfere with the apprehension of, any other person knowing or having reason to believe that the other person -
  - (a) has committed or is planning or likely to commit a terrorist act; or
  - (b) is a member of a specified entity.
- (2) Any person who commits an offence under this section shall be liable upon conviction to imprisonment not exceeding 15 years.

#### **15 Provision of weapons to terrorist groups**

- (1) A person shall not knowingly offer to provide, or provide, a weapon or explosive or other lethal device to -
  - (a) a specified entity;
  - (b) a member of a specified entity; or
  - (c) any other person for use by, or for the benefit of, a specified entity or a member of a specified entity.
- (2) Any person who commits an offence under this section shall be liable upon conviction to imprisonment not exceeding 15 years.

#### **16 Participation in terrorist group**

- (1) A person shall not participate (whether as a member, associate member or prospective member) in a terrorist group that is a specified entity, knowing that it is a specified entity.
- (2) Any person who commits an offence under this section shall be liable upon conviction to imprisonment not exceeding 15 years.

#### **17 Recruitment of persons to terrorist groups**

- (1) A person shall not knowingly agree to recruit, or recruit, another person -
  - (a) to be a member of a terrorist group; or
  - (b) to participate in the commission of a terrorist act.
- (2) Any person who commits an offence under this section shall be liable upon conviction to imprisonment not exceeding 15 years.

## **PART 4 - MANAGEMENT AND FORFEITURE OF PROPERTY OF SPECIFIED ENTITIES**

### **DIVISION 1 - MANAGEMENT**

#### **18 Direction to take control of property**

- (1) The Attorney General may apply to the Court for the appointment of a Receiver, and may direct such Receiver to take custody and control of property if the Attorney General has reasonable grounds to believe that the property is terrorist property.
- (2) The direction -
  - (a) shall specify the property concerned; and
  - (b) may be subject to conditions.
- (3) A person who has custody or control of property mentioned in the direction shall allow the Court appointed Receiver to take custody and control of the property in accordance with the direction.

#### **19 Notice of direction**

- (1) Notice of the making of a direction under sections 18 and 20 shall be given -
  - (a) as soon as possible to the person who owns or controls the property, if practicable, if the person or a representative of the person is in the Kingdom; and
  - (b) to any other person that the Attorney General thinks may have an interest in the property.
- (2) Failure to comply with subsection (1) does not affect the validity of the direction.

#### **20 Variation, revocation, or expiry of direction**

- (1) The Attorney General may -
  - (a) make another direction under section 18 varying the conditions of the direction or the property that is subject to the direction; or
  - (b) revoke the direction.
- (2) Notice of any direction under this section shall be given in accordance with the provisions of section 19(1).
- (3) If not earlier revoked, a direction under section 18 or this section expires if -
  - (a) for property of a specified entity – the entity ceases to be a specified entity; or



- (b) a forfeiture order is made under section 26 in relation to the property.

## **21 Judicial review and appeal**

- (1) Upon application by a person who owns or controls property subject to a direction under this Division, the Court may vary or revoke the direction.
- (2) The Court shall -
  - (a) if the Court decides that there are reasonable grounds for the Attorney General's actions under sections 18 or 20, dismiss the application;
  - (b) if the Court decides that there are no reasonable grounds for the Attorney General's actions under sections 18 or 20, revoke the direction.
- (3) Reasonable written notice of an application under subsection (1) shall be given to the Attorney General by the applicant.
- (4) Before deciding on the application, the Court shall hear from the Attorney General.
- (5) If the Court revokes the direction, the Attorney General shall -
  - (a) inform the person who owns or controls the property in writing; and
  - (b) publish a notice of revocation in the Gazette.
- (6) The Attorney General or a person whose property is subject to a direction may appeal to the Court of Appeal against a decision made by a Court under this Division.

## **22 Further provisions on management of property of specified entities**

The provisions of the Money Laundering and Proceeds of Crime Act apply, with all necessary modifications, to property that is the subject of a direction under section 18, as if the direction were a restraining order under Division 4 of Part 3 of that Act.

## **23 Third parties may apply for relief**

- (1) A person, other than the person who owns or controls the property, who claims an interest in property that is subject to a direction under section 18 (not being property to which subsection (2) applies) may apply to the Court for an order under section 24.
- (2) The person shall give written notice of the application to the Attorney General, who is a party to any proceedings on the application.

**24 Court may grant relief to third party**

- (1) Subsection (2) applies if -
  - (a) a person makes an application under section 23; and
  - (b) the Court is satisfied that the person's claim to the interest is valid.
- (2) The Court shall make an order -
  - (a) declaring the nature, extent, and value of the person's interest in the property;
  - (b) declaring that the interest is no longer subject to the order under section 18; and
  - (c) if the interest is held by the Court appointed Receiver -
    - (i) directing the Court appointed Receiver to transfer the interest to the person; or
    - (ii) declaring that there is payable by the Court appointed Receiver to the person an amount equal to the value of the interest declared by the Court.
- (3) However, the Court may, if it thinks fit, refuse to make an order if it is satisfied that -
  - (a) the person was knowingly involved in any way in the carrying out of the terrorist act that is the basis of the designation of the entity as a specified entity, or is an entity that is wholly owned or effectively controlled, directly or indirectly, by the specified entity; or
  - (b) if the person acquired the interest at the time of or after the designation of the entity as a specified entity, the applicant did not acquire the interest in the property in good faith and for value, without knowing or having reason to believe that the property was, at the time of the acquisition, property subject to a direction under section 18.

**DIVISION 2 - FORFEITURE****25 Application for forfeiture order**

- (1) The Attorney General may apply to the Court for a forfeiture order against terrorist property.
- (2) The Attorney General shall -
  - (a) name as respondents to the application only those persons who are known to own or control the property the subject of the application; and
  - (b) give notice of the application to each respondent in the manner directed by the Court.

- (3) The Court may, at any time before the final determination of the application, make orders for -
  - (a) service of the application on any person whom the Court thinks has an interest in the property; and
  - (b) publication of notice of the application.
- (4) Any person who claims an interest in the property may appear and present evidence at the hearing of the application.

## **26 Making forfeiture order**

- (1) If the Court is satisfied, on the balance of probabilities, that the property the subject of the application is terrorist property, the Court shall order that the property be forfeited to the Kingdom.
- (2) If the Court is satisfied that a person mentioned in sections 25(2)(a) or (3)(a) -
  - (a) has an interest in the property the subject of the application;
  - (b) has exercised reasonable care to ensure that the property is not terrorist property; and
  - (c) is not a member of a specified entity,the Court shall order that the interest is not affected by the order and declare the nature and extent of the interest.
- (3) If the Court makes a forfeiture order, the Court may give any directions that are necessary or convenient to give effect to the order.
- (4) If the Court refuses to make a forfeiture order, the Court shall make an order that describes the property and declare that it is not terrorist property.

## **27 Effect of forfeiture order**

- (1) If the Court makes a forfeiture order against property (other than registrable property), the order vests the property absolutely in the Kingdom.
- (2) If the Court makes a forfeiture order against registrable property -
  - (a) the order vests the property in the Kingdom in equity, but does not vest it in the Kingdom at law until the applicable registration requirements have been complied with;
  - (b) the Kingdom is entitled to be registered as owner of the property;
  - (c) the Attorney General may do, or authorise the doing of, anything necessary or convenient to obtain the registration of the Kingdom as owner, including the execution of any necessary instrument;

- (d) the Attorney General may do anything necessary or convenient to give notice of, or otherwise protect, the Kingdom's equitable interest in the property; and
  - (e) anything done by the Attorney General under paragraph (d) is not a dealing for subsection (3)(a).
- (3) If the Court makes a forfeiture order against property (including registrable property) -
- (a) the property shall not, except with the leave of the Court and in accordance with any directions of the Court, be disposed of, or otherwise dealt with, by or for the Kingdom, before 6 months after the forfeiture order was made; and
  - (b) the property may be disposed of, and the proceeds applied or otherwise dealt with as the Attorney General directs, after 6 months after the forfeiture order was made.

## 28 Protection of third parties

- (1) A person who claims an interest in property that has been forfeited and who has not been given notice under section 25(2)(a) or (3)(a) may apply to the Court, within 6 months after the forfeiture order was made, for an order under subsection (4).
- (2) The person shall give reasonable written notice of the application to the Attorney General.
- (3) The Attorney General -
  - (a) is a party to the proceedings in an application under subsection (1); and
  - (b) may make an application under subsection (1) for a person.
- (4) If a person applies to the Court for an order about the person's interest in property, the Court shall make an order declaring the nature, extent and value (as at the time the order is made) of the person's interest if the Court is satisfied in accordance with section 26(2).
- (5) An appeal lies to the Court of Appeal from an order under subsection (4).

## 29 Return of property

- (1) The Attorney General shall, on application by a person who has obtained an order under section 28(4), if the period for appeals has expired and any appeal from that order has been determined or has lapsed -
  - (a) return the property, or the part of it to which the interest of the applicant relates, to the applicant; or

- (b) if the interest in the property is no longer vested in the Kingdom, pay an amount equal to the value of the interest of the applicant, as declared in the order, to the applicant.
- (2) Subsection (1) does not apply to any property returned, or amount paid, to the person under section 24.

### **30 Appeal**

The Attorney General or a person affected by a decision made by the Court under this Division may appeal to the Court of Appeal against the decision.

## **DIVISION 3 - INFORMATION**

### **31 Disclosure of information**

- (1) A cash dealer or financial institution shall immediately inform the Transaction Reporting Authority about the existence of any property in its possession or control -
  - (a) that is owned or controlled, directly or indirectly, by or for a specified entity, including property derived or generated from that property; or
  - (b) for which there are reasonable grounds to suspect is property of a kind mentioned in paragraph (a).
- (2) The Transaction Reporting Authority may inform the financial intelligence authority or other appropriate authority of a foreign country about any information it has about any property of the kind mentioned in subsection (1), if the Authority thinks the information would be relevant to the foreign country.
- (3) Information may be given under subsection (2) subject to any conditions that the Transaction Reporting Authority determines.
- (4) A cash dealer or financial institution shall inform the Transaction Reporting Authority about every dealing that occurs in the course of its activities and for which there are reasonable grounds to suspect is related to the commission of a terrorist act.
- (5) No civil or criminal proceedings lie against a person for making a disclosure or report, in good faith, under subsections (1), (2) or (4).
- (6) Nothing in subsection (1) or (4) requires a law practitioner to disclose a privileged communication, other than information about a financial transaction recorded for a trust account of the law practitioner under the requirements of the Law Practitioners Act.
- (7) A person who receives information under subsections (1), (2) or (4) shall not disclose the information or its source except -

- (a) for the purposes of -
    - (i) the enforcement of this Act;
    - (ii) the detection, investigation or prosecution of an offence under this Act; or
    - (iii) providing assistance under the Mutual Assistance in Criminal Matters Act; or
  - (b) in accordance with an order of a court.
- (8) A person shall not contravene subsection (1) or (4).
- (9) Any person who commits an offence under this section shall be liable upon conviction to imprisonment not exceeding 5 years.

## PART 5 - GENERAL POWERS

### 32 Controlled delivery of property

- (1) This section applies to an authorised officer who has reasonable grounds to believe that a person has committed, is committing or is about to commit an offence under this Act.
- (2) The authorised officer may allow property, that the authorised officer reasonably suspects has been, is being or may be used to commit an offence under this Act, to enter, leave or move through the Kingdom for the purpose of gathering evidence to identify a person or to facilitate a prosecution for the offence.
- (3) An authorised officer does not commit an offence under this Act if -
- (a) the authorised officer is engaged in investigation of a suspected offence under this Act;
  - (b) the offence involves property that the authorised officer reasonably suspects has been, is being or may be used to commit an offence under this Act; or
  - (c) the authorised officer does not take action, that the authorised officer would otherwise be required to take under this Act, for the purpose of the investigation.

### 33 Provision of information relating to persons, goods or craft

- (1) The operator of a craft -
- (a) arriving in or departing from the Kingdom; or
  - (b) registered in the Kingdom, departing from any place outside the Kingdom,

shall give the appropriate aviation or ports authority any information in their possession, relating to persons or goods on board, or expected to be on board, the craft.

- (2) A person shall not contravene subsection (1).
- (3) Any person who commits an offence under this section shall be liable upon conviction to imprisonment not exceeding 2 years.
- (4) The appropriate aviation or ports authority may give the competent authority in a foreign country any information -
  - (a) in its possession relating to persons entering or leaving the Kingdom; and
  - (b) that is required by the laws of the foreign country.
- (5) The provision of information under subsection (1) or (3) is taken not to be a contravention of any provision of law prohibiting the disclosure of the information.
- (6) No information provided to the appropriate aviation or ports authority under subsection (1) may be used or disclosed by the appropriate aviation or ports authority except for the purpose of protecting border security, national security or public safety.
- (7) The Attorney General may make regulations generally to give effect to the purposes of this section, including regulations prescribing the types or classes of information that may be -
  - (a) provided under this section; or
  - (b) disclosed to the competent authority of a foreign country.

### **34 Power to prevent entry and order the removal of persons**

- (1) An authorised officer or other authority shall not grant an endorsement permitting a person to enter the Kingdom if he has reasonable grounds to suspect that that person has been, is, or will be, involved in the commission of a terrorist act.
- (2) If the Attorney General has reasonable grounds to suspect that a person, other than a Tongan subject, in the Kingdom has been, is or will be, involved in the commission of a terrorist act, the Attorney General may make an order requiring the person to leave the Kingdom and remain out of the Kingdom.
- (3) A person against whom an order under subsection (2) is made shall leave the Kingdom and shall, so long as the order is in force, remain out of the Kingdom.
- (4) A person against whom an order under subsection (2) is made may be -

- (a) detained in such manner as may be directed by the Attorney General for no more than 7 days, or any longer period that is reasonably needed to arrange for the person's removal from the Kingdom; and
- (b) placed on a craft leaving the Kingdom.

### **35 Exchange of information relating to terrorist groups and terrorists acts**

The Attorney General may disclose to the appropriate authority of a foreign country any information in the Attorney General's possession relating to any of the following -

- (a) the actions or movements of terrorist groups or persons suspected of involvement in the commission of terrorist acts;
- (b) the use of forged or falsified travel papers by persons suspected of involvement in the commission of terrorist acts;
- (c) traffic in explosives or other lethal devices by terrorist groups or persons suspected of involvement in the commission of terrorist acts; or
- (d) the use of communication technologies by terrorist groups,

if the disclosure is not prohibited by any provision of law and will not, in the Attorney General's view, prejudice national security or public safety.

### **36 Regulations**

The Attorney General may make regulations in relation to all matters for which regulations are required or authorised to be made by this Act, including the power to add or omit items to or from the Schedule.

### **37 Detention of goods suspected to be terrorist property**

An authorised officer may, without warrant, seize and detain goods if-

- (a) the goods came to his attention, or into his possession, during a search, inspection, audit, or examination under –
  - (i) the Customs and Excise Management Act; or
  - (ii) the Money Laundering and Proceeds of Crime Act;
- (b) the goods are in the Kingdom and he is satisfied that they either -
  - (i) are being, or are intended to be, exported into the Kingdom; or
  - (ii) are being, or have been, imported into the Kingdom; and
- (c) the authorised officer has good cause to suspect that the goods are terrorist property.



### **38 Return of cash necessary to satisfy essential human needs**

- (1) The power to detain goods under section 37 does not extend to, and the authorised officer shall if practicable return immediately, cash seized under section 37 if the authorised officer is satisfied that the cash is (or things for which it might be exchanged are) necessary to satisfy the essential human needs -
  - (a) of (or of a dependant of) an individual from whom the cash has been seized; and
  - (b) arising on, or within 7 days after, the date on which the detention would otherwise be effected.
- (2) Nothing in subsection (1) requires the authorised officer to return any cash that the authorised officer is satisfied is not necessary for the purpose specified in that subsection.
- (3) If the 7 day period referred to in section 40(1)(a) is extended under section 41, subsection (1) applies to the extension, and the reference in subsection (1)(b) to 7 days shall be read as a reference to the number of days (not exceeding 21) of that 7 day period as extended.

### **39 Further provisions about detention under section 37**

- (1) Reasonable force may be used if it is necessary for any of the following purposes -
  - (a) to seize goods under section 37; or
  - (b) to detain goods under section 37.
- (2) If the person for whom the goods have been seized and detained under section 37 is identified but is not present when the seizure and detention occurs, the authorised officer shall make all reasonable efforts to notify that person of the detention and seizure as soon as practicable.
- (3) Goods detained under section 37 shall be taken to such a place of security as an authorised officer directs, and there detained, unless section 42 applies.
- (4) An authorised officer or a person lawfully assisting an authorised officer is not liable for the loss of or damage to any property occasioned by anything done or omitted to be done or purported to have been done by an authorised officer or person lawfully assisting in the exercise of any power conferred on him under sections 37 to 42.
- (5) Nothing in section 37 limits or affects powers under the Mutual Assistance in Criminal Matters Act, the Money Laundering and Proceeds of Crime Act or the Customs and Excise Management Act.

**40 Return of goods detained under section 37**

- (1) In this section, investigation period, in relation to goods seized and detained under section 37 -
  - (a) means the period of 7 days after the date on which the goods were seized and detained; and
  - (b) includes any extension of that period granted by the Court under section 41.
- (2) Goods seized and detained under section 37 shall be returned to the person from whom they were seized as soon as practicable after whichever of the following occurs first:
  - (a) the completion of all relevant investigations, if they show that the goods are not terrorist property; or
  - (b) the expiry of the investigation period.
- (3) The authorised officer need not return the goods as provided in subsection (2), and may continue to detain them pending a decision by the Attorney General under section 18, if the authorised officer is advised by, or on behalf of, the Attorney General that the goods are terrorist property.

**41 Extension of detention period**

- (1) The 7 day period in section 40(1)(a) may be extended (but once only) by order of the Court for a reasonable period up to a further 14 days if, on an application for the purpose made before the expiry of that 7 day period, the Court is satisfied -
  - (a) that the good cause to suspect required by section 37(1)(c) exists; and
  - (b) that the extension to be granted is necessary to enable investigations in or outside the Kingdom in relation to the goods or entity to be completed.
- (2) The application shall be made in writing and served on the person from whom the goods were seized (if that person can be identified and located), and shall include the following particulars -
  - (a) a description of the goods detained;
  - (b) the date on which the detention commenced;
  - (c) a statement of the facts supporting the good cause to suspect required by section 37(1)(c); and
  - (d) a statement of the reasons why the extension sought is necessary to enable investigations in or outside the Kingdom in relation to the goods or entity to be completed.
- (3) The person from whom the goods were seized is entitled to appear and be heard on the application.

- (4) The authorised officer shall make all reasonable efforts to notify the person from whom the goods were seized, at least 24 hours before the hearing of the application, of the time and place of that hearing.

#### **42 Custody of certain goods detained under section 37**

- (1) If goods detained under section 37 are a craft, vehicle or animal, an authorised officer may leave those goods in the custody of either -
  - (a) the person from whom the goods have been seized; or
  - (b) any other person authorised by the authorised officer and who consents to having such custody.
- (2) Every person who has the custody of goods under subsection (1) shall, until a final decision is made under section 40 as to whether or not they are to be returned, hold them in safekeeping, without charge to the Kingdom and in accordance with any reasonable conditions that may be imposed by the authorised officer.
- (3) A person to whom subsection (2) applies shall also -
  - (a) make the goods available to an authorised officer on request; and
  - (b) not alter, or dispose of, or remove the goods from the Kingdom, unless he is authorised to do so by the authorised officer; and
  - (c) return the goods on demand to the custody of the authorised officer.

#### **43 Offences in relation to certain detained goods**

- (1) A person, having custody of goods pursuant to section 42(1), shall not act in breach of any requirement of, or imposed pursuant to, sections 42(2) or (3).
- (2) A person shall not, without the permission of the authorised officer, take or carry away or otherwise convert to his own use goods to which sections 42(2) and (3) applies.
- (3) A person who commits an offence under this section shall be liable upon conviction to a fine not exceeding \$1,000,000.

## **PART 6 - COUNTER-TERRORISM CONVENTIONS**

### **DIVISION 1 - TOKYO CONVENTION — AIRCRAFT**

#### **44 Criminal act in aircraft**

- (1) An act or omission taking place on board a Tongan-controlled aircraft while in flight other than in or over the Kingdom that, if taking place in the

Kingdom would constitute an offence under the law in force in the Kingdom, constitutes that offence.

- (2) Subsection (1) does not apply to an act or omission that would, if committed in the Kingdom be an offence but that is expressly or impliedly authorised under the law in force in the Kingdom when taking place outside the Kingdom.

#### **45 Specified aircraft**

If the Minister responsible for civil aviation is satisfied that the requirements of article 18 of the Tokyo Convention have been satisfied, the Minister may, by notification published in the Gazette, declare that a specified aircraft is taken to be registered in a specified Convention country.

#### **46 General powers of commander of aircraft**

- (1) The commander of an aircraft in flight may take any reasonable measures necessary for the purposes mentioned in subsection (2) in relation to any person on board the aircraft, including restraint of the person and the use of force, if the commander has reasonable grounds to believe -
  - (a) that the person has done or is about to do any act on the aircraft while it is in flight that jeopardises or may jeopardise -
    - (i) the safety of the aircraft or of persons or property on board the aircraft; or
    - (ii) good order and discipline on board the aircraft; or
  - (b) that the person has done on the aircraft while in flight any act that in the opinion of the commander is a serious offence under a law in force in the country in which the aircraft is registered, not being a law of a political nature or based on racial or religious discrimination.
- (2) The purposes mentioned in subsection (1) are -
  - (a) to protect the safety of the aircraft or of persons or property on board the aircraft;
  - (b) to maintain good order and discipline on board the aircraft; or
  - (c) to enable the commander to disembark or deliver that person in accordance with subsection (5).
- (3) For subsection (1)(b), a Tongan-controlled aircraft is taken to be registered in the Kingdom whether or not it is so registered and whether or not it is registered in another country.
- (4) A member of the crew of an aircraft and any other person on board the aircraft may, at the request or with the authority of the commander of the aircraft, and

a member shall if required by the commander, render assistance in restraining any person whom the commander is entitled under subsection (1) to restrain.

- (5) At any time when the aircraft is in flight, a member of the crew of the aircraft or any other person may, without obtaining the authority of the commander, take any measures mentioned in subsection (1) in relation to any person on board the aircraft that the member or other person has reasonable grounds to believe are immediately necessary to protect the safety of the aircraft or of persons or property on board the aircraft.

#### **47 Restraint of persons on aircraft**

- (1) Any restraint imposed on a person on board an aircraft under section 46 may be continued after the time when the aircraft first ceases to be in flight only if-
  - (a) the aircraft first ceases to be in flight in the territory of a country that is not a party to the Tokyo Convention and its authorities refuse to permit the disembarkation of the person in order to deliver that person to the competent authorities of the country;
  - (b) the aircraft makes a forced landing and the commander is unable to deliver that person to the competent authorities; or
  - (c) the person agrees to continued restraint for onward carriage.
- (2) The commander shall as soon as is reasonably practicable, and if possible before landing in a country's territory, cause notification to be given to the appropriate authority of the country where the aircraft ceases to be in flight of the fact that a person on board the aircraft is under restraint and of the reasons for the restraint.
- (3) Subject to the notification mentioned in subsection (2), restraint may be continued after the aircraft first ceases to be in flight -
  - (a) for any period (including the period of any further flight) between that time and the first occasion on which the commander is able with any requisite consent of the appropriate authorities to disembark or deliver the person under restraint in accordance with section 48; or
  - (b) if the person under restraint agrees to continue his journey under restraint on board that aircraft.

#### **48 Disembarkation and delivery of restrained person**

- (1) The commander of an aircraft may disembark any person on board an aircraft in any country in which the aircraft may be if, for any person on board the aircraft, the commander -
  - (a) has reasonable grounds to believe that the person is about to do any act mentioned in section 46(1)(a); and

- (b) believes that it is necessary to do so in order to protect the safety of the aircraft or of persons or property on board the aircraft or to maintain good order and discipline on board the aircraft.
- (2) For any person on board the aircraft that the commander of an aircraft has reasonable grounds to believe as mentioned in section 46(1)(b), the commander may deliver the person -
  - (a) in the Kingdom to a police officer; or
  - (b) in any other country that is a party to the Tokyo Convention, to an officer having functions corresponding to the functions of either a police officer or of an immigration officer in the Kingdom.

#### **49 Reporting and notification obligations**

- (1) The commander of an aircraft -
  - (a) if the commander disembarks a person under section 48(1), for a Tongan-controlled aircraft, in any country or, for any other aircraft, in the Kingdom, shall report the fact of, and the reason for, the disembarkation to -
    - (i) an appropriate authority in the country of disembarkation; or
    - (ii) the appropriate diplomatic or consular office of the country of nationality of that person;
  - (b) if the commander intends to deliver a person under section 48 in the Kingdom or, for a Tongan-controlled aircraft, in any other country that is a Convention country, shall, before or as soon as reasonably practicable after landing, give notification of his intention and of the reasons -
    - (i) if the country is the Kingdom, to a police officer or immigration officer or, for any other country, to an officer having functions corresponding to the functions either of a police officer or of an immigration officer in the Kingdom; and
    - (ii) in either case to the appropriate diplomatic or consular office of the country of nationality of the person; and
  - (c) shall give to the appropriate authority evidence in his possession about the person's behaviour.
- (2) A commander of an aircraft who, without reasonable cause, fails to comply with the requirements of this section commits an offence.
- (3) Any person who commits an offence under this section shall be liable upon conviction to imprisonment not exceeding 2 years.
- (4) If the person is delivered to a police officer -

- (a) the police officer shall take the person into custody unless he has reasonable grounds to believe that the person has not committed the offence; and
- (b) if the police officer refuses to take the person into custody, give written reasons for the refusal.

## 50 Indemnity for actions under this Division

A person who exercises a power, including restraint, on another person in accordance with this Division in good faith is not guilty of an offence and is not liable to civil proceedings for the exercise of that power.

## DIVISION 2 - HAGUE CONVENTION — HIJACKING

### 51 Offence of hijacking

- (1) Subject to subsections (2) and (3), a person on board an aircraft in flight shall not unlawfully, by the use of force or by threats of any kind, seize the aircraft or exercise control of it, whether the aircraft is in the Kingdom or not.
- (2) A person who commits an offence under this section shall be liable upon conviction to imprisonment not exceeding 25 years.
- (3) Proceedings may be brought for an offence under subsection (1) only if -
  - (a) the offence is committed on board an aircraft registered in the Kingdom;
  - (b) the aircraft on board which the offence is committed lands in the Kingdom's territory and the alleged offender is on board; or
  - (c) the offence is committed on board an aircraft leased without crew to a lessee who has his principal place of business in the Kingdom or, if the lessee has no principal place of business in the Kingdom, if the lessee is a permanent resident of the Kingdom.
- (4) Sub-section (1) applies to an act committed in relation to an aircraft used in military, customs or police service only if -
  - (a) the act is committed in or over the Kingdom; or
  - (b) if the act is committed outside the Kingdom, the person committing the act is a subject of the Kingdom.

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**DIVISION 3 - MONTREAL CONVENTION AND PROTOCOL — CIVIL AVIATION****52 Offence to destroy, damage or endanger safety of aircraft**

- (1) A person shall not unlawfully and intentionally -
  - (a) destroy an aircraft in service or so damage an aircraft as to render it incapable of flight or as to be likely to endanger its safety in flight; or
  - (b) commit on board an aircraft in flight an act of violence that is likely to endanger the safety of the aircraft.
- (2) A person shall not unlawfully and intentionally place or cause to be placed on an aircraft in service a device or substance that is likely to destroy the aircraft or is likely to damage it so as to render it incapable of flight or so as to be likely to endanger its safety in flight.
- (3) Sub-sections (1) and (2) apply to an act committed in relation to an aircraft used in military, customs or police service only if -
  - (a) the act is committed in or over the Kingdom; or
  - (b) if the act is committed outside the Kingdom, the person committing the act is a subject of the Kingdom.
- (4) Any person who commits an offence under this section shall be liable upon conviction to imprisonment not exceeding 25 years.

**53 Other acts endangering aircraft**

- (1) A person shall not unlawfully and intentionally destroy or damage any property to which this section applies or interfere with the operation of that property, if the destruction, damage or interference is likely to endanger the safety of aircraft in flight.
- (2) Subsection (1) applies to any property used for the provision of air navigation facilities including any land, building, ship, apparatus or equipment, whether it is on board an aircraft or elsewhere.
- (3) A person shall not intentionally communicate any information which he knows to be false, misleading or deceptive in a material particular, if the communication of the information endangers the safety of an aircraft in flight or is likely to endanger the safety of an aircraft in flight.
- (4) Subsections (1) and (3) applies to the commission of an act only if-
  - (a) the act is committed in the Kingdom; or
  - (b) the act is committed outside the Kingdom -
    - (i) the person committing the act is a subject of the Kingdom;



- (ii) the commission of the act endangers or is likely to endanger the safety in flight of an aircraft registered in the Kingdom or chartered by demise to a lessee whose principal place of business, or (if none) whose permanent residence, is in the Kingdom;
  - (iii) the act is committed on board an aircraft that is registered or chartered in the Kingdom;
  - (iv) the act is committed on board an aircraft that lands in the Kingdom with the person who committed the act still on board;  
or
  - (v) the person is present in the Kingdom.
- (5) Subsection (1) also applies to an act committed outside the Kingdom and that is committed in relation to property that is situated outside the Kingdom and is not used for the provision of air navigation facilities in connection with international air navigation, only if the person committing the act is a subject of the Kingdom.
- (6) Any person who commits an offence under this section shall be liable upon conviction to imprisonment not exceeding 25 years.

#### **54 Violence at international airports**

- (1) A person shall not unlawfully and intentionally, using any device, substance or weapon -
- (a) perform an act of violence, against a person at an airport serving international civil aviation, that causes or is likely to cause serious injury or death; or
  - (b) destroy or seriously damage the facilities of an airport serving international civil aviation or an aircraft not in service located there or disrupt the services of the airport,
- if the act endangers or is likely to endanger safety at the airport.
- (2) Any person who commits an offence under this section shall be liable upon conviction to imprisonment not exceeding 25 years.

### **DIVISION 4 - INTERNATIONALLY PROTECTED PERSONS**

#### **55 Offences against internationally protected persons**

- (1) A person shall not intentionally -
- (a) commit murder, kidnapping or other attack on the person or liberty of an internationally protected person;

- (b) commit a violent attack on the official premises, private accommodation or means of transport, of an internationally protected person, likely to endanger that person or that person's liberty; or
  - (c) threaten to commit an attack.
- (2) Any person who commits an offence under this section shall be liable upon conviction to imprisonment not exceeding 25 years.

## DIVISION 5 - HOSTAGES

### 56 Offences of taking hostages

- (1) A person shall not -
- (a) seize or detain another person; and
  - (b) threaten to kill, injure or continue to detain the other person,
- with intent to compel the government of a country, an international organisation or a person or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of the other person.
- (2) Any person who commits an offence under this section shall be liable upon conviction to imprisonment not exceeding 25 years.

## DIVISION 6 - NUCLEAR MATERIAL

### 57 Movement of nuclear material

- (1) A person shall not knowingly import or export nuclear material to or from the Kingdom except in accordance with a licence or written permit given by the Prime Minister with the consent of Cabinet.
- (2) A person shall not knowingly, without licence or written permission from the Prime Minister with the consent of Cabinet, transport nuclear material -
- (a) over the territory of the Kingdom; or
  - (b) through any of its seaports or airports.
- (3) A person shall not knowingly transport nuclear material between two places in the Kingdom, through international waters or airspace, without licence or written permission from the Prime Minister with the consent of Cabinet.
- (4) A licence or written permission mentioned in subsections (1), (2) or (3) may be given only if the Prime Minister with the consent of Cabinet has received a written assurance from the person transporting the material that the material will, during international nuclear transport, be protected at the levels mentioned in the Nuclear Material Convention.

- (5) Any person who knowingly makes a false statement or provide a false assurance to the Prime Minister under subsection (1), (2) or (3) commits an offence under this section.
- (6) Any person who commits an offence under this section shall be liable upon conviction to imprisonment not exceeding 25 years.

## **58 Offences relating to nuclear material**

- (1) Any person who -
  - (a) without lawful authority intentionally receive, possess, use, transfer, alter, dispose of or disperse nuclear material in a way that causes or is likely to cause death or serious injury to a person or substantial damage to property or to the environment;
  - (b) steal nuclear material;
  - (c) embezzle or fraudulently obtain nuclear material;
  - (d) demand nuclear material by threat or use of force or any other form of intimidation;
  - (e) threaten -
    - (i) to use nuclear material to cause death or serious injury to any person or substantial damage to any property or to the environment; or
    - (ii) to steal nuclear material to compel a person, state or an international organisation to do or refrain from doing any act; or
  - (f) without lawful authority commit an act, or threaten to commit an act against a nuclear facility, or interfere with a nuclear facility in a way that causes or is likely to cause death or serious injury to a person or substantial damage to property or to the environment,commits an offence under this section.
- (2) Any person who commits an offence under this section shall be liable upon conviction to imprisonment not exceeding 25 years.

## **DIVISION 7 - MARITIME SAFETY**

## **59 Offences regarding maritime safety**

- (1) Any person who unlawfully and intentionally -
  - (a) seizes, or exercises control over, a ship or fixed platform by force or threat of force or other form of intimidation;
  - (b) commits an act of violence, against a person on board a ship or fixed platform, that is likely to endanger the safe navigation of the ship or safety of the fixed platform;

- (c) destroys a ship or fixed platform;
  - (d) causes damage, to a ship or its cargo or a fixed platform, that is likely to endanger the safe navigation of the ship or safety of the fixed platform;
  - (e) places, or causes to be placed, on a ship or fixed platform a device or substance, likely -
    - (i) for a ship — to destroy the ship, or to cause damage to the ship or its cargo likely to endanger the safe navigation of the ship; or
    - (ii) for a fixed platform — to destroy the fixed platform or to endanger its safety;
  - (f) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation in a way that is likely to endanger the safe navigation of a ship;
  - (g) communicates information, that he knows to be false, endangering the safe navigation of a ship; or
  - (h) injures or kills a person in connection with the commission, or attempted commission, of an offence mentioned in paragraph (a), (b), (c), (d), (e), (f), or (g),
- commits an offence under this section.
- (2) Any person who, with the intention of compelling another person to do or to refrain from doing any act, threatens to commit an offence mentioned in subsections (1)(b), (c), (d) or (f) in relation to a ship or fixed platform, if the threat is likely to endanger the safety of the ship or fixed platform, commits an offence under this section.
  - (3) Any person who commits an offence under this section shall be liable upon conviction to imprisonment not exceeding 25 years.

## 60 Protocol offences

- (1) Any person who unlawfully and intentionally -
  - (a) with the intention of intimidating a population or compelling a government or international organisation to do or to refrain from doing any act -
    - (i) uses against or on or discharges from a fixed platform or ship any nuclear, chemical, or biological weapon or radioactive or nuclear material in a manner that causes or is likely to cause death or serious injury or damage;
    - (ii) discharges from a fixed platform or ship oil, liquefied natural gas, or other hazardous or noxious substance, which is not covered by paragraph (a)(i) in such quantity or concentration that causes or is likely to cause death or serious injury or damage;

- (iii) uses a ship in a manner that causes death or serious injury or damage;
    - (iv) threatens to commit an offence in paragraphs (a)(i), (ii) or (iii);
  - (b) transports on a craft -
    - (i) any explosive or radioactive material knowing that it is intended to cause or threatened to be used to cause death or serious injury or damage with the intention to intimidate a population or compel a government or international organisation to do or refrain for doing any act;
    - (ii) any nuclear, chemical, or biological weapon;
    - (iii) any source material, special fissionable material, or equipment or material especially designed or prepared for the processing use or production of special fissionable material knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguard pursuant to an International Atomic Energy Agency comprehensive safeguards agreement;
    - (iv) any equipment, material, or software or related technology that is intended to significantly contribute to the design, manufacture, or delivery of a nuclear, chemical or biological weapon;
    - (v) a person who has committed an act that constitutes an offence under this section with the intent to assist that person to avoid criminal prosecution;
  - (c) injures or causes the death of another person in connection with the commission of any offence under this section,  
commits an offence.
- (2) Any person who commits an offence under this section shall be liable upon conviction to imprisonment not exceeding 25 years.

## 61 Arrest and delivery

- (1) The master of a ship registered in the Kingdom who has reasonable grounds to believe that a person has committed an offence under section 59 against, or on board, any ship may -
  - (a) arrest and detain the person; and
  - (b) deliver the person to the appropriate authorities in any other Convention State.
- (2) The master of the ship shall -
  - (a) notify the authorities in the other Convention State before delivering the person; and

- (b) give to the authorities evidence in his possession that the person has committed the offence.
- (3) If the person is delivered to a police officer -
  - (a) the police officer shall take the person into custody unless he has reasonable grounds to believe that the person has not committed the offence; and
  - (b) if the police officer refuses to take the person into custody, give written reasons for the refusal.
- (4) A master of a ship who, without reasonable cause, fails to comply with the requirements of this section commits an offence.
- (5) Any person who commits an offence under this section shall be liable upon conviction to imprisonment not exceeding 2 years.

## DIVISION 8 - PLASTIC EXPLOSIVES

### 62 Plastic explosives offences

- (1) A person shall not manufacture unmarked plastic explosives, knowing that they are unmarked.
- (2) A person shall not possess or transport unmarked plastic explosives, knowing that they are unmarked.
- (3) Subject to subsection (5), it is not an offence under subsections (1) or (2) if -
  - (a) the person manufactures or holds unmarked plastic explosives in a quantity approved in writing by the Minister of Police solely for use -
    - (i) in research, development or testing of new or modified explosives;
    - (ii) in training in explosives detection or in the development or testing of explosives detection equipment; or
    - (iii) for forensic science purposes; or
  - (b) the unmarked plastic explosives are destined to be, and are incorporated as, an integral part of duly authorised military devices in the Kingdom within 3 years after the coming into force of the Plastic Explosives Convention in the Kingdom.
- (4) It is not an offence under subsection (2) if the person possesses or transports unmarked plastic explosives in a quantity approved in writing by the Minister of Police solely for a use mentioned in subsection (3).
- (5) If unmarked plastic explosives have been manufactured in, or imported into, the Kingdom before the commencement of this Act -

- (a) if they are held by authorities performing military or police functions and are not incorporated as an integral part of a military device, they shall be destroyed, marked or rendered permanently ineffective within 15 years after the commencement of this Act; and
  - (b) if they are held by any other person, they shall be destroyed, marked or rendered permanently ineffective within 3 years after the commencement of this Act.
- (6) A person shall not import or export unmarked plastic explosives.
- (7) Any person who commits an offence under this section shall be liable upon conviction to imprisonment not exceeding 10 years.

### **63 Power of entry**

- (1) An authorised officer may enter premises where he has reasonable grounds to believe that explosives are being manufactured, kept or stored and do any of the following -
- (a) investigate and make inquiries on the premises to find out whether an offence under section 62 is being committed;
  - (b) inspect any records, documents or equipment found on the premises;
  - (c) take copies of, or extracts from, the records or documents.
- (2) Any person who -
- (a) resists or obstructs an officer authorised for subsection (1) exercising the powers mentioned in subsection (1);
  - (b) knowingly gives false information in response to an inquiry under subsection (1); or
  - (c) suppresses any material information in response to an inquiry under subsection (1),
- commits an offence under this section.
- (3) Any person who commits an offence under this section shall be liable upon conviction to imprisonment not exceeding 5 years.

## **DIVISION 9 - TERRORIST BOMBING**

### **64 Terrorist bombing offences**

- (1) Subsection (2) applies to an action that is intended by a person -
- (a) to cause death or serious bodily injury; or
  - (b) to cause extensive damage to a place mentioned in subsection (2)(a) or (b), a facility mentioned in subsection (2)(c) or a system mentioned in

subsection (2)(d), if the damage results in or is likely to result in major economic loss.

- (2) Any person who unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against -
- (a) a part of a building, land, street or waterway or other location that is accessible or open to members of the public, whether continuously, periodically or occasionally, including a commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place;
  - (b) a facility or conveyance that is used or occupied, in connection with his official duties, by -
    - (i) a representative of any Government;
    - (ii) the Head of State of any country;
    - (iii) the Prime Minister or a Minister of any country;
    - (iv) a member of the legislature of any country;
    - (v) a judge of any country; or
    - (vi) an official or employee of a Government or public authority or an inter-governmental organisation;
  - (c) a facility, conveyance or instrumentality, whether public or privately owned, that is used in or for a publicly available service for the transportation of persons or cargo; or
  - (d) a publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, energy, fuel or communications,
- commits an offence under this section.
- (3) Any person who commits an offence under this section shall be liable upon conviction to imprisonment not exceeding 25 years.

## DIVISION 10 - NUCLEAR TERRORISM

### 65 Nuclear terrorism

- (1) Any person who -
- (a) unlawfully possesses radioactive material or makes or possesses a radioactive device -
    - (i) with the intent to cause death or serious bodily injury; or
    - (ii) with the intent to cause substantial damage to property or to the environment;



- (b) unlawfully uses in any way radioactive material or a radioactive device, or uses or damages a nuclear facility in a manner which causes a release or increases the risk of the release of radioactive material -
  - (i) with the intent to cause death or serious bodily injury;
  - (ii) with the intent to cause substantial damage to property or to the environment; or
  - (iii) with the intent to compel a person, State or an international organisation to do or refrain from doing any act,

commits an offence under this section.

- (2) Any person who -
  - (a) threatens to commit an offence mentioned in subsection (1)(b); or
  - (b) unlawfully and intentionally makes a demand supported by a threat or use of force -
    - (i) for the supply of radioactive material or a radioactive device; or
    - (ii) for a nuclear facility to be made available or for access to a nuclear facility,

commits an offence under this section.

- (3) A threat referred to in subsection (2) shall be made in circumstances which indicate the credibility of the threat.
- (4) Any person who commits an offence under this section shall be liable upon conviction to imprisonment not exceeding 25 years.

## PART 7 - TRANSNATIONAL ORGANISED CRIME

### 66 Participation in organised criminal group

- (1) Any person who participates (whether as a member, associate member or prospective member) in an organised criminal group, knowing that it is an organised criminal group -
  - (a) knowing that his participation contributes to the occurrence of criminal activity; or
  - (b) reckless as to whether his participation contributes to the occurrence of criminal activity;commits an offence under this section
- (2) A group of people is capable of being an organised criminal group for the purposes of this section whether or not -
  - (a) some of them are subordinates or employees of others;

- (b) only some of the people involved in it at a particular time are involved in the planning, arrangement or execution at that time of any particular action, activity, or transaction; or
  - (c) its membership changes from time to time.
- (3) Any person who commits an offence under this section shall be liable upon conviction to imprisonment not exceeding 25 years.

## **67 Corruption**

- (1) Any person who intentionally promises, offers or gives to a public official, directly or indirectly, an undue advantage, for the official or for another person, for the official to act or refrain from acting in the exercise of his official duties, commits an offence under this section.
- (2) Any public official who intentionally solicits or accepts, directly or indirectly, an undue advantage, for the official or for another person, for the official to act or refrain from acting in the exercise of official duties, commits an offence under this section.
- (3) Any person who commits an offence under this section shall be liable upon conviction to imprisonment not exceeding 10 years.

## **PART 8 - PEOPLE TRAFFICKING**

### **68 Offence of trafficking in persons**

- (1) Any person who engages in trafficking in a person or is involved in the arranging of trafficking in a person, knowing that the person's entry into the Kingdom or any other state is or was arranged by specified means commits an offence under this section.
- (2) Any person who commits an offence under this section shall be liable upon conviction to imprisonment not exceeding 15 years.

### **69 Offence of trafficking in children**

- (1) Any person who intentionally engages in trafficking in a person who is a child or is involved in the arranging of trafficking in a person who is a child, regardless of whether the child's entry into the Kingdom or any other state is or was arranged by specified means, commits an offence.
- (2) Any person who commits an offence under this section shall be liable upon conviction to imprisonment not exceeding 20 years.

## **70 Exploitation of people not legally entitled to work**

- (1) Any employer who allows an unlawful employee to undertake employment in the employer's service shall not take an action with the intention of preventing or hindering the employee from -
  - (a) leaving the Kingdom;
  - (b) ascertaining or seeking that person's entitlement under the laws of the Kingdom; or
  - (c) disclosing to any person the circumstances of that person's employment by the employer.
- (2) Without limiting the generality of subsection (1), the following are examples of actions of the kind mentioned in that subsection -
  - (a) taking or retaining possession or control of a person's passport, any other travel or identity document, or travel tickets;
  - (b) preventing or hindering a person from -
    - (i) having access to a telephone;
    - (ii) using a telephone;
    - (iii) using a telephone privately;
    - (iv) leaving premises;
    - (v) leaving premises unaccompanied; or
  - (c) preventing or hindering an authorised officer from entering or having access to any place or premises to which the person is entitled to have access under any law.
- (3) Any person who commits an offence under this section shall be liable upon conviction to imprisonment not exceeding 10 years.

## **71 Consent of trafficked person**

For sections 68 and 69 it is not a defence -

- (a) that the trafficked person consented to the intended exploitation; or
- (b) that the intended exploitation did not occur.

## **72 Fraudulent travel documents for people or child trafficking**

- (1) Any person who knowingly, in order to obtain a material benefit from people or child trafficking -
  - (a) produces a fraudulent travel or identity document; or
  - (b) procures, provides or possess a fraudulent travel or identity document, commits an offence under this section.

- (2) Any person who commits an offence under this section shall be liable upon conviction to imprisonment not exceeding 10 years.

### **73 Protection of trafficked persons**

- (1) A trafficked person is not liable to criminal prosecution for -
- (a) the act of trafficking in persons or being a party to an offence of trafficking in persons;
  - (b) the person's illegal entry into the Kingdom, in connection with the act of trafficking in person if the Kingdom is the receiving country;
  - (c) the person's period of unlawful residence in the Kingdom after being trafficked, if the Kingdom is the receiving country; or
  - (d) the person's procurement or possession of any fraudulent travel or identity documents that the person obtained, or with which the person was supplied, for the purpose of entering the receiving country in connection with the act of trafficking in persons.
- (2) Subsection (1) does not prevent the removal of a trafficked person in accordance with the Immigration Act.

## **PART 9 - PEOPLE SMUGGLING**

### **74 Offence of people smuggling**

- (1) Any person who, in order to obtain a material benefit, engages in people smuggling either knowingly or being reckless as to the fact that the entry of the person being or to be smuggled into the country is illegal, commits an offence under this section.
- (2) Subsection (1) applies whether or not the person being smuggled enters or arrives in the receiving country.
- (3) Any person who commits an offence under this section shall be liable upon conviction to imprisonment not exceeding 15 years.

### **75 Offence to facilitate stay of an unauthorised person**

- (1) Any person who knowingly facilitates the continued presence of an unauthorised person in a receiving country in order to obtain a material benefit, commits an offence under this section.
- (2) Any person who commits an offence under this section shall be liable upon conviction to imprisonment not exceeding 10 years.

## **76 Fraudulent travel or identity documents for people smuggling**

- (1) Any person who knowingly, in order to obtain a material benefit from people smuggling -
  - (a) produces a fraudulent travel or identity document; or
  - (b) procures, provides or possesses a fraudulent travel or identity document,commits an offence under this section.
- (2) Any person who commits an offence under this section shall be liable upon conviction to imprisonment not exceeding 10 years.

## **77 Aggravated offences**

- (1) A person commits an aggravated offence of any of the offences mentioned in subsection (2) who commits that offence in one or more of the following circumstances -
  - (a) the unauthorised person is subjected to torture or to any other cruel, inhuman or degrading treatment (including exploitation);
  - (b) the life or safety of the person being smuggled is, or is likely to be, endangered.
- (2) The offences are offences against sections 74, 75 and 76.
- (3) Any person who commits an offence under this section shall be liable upon conviction to imprisonment not exceeding 25 years.

## **78 Protection of smuggled persons**

- (1) An unauthorised person is not liable to prosecution for an offence under this Part, by reason only of the fact that the person is the object of the following conduct -
  - (a) people smuggling;
  - (b) when committed for the purpose of enabling people smuggling, an offence under section 75;
  - (c) an offence under section 76.
- (2) For the avoidance of doubt, nothing in sub-section (1) prevents proceedings being taken against an unauthorised person for an act or omission that constitutes an offence under any other law.

## **79 Obligation on commercial carriers**

- (1) Any commercial carrier who transports a person into a receiving country, and on entry into the receiving country, the person does not have the travel

documents required for lawful entry into that country, commits an offence under this section.

- (2) A commercial carrier is not guilty of an offence under sub-section (1) if -
  - (a) the commercial carrier had reasonable grounds to believe that the documents that the person has are the travel documents required for lawful entry of that person into the receiving country;
  - (b) the person possessed the travel documents required for lawful entry into the receiving country when that person boarded, or last boarded, the means of transport to travel to the receiving country; or
  - (c) entry into the receiving country occurred only because of illness of or injury to a person on board, emergency, stress of weather or other circumstances beyond the control of the commercial carrier.
- (3) A commercial carrier that is guilty of an offence under this section is liable to pay the costs of the person's detention in, and removal from, the receiving country.
- (4) Any person who commits an offence under this section shall be liable upon conviction to a fine not exceeding \$100,000.

## **80 Boarding, search and detention of craft**

- (1) This section applies to a craft that is a ship, boat, or other machine or vessel used or capable of being used for the carriage of persons by water or over water, except for a foreign warship.
- (2) An authorised officer may stop and board the craft within the Kingdom if the authorised officer has reasonable grounds to believe the craft -
  - (a) is being used to commit an offence against section 74; and
  - (b) the craft is in -
    - (i) the Kingdom; or
    - (ii) the contiguous zone of the Kingdom.
- (3) The authorised officer may, when reasonably necessary for the exercise of his functions in connection with an offence against section 74 -
  - (a) direct the craft to stay where it is, or direct it to be taken to a suitable place in the Kingdom, for the purpose of search;
  - (b) search and detain the craft, anyone on it and anything on it;
  - (c) question any person on board the craft;
  - (d) require the production of any documents relating to the craft or any travel or identity documents of a person on the craft;
  - (e) take a copy of any documents produced;

- (f) seize and detain anything found on the craft that appears to him to be evidence of an offence against this Act; and
  - (g) remain on the craft for such period as is reasonably necessary for the purpose of boarding, searching and directing the craft or carrying out an investigation for an offence against section 74.
- (4) If the craft fails to stop at the request of an authorised officer, the officer may pursue it into international waters and take any action that is reasonably necessary to stop the craft to enable it to be boarded (other than in the territorial sea of another country).
- (5) The authorised officer may require the person in charge of the craft, a member of the crew or any person on board to take any action that may be directed by the officer under subsection (3)(a).
- (6) The person in charge of the craft shall give any authorised officer who remains on board the craft proper and sufficient food and suitable accommodation without charge.
- (7) A person shall comply with a direction of the authorised officer under subsection (3)(a).
- (8) Any person who commits an offence under this section shall be liable upon conviction to imprisonment not exceeding 2 years.

## PART 10 - GENERAL PROVISIONS

### 81 Jurisdiction

Unless otherwise provided for under this Act, proceedings may be brought for an offence under this Act -

- (a) if the act or omission -
  - (i) is committed in the Kingdom;
  - (ii) is committed on board a ship or aircraft registered in the Kingdom; or
  - (iii) is committed by a person who is in the Kingdom; and
- (b) whether or not the act or omission constituting the offence is committed in or outside the Kingdom, if the act or omission -
  - (i) is committed by a subject of the Kingdom or a citizen of any country who is ordinarily resident in the Kingdom;
  - (ii) is committed in order to compel the Government of Tonga to do or abstain from doing any act;
  - (iii) is committed against a subject of the Kingdom;

- (iv) is committed by a person who is, after the commission of the offence, present in the Kingdom;
- (v) is intended to be committed in the Kingdom; or
- (vi) originates in or transits the Kingdom.

## **82 Aiding, abetting, counselling and procuring the commission of an offence**

- (1) A person who intentionally aids, abets, counsels or procures the commission of an offence under this Act by another person is taken to have committed the offence and is punishable as if the offence had been committed by that person.
- (2) A person does not commit an offence under subsection (1) if, before the offence was committed, the person -
  - (a) terminated his involvement; and
  - (b) took all reasonable steps to prevent the commission of the offence.

## **83 Incitement to commit an offence**

- (1) A person who intentionally urges the commission of an offence under this Act commits an offence.
- (2) A person commits an offence under subsection (1) even if committing the offence incited is impossible.
- (3) Any person who commits an offence under subsection (1) shall be liable upon conviction to the same penalty as for the commission of the offence under this Act.

## **84 Conspiring to commit an offence**

- (1) A person who conspires with another person, whether inside or outside the Kingdom, to commit an offence under this Act commits the offence of conspiracy and is punishable as if the offence to which the conspiracy relates had been committed.
- (2) A person is not guilty of conspiracy to commit an offence if, before the taking of action under the agreement, the person -
  - (a) withdrew from the agreement; and
  - (b) took all reasonable steps to prevent the commission of the offence.
- (3) A person is not guilty of conspiracy to commit an offence if -
  - (a) all other parties to the agreement have been acquitted of the conspiracy and a finding of guilt would be inconsistent with their acquittal; or
  - (b) the person is a person for whose benefit or protection the offence exists.



## **85 Attempt to commit an offence**

A person who attempts to commit an offence under this Act commits an offence and is punishable as if the offence attempted had been committed, provided that the person's conduct is more than merely preparatory to the commission of the offence.

## **86 Liability of a company**

- (1) This Act applies to a company in the same way as it applies to an individual and a company may be found guilty of any of the offences set out in this Act, in addition to the liability of any person for the same offence.
- (2) For an offence under this Act, the conduct or state of mind of an employee, agent or officer of a company is taken to be attributed to the company if that person is acting -
  - (a) within the scope of the person's employment;
  - (b) within the scope of the person's actual or apparent authority; or
  - (c) with the consent or agreement (express or implied) of a director, servant or agent of the company, and giving that consent is within the actual or apparent authority of the director, servant or agent.
- (3) A reference in this section to the state of mind of a person includes the person's knowledge, intention, opinion, belief or purpose, and the person's reasons for that intention, opinion, belief or purpose.

## **87 Obligation to extradite or prosecute**

If the Prime Minister refuses a request from another country to extradite a person under the Extradition Act, and the extradition request relates to the equivalent of an act or omission for an offence under this Act, the Prime Minister shall submit the matter to the Attorney General for prosecution.

## **88 Consent of Attorney General**

- (1) Proceedings for any offence under this Act, for which jurisdiction is claimed under section 83(a)(ii) for an offence committed on board an aircraft while in flight, or a vessel, elsewhere than in or over the Kingdom or for any other offence committed outside the Kingdom may only be instituted with the consent of the Attorney General.
- (2) Subsection (1) does not prevent the arrest, or the issue of a warrant for the arrest, of any person for any offence, or the remanding in custody or on bail of any person charged with any offence.

**89 Restricted grounds for refusal to extradite or provide mutual assistance**

- (1) Despite anything in the Extradition Act or Mutual Assistance in Criminal Matters Act, an offence under this or any other Act, where the act or omission constituting the offence also constitutes a terrorist act, is taken, for the purposes of extradition or mutual assistance, not to be -
  - (a) an offence of a political character or an offence connected with a political offence or an offence inspired by political motives; or
  - (b) a fiscal offence.
- (2) Despite anything in the Mutual Assistance in Criminal Matters Act, no request for mutual assistance in relation to an offence under this Act may be declined solely on the basis of bank secrecy.

**90 Transnational Crimes Act repealed**

The Transnational Crimes Act 2005 is hereby repealed.

**91 Consequential amendments**

- (1) The Criminal Offences Act is amended by repealing sections 78A, 78B and 78C.
- (2) The Money Laundering and Proceeds of Crime Act 2000 is amended by repealing sections 22A, 22B and 22C.

Passed by the Legislative Assembly this 11<sup>th</sup> day of September 2013.

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**SCHEDULE**

- 1 Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Tokyo on 14 September 1963
- 2 Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970
- 3 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on 23 September 1971
- 4 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, done at New York on 14 December 1973
- 5 International Convention Against the Taking of Hostages adopted by the General Assembly of the United Nations on 17 December 1979
- 6 Convention for the Physical Protection of Nuclear Material, done at Vienna and New York on 3 March 1980
- 7 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988
- 8 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf 1988
- 9 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation 1988
- 10 Convention on the Marking of Plastic Explosives for the Purpose of Identification, done at Montreal on 1 March 1991
- 11 International Convention for the Suppression of Terrorist Bombings 1997
- 12 International Convention for the Suppression of Acts of Nuclear Terrorism, adopted by the General Assembly of the United Nations on 13 April 2005
- 13 Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organised Crime
- 14 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organised Crime