

A BILL

entitled

PROCEEDS OF CRIME AND RELATED MEASURES AMENDMENT ACT 2013

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24 Commencement

SCHEDULE
CONSEQUENTIAL AMENDMENTS

WHEREAS it is expedient to amend the Proceeds of Crime Act 1997, the Anti-Terrorism (Financial and Other Measures) Act 2004, the Criminal Code Act 1907, the Criminal Justice (International Cooperation) (Bermuda) Act 1994 and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008, to give effect to recommendations of the Financial Action Task Force:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act may be cited as the Proceeds of Crime and Related Measures Amendment Act 2013.

Proceeds of Crime Act 1997

Amends section 46

2 Section 46 of the Proceeds of Crime Act 1997 ("the 1997 Act") is amended by inserting, immediately before subsection (1)—

"(A1) A person shall make a disclosure to the FIA when they know or suspect that—

- (a) any currency, funds or other assets are derived from or used in connection with any criminal conduct; or
- (b) a money laundering offence has been committed, is in the course of being committed or has been attempted,
and this information has come to him in the course of his trade, profession, business or employment".

Amends section 47

3 Section 47 of the 1997 Act is amended—

(a) by deleting subsection (2)(b) and substituting the following—

"(b) he discloses to any other person—

- (i) his knowledge or suspicion that a disclosure or related information has been filed with the FIA; or

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(ii) information or any other matter which is likely to prejudice any investigation which might be conducted following such a disclosure.”

(b) in subsection (4) by deleting “(2)” and substituting “(2)(b)(ii)”.

(c) by inserting next after subsection (5)—

“(6) No person shall be guilty of an offence under this section where he discloses information to a supervisory authority in the course of it carrying out its statutory duties.

(7) For the purposes of this section supervisory authority shall have the same meaning as under section 2 of the Proceeds of Crime (Anti-Money Laundering and Terrorist Financing Supervision and Enforcement) Act 2008.”.

Amends section 49

4 Section 49(1) of the 1997 Act is amended—

(a) in paragraph (a) by inserting after “money laundering” (in both places), the words “,terrorist financing and the financing of proliferation”; and

(b) in paragraph (c) by inserting after “money laundering” the words “, terrorist financing and the financing of proliferation”; and

(c) inserting at the end of paragraph (c) the word “and”; and

(d) by inserting after paragraph (c)—

“(d) advising the Minister in the development of policies to combat money laundering, terrorist financing and the financing of proliferation.”.

Anti-Terrorism (Financial and Other Measures) Act 2004

Amends section 3(1)

5 Section 3(1) of the Anti-Terrorism (Financial and Other Measures) Act 2004 (“the 2004 Act”) is amended by deleting and substituting paragraph (c) as follows—

“(c) the use or threat is made for the purpose of advancing a political, religious, racial, ethnic or philosophical, or ideological cause;”.

Amends section 3(2)

6 Section 3(2) of the 2004 Act is amended by inserting after paragraph (g)—

“(h) involves unlawful acts against the safety of civil aviation;

(i) involves the seizure or detention of another person (“the hostage”) and threatens to kill, to injure or to continue to detain the hostage;

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- (j) involves nuclear material such that it—
 - (i) involves serious interference with the physical protection of nuclear material; or
 - (ii) involves an act that without lawful authority constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material,
and which causes or is likely to cause death or serious injury to any person or substantial damage to property;
- (k) involves unlawful violence at airports serving international civil aviation;
- (l) involves unlawful violence against the safety of fixed platforms located on the continental shelf; or
- (m) involves terrorist bombings, the unlawful and intentional delivery, placement, discharge or detonation of an explosive or other lethal device in, into or against a place of public use, a government facility, a public transportation system or an infrastructure facility.”.

Amends section 5

7 Section 5 of the 2004 Act is amended by deleting paragraph (b) of subsections (1), (2) and (3), and substituting each paragraph as follows—

- “(b) intends that it should be used, or suspects that it may be used, for the purposes of—
 - (i) terrorism;
 - (ii) financing of terrorist organisations; or
 - (iii) financing of a person or persons participating in terrorist activity.”.

Amends section 9

8 Section 9(9) of the 2004 Act is amended—

- (a) in paragraph (a) by deleting “\$10,000 or imprisonment for six months or both”, and substituting “\$15,000 or imprisonment for three years or both; and
- (b) in paragraph (b) by deleting “to a fine of \$100,000 or imprisonment for five years or both”, and substituting “to an unlimited fine or imprisonment for ten years or both” .

Amends section 10A

9 Section 10A of the 2004 Act is amended—

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(a) by deleting subsection (2)(b) and substituting the following—

“(b) he discloses to any other person—

- (i) his knowledge or suspicion that a disclosure or related information has been filed with the FIA; or
- (ii) information or any other matter which is likely to prejudice any investigation which might be conducted following such a disclosure.”

(b) in subsection (4) by deleting “(2)” and substituting “(2)(b)(ii)”.

Amends section 12O

10 Section 12O(1) of the 2004 Act is amended by deleting “8” and substituting “9”.

Amends section 15A

11 Section 15A of the 2004 Act is amended by deleting “Terrorism (United Nations Measures) (Overseas Territories) Order 2001 and substituting “Terrorist-Asset Freezing etc. Act 2010 (Overseas Territories) Order 2011.

Amends Schedule 3

12 Paragraph 9(1) of Schedule 3 to the 2004 Act is amended by inserting after “claims” the words “(including a person who asserts an interest in any property)”.

Criminal Code Act 1907

Amends part note and inserts section 70IA

13 The Criminal Code Act 1907 is amended—

(a) by deleting the Part note “RESTITUTION AND REPARATION”, and substituting the Part note “RESTITUTION, REPARATION AND DEPRIVATION”; and

(b) by inserting next after section 70I the following—

“Deprivation Orders

70IA (1) Where, upon application by the Director of Public Prosecutions, the court that heard the criminal case, is satisfied that property is tainted property in respect of an offence of which a person has been convicted, the court may order that the specified property be deprived from the convicted person.

(2) In determining whether property is tainted property the court may infer, in the absence of evidence to the contrary—

- (a) that the property was used in or in connection with the commission of an offence if it was in the person’s possession at the time of, or immediately after the commission of the offence for which the person was convicted; or

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(b) that the property was derived, obtained or realised as a result of the commission of the offence if it was acquired by the person before, during or within six years after the period of the commission of the offence of which the person was convicted, and the court is satisfied that the income of that person from sources unrelated to criminal activity of that person cannot reasonably account for the acquisition of that property.

(3) In considering whether a deprivation order should be made under subsection (1), the court shall have regard to—

- (a) the rights and interests, if any, of third parties in the property;
- (b) the gravity of the indictable offence concerned;
- (c) any hardship that may reasonably be expected to be caused to any person by the operation of the order; and
- (d) the use that is ordinarily made of the property, or the use to which the property was intended to be put.

(4) An order under this section shall operate to deprive the offender of his rights, if any, in the property to which it relates and the property shall (if not already in their possession) be taken into the possession of the police.

(5) Subject to subsection (3) property deprived from a person under subsection (1) may, after the expiry of six months from the date of the deprivation order, be disposed of and the proceeds shall be deposited into the Consolidated Asset Fund.”

Amends penalties relating to offences of corruption etc

14 The Criminal Code Act 1907 is amended—

- (a) in section 111, by deleting “to imprisonment for three years” and substituting “on summary conviction to a fine of \$50,000 or to imprisonment for five years, or both; and on conviction on indictment to an unlimited fine or imprisonment for 15 years, or both”;
- (b) in section 112—
 - (i) by deleting “a summary” and substituting “an”; and
 - (ii) by deleting “to imprisonment for twelve months” and substituting “on summary conviction to a fine of \$50,000 or to imprisonment for five years, or both; and on conviction on indictment to an unlimited fine or imprisonment for 15 years, or both”;
- (c) in section 116(1), by deleting—
 - (i) “a felony” and substitute “an offence”;
 - (ii) “to imprisonment for five years” and substituting “on summary conviction to a fine of \$50,000 or to imprisonment for five years, or both”;

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- and on conviction on indictment to an unlimited fine or imprisonment for 15 years, or both”;
- (d) in section 116(4), by deleting “three years” and substitute with “four years or to a fine of \$50,000, or both”;
 - (e) in section 117, by deleting—
 - (i) “a felony” and substitute “an offence”;
 - (ii) “to imprisonment for five years” and substitute “on summary conviction to a fine of \$50,000 or to imprisonment for five years, or both; and on conviction on indictment to an unlimited fine or imprisonment for 15 years, or both”;
 - (f) in section 118, by deleting—
 - (i) in the headnote “of” and substitute “or”;
 - (ii) “a summary offence and is liable to imprisonment for twelve months”, and substituting “an offence, and is liable on summary conviction to a fine of \$50,000 or to imprisonment for five years, or both; and on conviction on indictment to an unlimited fine or imprisonment for 15 years, or both”;
 - (g) in section 120(1), by deleting— “to imprisonment for five years” and substituting “on summary conviction to a fine of \$50,000 or to imprisonment for five years, or both; and on conviction on indictment to an unlimited fine or imprisonment for ten years, or both”;
 - (h) in sections 122(1), 123, 124, 125(1) and 125(2), by deleting “to imprisonment for three years” and substituting “on summary conviction to a fine of \$50,000 or to imprisonment for five years, or both; and on conviction on indictment to an unlimited fine or imprisonment for ten years, or both”;
 - (i) in sections 122,123, 125(1) and 125(2), by deleting “misdemeanor” and substitute “offence”;
 - (j) in section 125(3), by deleting “of a summary offence, and is liable to imprisonment for twelve months” and substituting “of an offence and is liable on summary conviction to a fine of \$50,000 or to imprisonment for five years, or both; and on conviction on indictment to an unlimited fine or imprisonment for ten years, or both”;
 - (k) in section 125A by deleting—
 - (i) “misdemeanor” and substitute “offence”;
 - (ii) “on conviction to imprisonment for five years”, and substituting “on summary conviction to a fine of \$50,000 or to imprisonment for five years, or both; and on conviction on indictment to an unlimited fine or imprisonment for ten years, or both”;

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- (l) in sections 125B, by deleting “on conviction to imprisonment for twelve months” and substituting “on summary conviction to a fine of \$50,000 or to imprisonment for four years, or both; and on conviction on indictment to an unlimited fine or imprisonment for ten years, or both”;
- (m) in sections 126, 127(4) and 128, by deleting “to imprisonment for three years” and substituting “on summary conviction to a fine of \$50,000 or to imprisonment for five years, or both; and on conviction on indictment to an unlimited fine or imprisonment for ten years, or both”;
- (n) in sections 126, 127, and 128, by deleting “misdemeanor” and substitute “offence”;
- (o) in section 129, by deleting “to imprisonment for twelve months” and substituting “on summary conviction to a fine of \$50,000 or to imprisonment for five years, or both; and on conviction on indictment to an unlimited fine or imprisonment for ten years, or both”;
- (p) in section 129 by deleting, wherever it appears, “felony” and substitute “offence”;
- (q) in section 392(1), by deleting the words from “liable on conviction” to the end of that subsection, and substituting “liable on summary conviction to a fine of \$50,000 or to imprisonment for five years, or both; and on conviction on indictment to an unlimited fine or imprisonment for ten years, or both”;

Criminal Justice (International Cooperation) (Bermuda) Act 1994

Amends section 11C

15 Section 11C of the Criminal Justice (International Cooperation) (Bermuda) Act 1994 (“the 1994 Act”) is amended by inserting after subsection (2)–

“(3) For the avoidance of doubt, nothing in this Act shall prevent the giving of assistance by persons in Bermuda, in connection with the obligations assumed by Bermuda under–

- (a) a lawful agreement; or
- (b) a treaty,

in the freezing or seizure of assets which are the subject of an agreement or a treaty.”.

Inserts section 27A

16 The 1994 Act is amended by inserting next after section 27, the following–

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“Non-prosecution of witnesses

27A (1) Subject to the written consent of the Director of Public Prosecutions, a witness, expert or other person who, at the request of prosecuting authorities in Bermuda, consents to—

- (a) give evidence in a proceeding in Bermuda; or
- (b) assist in an investigation, prosecution or judicial proceeding in Bermuda,

shall be afforded safe conduct, and shall not be prosecuted, detained, punished or subjected to any other restriction of his personal liberty, in Bermuda, in respect of acts, omissions or convictions prior to his departure from the requested State Party.

(2) Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he—

- (a) has been officially informed that his presence is no longer required by prosecuting authorities;
- (b) (although having an opportunity to leave without condition) has, nevertheless remained voluntarily in Bermuda; or
- (c) having left Bermuda, has returned of his or her own free will.

(3) In this section—

“State Party” means any country or territory, and includes Bermuda.”.

*Proceeds of Crime (Anti-Money Laundering and
Anti-Terrorist Financing) Regulations 2008*

Amends regulation 7

17 Regulation 7 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 (“the 2008 Regulations”) is amended by inserting after “(including,” the words “all complex, unusually large transactions, and all unusual patterns of transactions which have no apparent economic or lawful purpose, and”.

Amends regulation 11

18 Regulation 11 of the 2008 Regulations is amended—

- (a) in the headnote, by deleting the word “customer”;
- (b) in paragraph (1)—
 - (i) by deleting “customer”;
 - (ii) by inserting after “measures”, the words “to business relationships with natural and legal persons”; and
- (c) by inserting after paragraph (1)(a)—

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“(aa) in instances where a person or a transaction is from or in a country which represents a higher risk of money laundering, corruption, terrorist financing or being subject to international sanctions.”.

Amends regulation 14

19 Regulation 14 of the 2008 Regulations is amended by deleting paragraph (1)(b) and substituting the following—

“(b) notwithstanding the relevant person’s reliance on the other person, the relevant person—

(i) must obtain information sufficient to identify customers;

(ii) must satisfy itself that reliance is appropriate given the level of risk for the jurisdiction in which the party to be relied upon is usually resident; and

(iii) will remain liable for any failure to apply such measures.”.

Amends regulation 15

20 Regulation 15 of the 2008 Regulations is amended by inserting after paragraph (5)—

“(5A) For the avoidance of doubt, all documents related to the investigations of—

(a) complex transactions;

(b) unusually large transactions; or

(c) unusual patterns of transactions,

in relation to regulation 7, must be recorded and kept for a minimum period of five years.”.

Amends regulation 18

21 Regulation 18 of the 2008 Regulations is amended—

(a) in subsection (1), by deleting the “and” at the end of paragraph (a), inserting “and” at the end of paragraph (b), and adding—

“(c) screened prior to hiring to ensure high standards.”;

(b) by deleting paragraph (2) and substituting—

“(2) For the purposes of this paragraph, an employee is a relevant employee if—

(a) at any time in the course of his duties, he has, or may have, access to any information which may be relevant in determining whether any person is engaged in money laundering or terrorist financing;

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- (b) at any time plays a role in implementing and monitoring compliance with anti-money laundering or anti-terrorist financing requirements.”.

Amends regulation 19

22 Regulation 19 of the 2008 Regulations is amended by inserting, immediately before reference “15(1)”, reference “14(1),”.

Consequential amendments

23 The amendments set out in the Schedule shall have effect.

Commencement

24 This Act shall come into operation on such day as may be appointed by the Minister by notice published in the Gazette, and different days may be appointed for different provisions.

SCHEDULE

(Section 23)

CONSEQUENTIAL AMENDMENTS

Amends the Criminal Code Act 1907

1 The Criminal Code Act 1907 is amended by inserting, next section 118, the following—

“Corrupting or threatening a holder of a judicial office or law enforcement official

118A Any person—

- (a) who attempts by threats or intimidation of any kind, or by benefits or promises of benefit of any kind, or by other corrupt means, to influence any person, whether a particular person or not, in his conduct as a holder of a judicial office or law enforcement official;
- (b) who threatens to do any injury or cause any detriment of any kind to any person on account of anything done by him as a holder of a judicial office or law enforcement official; or
- (c) who accepts any benefit or promise of benefit on account of anything to be done or that has been done by him as a holder of a judicial office or law enforcement official,

is guilty of an offence:

Punishment on summary conviction: a fine of \$50,000 or to imprisonment for 5 years, or both; and on conviction on indictment: a fine of \$1000,000 or imprisonment for ten years, or both.”.

Amends the Parliament Act 1957

2 The Parliament Act 1957 is amended—

- (a) in section 15 by deleting the final paragraph and substituting—

“Punishment on summary conviction: a fine of \$50,000 or to imprisonment for 5 years, or both; and on conviction on indictment: an unlimited fine or imprisonment for 15 years, or both.”.

- (b) in section 16 by deleting the final paragraph and substituting—

“Punishment on summary conviction to a fine of \$50,000 or to imprisonment for 5 years, or both; and on conviction on indictment: an unlimited fine or imprisonment for 15 years, or both.”.

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Public Treasury (Administration and Payments) Act 1969

3 The Public Treasury (Administration and Payments) Act 1969 is amended by deleting section 33B(5) and substituting the following—

“(5) A person guilty of an offence under this section is liable on summary conviction to a fine of \$50,000 or to imprisonment for 5 years, or both; and on conviction on indictment to an unlimited fine or imprisonment for 15 years, or both.”.

Parliamentary Election Act 1978

4 The Parliamentary Election Act 1978 is amended, in section 66, by deleting the final paragraph and substituting—

“Punishment on summary conviction: a fine of \$50,000 or to imprisonment for 5 years, or both; and on conviction on indictment: an unlimited fine or imprisonment for 15 years, or both.”.

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EXPLANATORY MEMORANDUM

This Bill seeks to amend the Proceeds of Crime Act 1997, the Anti-Terrorism (Financial and Other Measures) Act 2004, the Criminal Code Act 1907, the Criminal Justice (International Cooperation) (Bermuda) Act 1994 and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008, to give effect to recommendations of the Financial Action Task Force.

Clause 1 is the citation.

Clause 2 amends section 46 of the Proceeds of Crime Act 1997, adding a new subsection (A1), to require persons to report suspicious transactions in relation to money laundering or terrorist financing.

Clause 3 amends section 47 of the Proceeds of Crime Act 1997, to make it an offence for a person to disclose to another person that a suspicious transaction report, or related information, has been filed with the FIA.

Clause 4 amends section 49 of the Proceeds of Crime Act 1997, to allow the National Anti-Money Laundering Committee to advise the Minister on the additional matters concerning terrorist financing and the financing of proliferation.

Clause 5 amends section 3 of the Anti-Terrorism (Financial and Other Measures) Act 2004 by deleting and substituting subsection (1), thereby broadening the definition of terrorism to include the use of racial, ethnic or philosophical causes.

Clause 6 amends section 3(2) of the Anti-Terrorism (Financial and Other Measures) Act 2004, thereby broadening the recognised means by which acts of terrorism can be committed.

Clause 7 amends section 5(1)(b), (2)(b), and (3)(b) of the Anti-Terrorism (Financial and Other Measures) Act 2004, broadening the prescribed offences to include the financing of terrorist organisations and the financing of a person or persons participating in terrorist activity.

Clause 8 amends section 9(9) of the Anti-Terrorism (Financial and Other Measures) Act 2004 thereby increasing the prescribed penalties for offences under that section (disclosure).

Clause 9 amends section 10A making it an offence for any person to disclose to another person his knowledge or suspicion that a disclosure or related information has been filed.

Clause 10 amends section 12O of the Anti-Terrorism (Financial and Other Measures) Act 2004 to correct an incorrect cross reference.

Clause 11 amends section 15A of the Anti-Terrorism (Financial and Other Measures) Act 2004 to update the reference to the 2011 Order in Council.

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Clause 12 amends paragraph 9(1) of Schedule 3 to the Anti-Terrorism (Financial and Other Measures) Act 2004, to allow third party persons who assert an interest in any cash detained to have the cash (in whole or in part) released to them.

Clause 13 amends the Criminal Code Act 1907 by: deleting the Part note “Restitution and Reparation” and substituting the Part note “Restitution, Reparation, and Deprivation”; and by inserting section 70IA to allow a court, by way of a deprivation order, to deprive a convicted person of tainted property.

Clause 14 amends provisions in Part VII of the Criminal Code Act 1907 by increasing the penalties for certain offences including corruption, extortion, judicial corruption, perjury, offences relating to witnesses, destroying evidence, conspiring to bring a false accusation or defeat justice etc.

Clause 15 amends section 11C of the Criminal Justice (International Cooperation) (Bermuda) Act 1994 to clarify that nothing in the Act shall prohibit the giving assistance by persons in Bermuda in connection with the obligations of a lawful agreement or treaty.

Clause 16 amends the Criminal Justice (International Cooperation) (Bermuda) Act 1994 by inserting section 27A, adding protection against prosecution for persons coming to Bermuda for the purposes of assisting in proceedings or investigations, during the time in which they are in Bermuda for such purposes.

Clause 17 amends regulation 7 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 by broadening the definition of “ongoing monitoring” to include: all complex, unusually large transactions, and all unusual patterns of transaction which have no apparent economic or lawful purpose.

Clause 18 amends regulation 11 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 to enhance the requirements of enhanced due diligence.

Clause 19 amends regulation 14(1)(b) of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 to mandate that a relevant person must satisfy itself that reliance on a third party is appropriate given the level of risk for the jurisdiction in which the party to be relied upon is usually resident; and that they will remain liable for any failure to apply such measures.

Clause 20 amends regulation 15 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 to clarify that all documents related to the investigation of complex transactions, unusually large transactions, and unusual patterns of transactions, in relation to records kept in accordance with regulation 7, must be recorded and kept for a minimum period of five years.

Clause 21 amends regulation 18 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008, broadening the meaning of “relevant employee”.

Clause 22 amends regulation 19 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008.

Clause 23 sets out, by way of a schedule to the Bill, the consequential amendments.

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Clause 24 is the commencement provision.