

M O N T S E R R A T

NO. 6 OF 2010

PROCEEDS OF CRIME (AMENDMENT) ACT 2010

ARRANGEMENT OF SECTIONS

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I ASSENT

Peter Waterworth
GOVERNOR

DATE: 15.4.2010

MONTSERRAT

NO. 6 OF 2010

AN ACT TO AMEND THE PROCEEDS OF CRIME ACT 2010 (NO. 1 OF 2010).

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council of Montserrat and by the Authority of the same as follows:—

Short title

1. This Act may be cited as the Proceeds of Crime (Amendment) Act 2010.

Amendment of section 155

2. Section 155 of the Act is amended by deleting subsection (4) and substituting the following—

“(4) In undertaking its functions, a supervisory authority has—

- (a) in the case of the Financial Services Commission when acting as the supervisory authority for regulated service providers that are financial institutions, the information gathering and enforcement powers provided for in the Financial Services Commission Act, 2008;
- (b) in the case of—
 - (i) the Financial Services Commission when acting as the supervisory authority for regulated service providers that are not financial institutions, and
 - (ii) the supervisory authority for non-financial service providers,

the information gathering and enforcement powers provided for in sections 158 to 163.”.

Deletion and replacement of section 157

3. The Act is amended by deleting section 157 and substituting the following—

Registration of non-financial service providers

157. (1) A person, other than a regulated person, must not carry on any type of relevant business in or from within Montserrat unless that person is registered for that type of relevant business with the supervisory authority for non-financial service providers, in accordance with regulations made under section 175.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable—

(a) on summary conviction, to imprisonment for a term of 12 months or to a fine of \$20,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of 5 years or to a fine of \$100,000 or to both.

Amendment of heading and insertion of section 157A

4. The Act is amended—

(a) in the heading before section 158, by inserting after “Powers of”, the words “Commission and”; and

(b) by inserting after the heading the following new section—

“Interpretation for sections 158 to 164A

157A. In sections 158 to 164A—

“relevant supervisory authority” means—

(a) in the case of a regulated service provider that is not a financial institution, the Commission; and

(b) in the case of a non-financial service provider, the supervisory authority for non-financial service providers; and

“relevant service provider”—

(a) in relation to the exercise of a power by the Commission, means a regulated service provider that is not a financial institution; or

(b) in relation to the exercise of a power by the non-financial supervisory authority, means a non-financial service provider.”.

Amendment of section 158

5. Section 158 of the Act is amended—

- (a) by deleting “The supervisory authority for non-financial service providers” and substituting “A relevant supervisory authority”; and
- (b) by deleting “non-financial service provider” in each of the places it occurs in paragraphs (a), (b), (c) and (d) and substituting “relevant service provider”.

Amendment of section 159

6. Section 159 of the Act is amended—

- (a) by deleting “the supervisory authority for non-financial service providers” and substituting “a relevant supervisory authority”;
- (b) by deleting “non-financial service provider” and substituting “relevant service provider”;
- (c) in paragraph (a)(v), by deleting “the service provider”;
- (d) in paragraph (b), by inserting “relevant” before “supervisory authority’s”;
- (e) in paragraph (b)(i), (iii) and (iv), by inserting “relevant” before “service provider”; and
- (f) in paragraph (b)(ii), by deleting “services” and substituting “relevant service”.

Amendment of section 160

7. Section 160 of the Act is amended—

- (a) in subsection (1)—
 - (i) by deleting “the supervisory authority for non-financial service providers” and substituting “a relevant supervisory authority”; and
 - (ii) by inserting “relevant” before “service provider”;
- (b) in subsection (2)(b), by deleting “licensee” and substituting “service provider”;
- (c) in subsection (4)—
 - (i) by deleting “paragraph” and substituting “section”;
 - (ii) by inserting “relevant” before “service provider”; and
 - (iii) by inserting “relevant” before “supervisory authority”; and
- (d) in subsection (6) by deleting “paragraph” and substituting “section” and by inserting “relevant” before “service provider”.

Amendment of section 161

8. Section 161 is amended

- (a) by inserting after “registration of a”, the words “non-financial”; and

- (b) by inserting before “service provider” in each place the words occur in subsections (2), (3) and (4), the words “non-financial”.

Deletion and replacement of section 162

9. Section 162 is deleted and the following sections inserted in its place—

Interpretation for this Part

162. For the purposes of this Part—

- (a) “disciplinary violation” means a contravention of—
- (i) a provision of the Anti-Money Laundering and Terrorist Financing Regulations specified in those Regulations as a disciplinary violation; or
 - (ii) a provision of an Anti-Money Laundering and Terrorist Financing Code specified in the relevant Code as a disciplinary violation.
- (b) the imposition of an administrative penalty becomes final on—
- (i) the payment by the service provider of the penalty;
 - (ii) the date when, in accordance with section 162C(5), the service provider is considered to have committed the disciplinary violation; or
 - (iii) if the service appeals the notice under section 164A, the dismissal of any appeal of the service provider, provided that the time for any further appeal has expired.

Relevant supervisory authority may take disciplinary action

162A. (1) A relevant supervisory authority may take disciplinary action against a relevant service provider if it is satisfied that the service provider has committed a disciplinary violation.

(2) A relevant supervisory authority takes disciplinary action against a relevant service provider by imposing an administrative penalty on it.

(3) The administrative penalty imposed on a relevant service provider in respect of a disciplinary violation shall not exceed the sum specified—

- (a) in the case of a contravention specified in section 162(a)(i), in the Anti-Money Laundering and Terrorist Financing Regulations;
- (d) in the case of a contravention specified in subsection 162(a)(ii), in the relevant Anti-Money Laundering and Terrorist Financing Code.

(4) A violation that is committed or continued on more than one day constitutes a separate violation for each day on which it is committed or continued.

(5) A relevant supervisory authority shall not take disciplinary action against a relevant service provider in respect of a disciplinary violation committed more than two years prior to the date upon which it sends a notice to the relevant service provider under section 162B.

(6) For greater certainty, a disciplinary violation is not an offence and, accordingly, section 32 of the Penal Code does not apply in respect of a disciplinary violation.

(7) If the conduct or omission that constitutes a disciplinary violation also constitutes an offence, the taking of disciplinary action against a relevant service provider does not prevent the service provider being also prosecuted for the offence.

Notice of intention to take disciplinary action

162B. (1) If it intends to take disciplinary action against a relevant service provider, a relevant supervisory authority shall send a notice of its intention to the relevant service provider which—

- (a) sets out the alleged disciplinary violation and the relevant facts surrounding the violation;
- (b) sets out the amount of the penalty that it intends to impose for the violation; and
- (c) advises the relevant service provider of his right to make written representations to the relevant supervisory authority in accordance with subsection (2).

(2) A service provider that receives a notice under subsection (1) may, within 28 days of the date upon which he receives the notice, send written representations to the supervisory authority disputing the facts of the alleged disciplinary violation or the amount of the administrative penalty or both.

Disciplinary action

162C. (1) After the expiration of 28 days from the date that it sent a notice under section 162B to a service provider, a relevant supervisory authority may take disciplinary action against that service provider by sending him a penalty notice stating:

- (a) the disciplinary violation in respect of which the notice is issued;
- (b) the date on which notice of intention to take disciplinary action in respect of that violation was sent to the relevant service provider;
- (c) the amount of the administrative penalty for the violation, which shall not exceed the amount specified in the notice sent under section 162B;
- (d) a date, not less than 28 days after the date of the penalty notice, by which the service provider must pay the penalty to the supervisory authority; and
- (e) that if the service provider does not pay the penalty or exercise its rights of appeal under section 164A, it will be

considered to have committed the violation and that it is liable for the penalty set out in the notice.

(2) Before taking disciplinary action against a relevant service provider under subsection (1), a relevant supervisory authority shall consider any written representations that it has received from the service provider and, where it receives such representations, it must provide reasons for the action that it takes.

(3) A service provider that receives a penalty notice under subsection (1) shall pay the penalty stated to the relevant supervisory authority on or before the date specified in the notice or appeal the notice under section 164A.

(4) If the service provider pays the administrative penalty, it is considered to have committed the violation and the disciplinary action is over.

(5) A service provider that neither pays the administrative penalty nor appeals the notice within 28 days is considered to have committed the disciplinary violation and is liable for the penalty.

(6) If a relevant supervisory authority imposes an administrative penalty on a relevant service provider, the supervisory authority shall, after the imposition of the penalty has become final, advertise the imposition of the penalty by publication in the *Gazette*.

(7) The regulations may provide for:

- (a) the procedures to be adopted by a relevant supervisory authority when taking disciplinary action against a relevant service provider; and
- (b) the determination of, or the method of determining, the amount of the administrative penalty for a disciplinary violation.

Recovery of administrative penalties

162D. (1) An administrative penalty constitutes a debt to the relevant the supervisory authority and may be recovered in the Court.

(2) A relevant supervisory authority may, after the imposition of a penalty has become final, issue a certificate certifying the unpaid amount of any debt referred to in subsection (1) and the registration of the certificate in the Court has the same effect as a judgment of the Court for a debt of the amount specified in the certificate together with the costs of registration.

Amendment of section 163

10. Section 163 of the Act is amended—

- (a) in subsection (1), by deleting “the non-financial supervisory authority” and substituting “a relevant supervisory authority”;
- (b) in subsection (2)(a), by deleting “non-financial service provider” in each of the places it occurs in subparagraphs (i), (ii) and (iii), and substituting “relevant service provider”; and

- (c) in subsection (3), by deleting “the supervisory authority for non-financial service providers” and substituting “a relevant supervisory authority”.

Insertion of section 164A

11. The Act is amended by inserting the following section after section 164—

“Appeals

Appeals

164A. (1) Subject to subsection (2), a person who is aggrieved by a decision of a relevant supervisory authority or the supervisory authority for non-profit organisations made under this Act, the regulations or a Code may, within 28 days of the date of the decision, apply to the Court for leave to appeal against the decision.

(2) Unless the Court otherwise determines, an application for leave to appeal, an appeal and an application for judicial review, does not operate as a stay of the decision of the relevant supervisory authority or the supervisory authority for non-profit organisations in respect of which the application or appeal is made.

(3) Upon hearing an appeal, the Court may—

- (a) dismiss the appeal; or
- (b) remit the matter back to the relevant supervisory authority or the supervisory authority for non-profit organisations, as the case may be, for further consideration with such directions as it considers fit.”.

Teresina Bodkin
SPEAKER

Passed the Legislative Council this 6th day of April, 2010.

Judith Jeffers
CLERK OF COUNCILS