



BERMUDA

PROCEEDS OF CRIME AMENDMENT ACT 2015

2015 : 53

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PROCEEDS OF CRIME AMENDMENT ACT 2015

WHEREAS it is expedient to amend the Proceeds of Crime Act 1997, the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008, the Financial Intelligence Agency Act 2007, the Criminal Justice (International Co-operation) (Bermuda) Act 1994, the Anti-Terrorism (Financial and Other Measures) Act 2004, the Companies Act 1981, the Revenue Act 1898, and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008, in order to strengthen the Anti-Money Laundering and Anti-Terrorist Financing (AML/ATF) Legislative Framework in accordance with revised international standards:

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 Amendment Act 2015.

AMENDMENTS TO THE PROCEEDS OF CRIME ACT 1997

Amends the Proceeds of Crime Act 1997 ("principal Act")

2 The principal Act is amended—

(a) by repealing and replacing sections 9 and 10 as follows—

"Confiscation orders

9 (1) Where a defendant appears before the Supreme Court to be sentenced for one or more drug trafficking offences or relevant offences, the court shall proceed under this section—

- (a) on the application of the Director of Public Prosecutions; or
- (b) of its own motion where it considers it appropriate to do so.

(2) The court shall first determine whether the defendant has benefited from criminal conduct.

(3) For the purposes of this Act, a person has benefited from criminal conduct if he has at any time (whether before or after the commencement of this Act)—

- (a) received any payment or other reward in connection with his or another person's criminal conduct;
- (b) obtained property as a result of or in connection with his or another person's criminal conduct; or
- (c) derived a pecuniary advantage as a result of or in connection with his or another person's criminal conduct.

(4) If the court determines that he has so benefited, it shall, before sentencing or otherwise dealing with him in respect of the offence or (as the case

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may be) any of the offences concerned, make a confiscation order and determine in accordance with section 15 the amount to be recovered in his case under the order.

- (5) The court shall then, in respect of the offence or offences concerned—
 - (a) order the defendant to pay the amount of the confiscation order within such period as it may specify; and
 - (b) take into account the confiscation order before—
 - (i) imposing any fine on him;
 - (ii) making any other order involving any payment by him; and
 - (iii) making any order under section 37 of the Misuse of Drugs Act 1972 (forfeiture); but
 - (c) subject to paragraph (b), leave the confiscation order out of account in determining the appropriate sentence or other manner of dealing with the defendant.”; and
- (b) and in consequence of the amendments made by way of paragraph (a) amend sections 7, 11(1), 11(7), 13(1), 13(2), and 36.1E (9)(a), by deleting all references to section 10 wherever they occur.

Repeals and replaces section 12

3 Section 12 of the principal Act is repealed and replaced as follows—

“Assessing the proceeds of criminal conduct

12 (1) For the purposes of this Act—

- (a) any payments or other rewards received, property obtained or pecuniary advantage derived by a person at any time (whether before or after the commencement of this Act) as a result of or in connection with criminal conduct carried on by him or another person are his proceeds of criminal conduct; and
 - (b) the value of his proceeds of criminal conduct is the aggregate of the values of the payments or other rewards, property and pecuniary advantage.
- (2) Subject to subsections (5) and (6), the court shall make the required assumptions for the purpose—
- (a) of determining whether the defendant has benefited from criminal conduct; and
 - (b) if he has, of determining the value of his proceeds of criminal conduct.
- (3) The required assumptions are—
- (a) that any property appearing to the court—

- (i) to have been held by the defendant at any time since his conviction; or
- (ii) to have been transferred to him at any time since the beginning of the period of six years ending when the proceedings were instituted against him,

was received by him as a payment or reward, property or a pecuniary advantage in connection with criminal conduct carried on by him;

- (b) that any expenditure of his since the beginning of that period was met out of payments received by him in connection with criminal conduct carried on by him;
- (c) that, for the purpose of valuing any property received or assumed to have been received by him at any time as such a reward, he received the property free of other interests in it.

(4) For the purposes of this Act, if a person derives a pecuniary advantage as a result of or in connection with the commission of an offence, he is to be treated as if he had obtained instead a sum of money equal to the value of the pecuniary advantage.

(5) The court shall not make any of the required assumptions in relation to any particular property or expenditure if—

- (a) that assumption is shown to be incorrect in the defendant's case; or
- (b) the court is satisfied that there would be a serious risk of injustice in the defendant's case if that assumption were to be made,

and where the court, by virtue of this subsection, does not make one of the required assumptions it shall state its reasons.

(6) For the purpose of assessing the value of the proceeds derived by the defendant from criminal conduct in a case where a confiscation order has previously been made against him (under this Act or the Drug Trafficking Suppression Act 1988), the court shall leave out of account any such proceeds that are shown to the court to have been taken into account in determining the amount to be recovered under the previous order.”.

Amends section 13

4 Section 13 of the principal Act is amended—

- (a) in subsection (1)(a), by deleting the words “as mentioned in the section in question” and by substituting the words “from criminal conduct”;
- (b) by deleting and substituting subsection (1)(b) and substituting as follows—

“(b) assessing the value of his proceeds of criminal conduct.”; and

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- (c) in subsection (8), by deleting the words “drug trafficking or from any relevant offence” and by substituting the words “criminal conduct”.

Amends section 15

5 Section 15 of the principal Act is amended—

- (a) by deleting and substituting subsection (1) as follows—

“(1) Subject to subsection (3), the amount to be recovered under a confiscation order shall be the amount the court assesses to be the value of the defendant’s proceeds of criminal conduct.”; and

- (b) by deleting and substituting subsection (3) as follows—

“(3) If the court is satisfied that the amount that might be realised at the time that the confiscation order is made is less than the amount the court assesses to be the value of the defendant’s proceeds of criminal conduct, the amount to be recovered under the confiscation order shall be the amount appearing to the court to be the amount that might be so realised.”.

Amends section 17

6 Section 17 of the principal Act is amended by deleting and substituting subsections (1) and (2) as follows—

“17 (1) This section applies where a defendant has appeared before the Supreme Court to be sentenced in respect of one or more drug trafficking or relevant offences but the court has not made a confiscation order because either—

- (a) it did not proceed under this Act; or
(b) it has made a determination that the defendant has not benefited from criminal conduct.

(2) If the Director of Public Prosecutions has evidence which was not previously available but which he believes would have led the court to determine that the defendant had benefited from criminal conduct, he may make an application to the court.”.

Amends section 18

7 Section 18 of the principal Act is amended—

- (a) by deleting and substituting subsections (2), (3), and (4) as follows—

“(2) Where the Director of Public Prosecutions is of the opinion that the real value of the defendant’s proceeds of criminal conduct was greater than their assessed value, he may apply to the court for the evidence on which he has formed his opinion to be considered by the court.

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(3) If, having considered the evidence, the court is satisfied that the real value of the defendant's proceeds of criminal conduct is greater than their assessed value (whether because the real value at the time of the current determination was higher than was thought or because the value of the proceeds or benefit in question has subsequently increased), the court shall make a fresh determination of the amount to be recovered under a confiscation order.

(4) In this section—

“assessed value” means the value of the defendant's proceeds of criminal conduct as assessed by the court in accordance with section 15(1) of this Act; and

“real value” means the value of the defendant's proceeds of criminal conduct which took place in the period by reference to which the current determination was made or in any earlier period.”; and

(b) by deleting subsection (6) and substituting the following—

“(6) For the avoidance of doubt, section 12(6) shall not apply in relation to any of the defendant's proceeds of criminal conduct taken into account in respect of the current determination.”.

Amends section 19

8 Section 19 of the principal Act is amended—

(a) by deleting and substituting subsections (1) and (2) as follows—

“(1) On an application under section 17 or 18, the court may take into account any payment or other reward, property or pecuniary advantage received by the defendant on or after the date of the—

(a) conviction (in the case of an application under section 17 by virtue of subsection (1)(a));

(b) determination (in the case of an application under section 17 by virtue of subsection (1)(b)); or

(c) current determination (in the case of an application under section 18),

but only if the Director of Public Prosecutions shows that it was received by the defendant in connection with criminal conduct, on or before that date.

(2) In considering any evidence which relates to any payment or reward, property or pecuniary advantage in relation to criminal conduct to which subsection (1) applies, the court shall not make the assumptions which would otherwise be required by section 12.”; and

(b) in section 19(4), by deleting the reference to section 10.

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Amends section 23

- 9 Section 23 of the principal Act is amended, in subsection (2), by—
- (a) deleting the words “drug trafficking” and by substituting the words “criminal conduct”; and
 - (b) deleting the words “value of his benefit from relevant offences, or the amount” and by substituting the word “amount”.

Inserts section 26A

- 10 The principal Act is amended by inserting next after section 26 the following—
- “Enforcement of payment of confiscation order
- 26A (1) Where—
- (a) the Supreme Court has made a confiscation order; and
 - (b) any sum required to be paid by a person under a confiscation order is not paid when it is required to be paid,
- the court may issue a warrant under this section for the person’s arrest.
- (2) A warrant under this section shall be authority—
- (a) for any police officer, whether he has the warrant with him or not, to arrest the person who is the subject of the warrant and bring him before the court to be dealt with according to law; and
 - (b) if the circumstances require, for the person to be detained in custody at a police station for a period of not more than two days after his arrest before he is brought before a court in accordance with paragraph (a).
- (3) A police officer arresting a person by virtue of a warrant under this section shall, at the time of the arrest, either—
- (a) show the warrant to the person being arrested; or
 - (b) if the officer does not have the warrant with him at the time of the arrest—
 - (i) inform the person being arrested of the existence and purport of the warrant; and
 - (ii) after such arrest, show the warrant to the person as soon as reasonably practicable but not more than four hours after the arrest.
- (4) The powers under subsection (1), for the issuance of a warrant, are exercisable—
- (a) on application by a police officer;
 - (b) on application by the Director of Public Prosecutions; or

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(c) by the court on its own motion.

(5) Where a person has been brought before the court on a warrant issued under this section the court may—

- (a) impose a period of imprisonment in default in accordance with section 25;
- (b) order a fresh assessment of the realisable assets of the defendant;
- (c) vary or discharge the confiscation order;
- (d) exercise any of the powers as prescribed under sections 27 to 34; or
- (e) make any other order that the court deems fit.”.

Amends section 42A

11 Section 42A of the principal Act is amended—

- (a) by inserting next to section number “42A” the subsection number “(1)”;
- (b) by inserting after the definition of “country” the following—

“ “criminal property” has the meaning set out in subsection (2);”; and

(c) by inserting after subsection (1) the following—

“(2) “Criminal property” is property which—

- (a) constitutes a person’s benefit from criminal conduct or represents such a benefit (in whole or part and whether directly or indirectly); and
- (b) the alleged offender knows or suspects constitutes or represents such benefit.

(3) For the purposes of subsection (2), it is immaterial—

- (a) who carried out the conduct;
- (b) who benefited from it; or
- (c) whether it occurred before or after the passing of this Act.

(4) For the purposes of subsection (2), a person benefits from criminal conduct if he obtains property as a result of or in connection with the conduct.”.

Repeals and replaces section 43

12 Section 43 of the principal Act is repealed and replaced as follows—

“Concealing or transferring proceeds of criminal conduct

43 (1) A person commits an offence if he—

- (a) conceals criminal property;
 - (b) disguises criminal property;
 - (c) converts criminal property;
 - (d) transfers criminal property; or
 - (e) removes criminal property from Bermuda.
- (2) But a person does not commit such an offence if—
- (a) he makes a disclosure under section 46 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the consent of the FIA;
 - (b) he intended to make such a disclosure but had a reasonable excuse for not doing so; or
 - (c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.
- (3) A person may be treated as having the consent of the FIA if—
- (a) he makes a disclosure to the FIA; and
 - (b) the condition in subsection (4) or the condition in subsection (5) is satisfied.
- (4) The condition is that before the end of the notice period he does not receive notice from the FIA that consent to the doing of the act is refused.
- (5) The condition is that—
- (a) before the end of the notice period he receives notice from the FIA that the consent to the doing of the act is refused; and
 - (b) the moratorium period has expired.
- (6) The notice period is the period of seven working days commencing on the day after a disclosure is made.
- (7) The moratorium period is the period of 45 days and shall commence on the day that the notice is given.
- (8) For the purposes of this section—
- “a working day” means a day other than a Saturday or a public holiday as prescribed by the Public Holidays Act 1947.
- (9) Concealing or disguising criminal property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.”.

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Amends section 44

13 Section 44 of the principal Act is amended by inserting next after subsection (3) the following—

“(3A) A person may be treated as having the consent of the FIA under subsection (3)(b)(i) if—

- (a) he makes a disclosure to the FIA; and
- (b) the condition in subsection (3B) or the condition in subsection (3C) is satisfied.

(3B) The condition is that before the end of the notice period he does not receive notice from the FIA that consent to the doing of the act is refused.

(3C) The condition is that—

- (a) before the end of the notice period he receives notice from the FIA that consent to the doing of the act is refused; and
- (b) the moratorium period has expired.

(3D) The notice period is the period of seven working days commencing on the day after a disclosure is made.

(3E) The moratorium period is the period of 45 days and shall commence on the day that the notice is given.

(3F) For the purposes of this section—

“a working day” means a day other than a Saturday or a public holiday as prescribed by the Public Holidays Act 1947.”.

Amends section 45

14 Section 45 of the principal Act is amended—

(a) by deleting and substituting subsection (1) as follows—

“(1) A person commits an offence if he—

- (a) acquires criminal property;
- (b) uses criminal property; or
- (c) has possession of criminal property.”; and

(b) by inserting next after subsection (5) the following—

“(5A) A person may be treated as having the consent of the FIA under subsection (5)(b)(i) if—

- (a) he makes a disclosure to the FIA; and

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(b) the condition in subsection (5B) or the condition in subsection (5C) is satisfied.

(5B) The condition is that before the end of the notice period he does not receive notice from the FIA that consent to the doing of the act is refused.

(5C) The condition is that—

(a) before the end of the notice period he receives notice from the FIA that consent to the doing of the act is refused; and

(b) the moratorium period has expired.

(5D) The notice period is the period of seven working days commencing on the day after a disclosure is made.

(5E) The moratorium period is the period of 45 days and shall commence on the day that the notice is given.

(5F) For the purposes of this section—

“a working day” means a day other than a Saturday or a public holiday as prescribed by the Public Holidays Act 1947.”.

Amends section 49

15 Section 49 of the principal Act is amended—

(a) in subsection (2), by—

(i) deleting paragraph (c); and

(ii) inserting next after paragraph “(ec)” the following—

“(ed) the National Coordinator;

(ee) the Registrar General;

(ef) the Registrar of Companies (including when acting in his capacity as Superintendent of Real Estate); or”;

(b) by inserting after subsection (5) the following—

“(5A) In this section “the National Coordinator” means a person appointed as head of the office of the National Anti-Money Laundering Committee.”.

Inserts section 49AA

16 The principal Act is amended by inserting next after section 49 the following—

“Prohibition against the import and export of proceeds of criminal conduct
49AA (1) A person shall not without lawful authority import into Bermuda or export from Bermuda proceeds of criminal conduct in any form whatsoever.

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(2) Any person who knowingly contravenes subsection (1) commits an offence and shall be liable—

- (a) on summary conviction, to imprisonment for five years or a fine of \$50,000 or both; or
- (b) on conviction on indictment, to imprisonment for twenty years or an unlimited fine or both.

(3) For the avoidance of doubt, the word “goods” in section 100 of the Revenue Act 1898 includes the proceeds of criminal conduct in any form whatsoever.”.

AMENDMENTS TO THE PROCEEDS OF CRIME (ANTI-MONEY LAUNDERING AND ANTI-TERRORIST FINANCING SUPERVISION AND ENFORCEMENT) ACT 2008

Amends section 10(3)(d)

17 Section 10(3)(d) of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 is amended by deleting the words “, if any,”.

AMENDMENTS TO THE FINANCIAL INTELLIGENCE AGENCY ACT 2007

Amends section 4

18 Section 4 of the Financial Intelligence Agency Act 2007 is amended—

- (a) in the headnote, by inserting next after the word “Board” the words “and operational independence”; and
- (b) by deleting and substituting subsection (6) as follows—

“(6) The FIA shall be operationally independent and have the authority and capacity to carry out its functions freely, including the autonomous authority to—

- (a) analyse;
- (b) request; and
- (c) disseminate,

information in accordance with the provisions of this Act.”.

Repeals and replaces section 6

19 Section 6 of the Financial Intelligence Agency Act 2007 is repealed and replaced as follows—

“Employment of officers, servants and agents

6 (1) The FIA shall, subject to such terms and conditions as it thinks fit and subject to subsection (2), employ such officers, servants and agents as it considers necessary for the due performance of its functions, and shall ensure that amongst their number is a barrister and attorney.

(2) The FIA shall ensure that all—

- (a) officers;
- (b) servants; and
- (c) agents,

have the necessary security clearances and an understanding of their responsibilities in handling and disseminating sensitive or confidential information.

(3) The FIA shall, subject to the provisions of this Act, have the independent operational authority to acquire and to deploy the necessary human resources needed to carry out its functions—

- (a) on a singular basis; or
- (b) on an ongoing basis,

free from any undue influence (including political, governmental, or industry-specific undue influence) of a nature that may compromise the operational independence of the FIA.”.

Amends section 14

20 Section 14 of the Financial Intelligence Agency Act 2007 is amended—

(a) in subsection (1), by deleting the word “and” at the end of paragraph (a) and inserting after paragraph (a) the following—

“(aa) of maintaining secure and restricted access to its facilities and to the information referred to in paragraph (a), including its information technology systems; and”; and

(b) by inserting next after subsection (2) the following—

“(3) This subsection applies where the FIA receives from a foreign financial intelligence authority a request for information relating to suspected proceeds of criminal conduct, potential money laundering offences and potential terrorist financing offences. The FIA may—

- (a) conduct enquires in relation to such request, in accordance with its functions and powers under this Act; and
- (b) subject to subsection (4), disseminate to the requesting foreign financial intelligence authority any information obtained by the FIA in connection with the exercise of its functions.

(4) Where a foreign financial intelligence authority makes a request for information to the FIA, the FIA may refuse to provide information to that authority if, in the opinion of the FIA, that authority cannot effectively protect the information to be disseminated in accordance with subsection (3).”.

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Repeals and replaces section 18

21 Section 18 of the Financial Intelligence Agency Act 2007 is repealed and replaced as follows—

“Permitted disclosure and limitations

18 Information obtained by the FIA in connection with the exercise of its functions may be disclosed by the FIA, of its own volition or upon request, if the disclosure is for the purpose of enabling or assisting (“permitted purpose”)—

- (a) the FIA to discharge its functions under section 14;
- (b) the Minister of Finance, the Minister responsible for justice and the Minister responsible for defence to discharge their functions under any statutory provision;
- (c) the Collector of Customs, or a customs officer designated by him, to discharge his functions under any statutory provision;
- (d) the Registrar of Companies to discharge his functions under any statutory provision;
- (e) the Registrar-General to discharge his functions under any statutory provision; or
- (f) the Bermuda Monetary Authority to discharge its functions under any statutory provision.”.

Inserts section 21A

22 The Financial Intelligence Agency Act 2007 is amended by inserting next after section 21 the following—

“21A All information—

- (a) received;
- (b) processed;
- (c) held; or
- (d) disseminated,

by the FIA, shall be securely protected and disseminated or disclosed or used only in accordance with agreed procedures, policies and applicable laws and regulations.”.

*AMENDMENTS TO THE CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION)
(BERMUDA) ACT 1994*

Amends section 11D

23 Section 11D of the Criminal Justice (International Co-operation) (Bermuda) Act 1994 is amended by inserting next after subsection (2) the following—

“(3) For the purposes of this section, no person who—

- (a) receives from a requesting state a request for assistance; or
- (b) obtains information directly or indirectly for the purposes of subsection (3)(a),

shall disclose the request or the information to another person without the consent of the requesting state.

(4) Subsection (3) does not apply to information which at the time of the disclosure is or has already been made available to the public from other sources, or to information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

(5) Any person who discloses information in contravention of subsection (3) is guilty of an offence and is liable—

- (a) on summary conviction to a fine of \$50,000 or to imprisonment for two years or to both; or
- (b) on conviction on indictment, to imprisonment for ten years or an unlimited fine or both.

(6) This section shall have effect notwithstanding the provisions of the Public Access to Information Act 2010.”.

AMENDMENTS TO THE ANTI-TERRORISM (FINANCIAL AND OTHER MEASURES) ACT 2004

Repeals and replaces section 12A(1)

24 Section 12A(1) of the Anti-Terrorism (Financial and Other Measures) Act 2004 is repealed and replaced as follows—

“12A (1) The Minister may, after consulting the National Anti-Money Laundering Committee, make such regulations as he thinks fit for the purposes of—

- (a) detecting and preventing the financing of terrorism; or
- (b) detecting and preventing the financing of proliferation of weapons of mass destruction.”.

AMENDMENTS TO THE COMPANIES ACT 1981

Inserts section 64A

25 The Companies Act 1981 is amended by inserting next after section 64 the following—

“Register of Directors

64A (1) Every company registered in Bermuda shall file with the Registrar a current listing of directors, in such form as prescribed in accordance with this section, and it shall be produced—

- (a) annually; and
- (b) whenever there has been a change to its listing of directors.

(2) The current listing of directors must contain the following particulars with respect to each director—

- (a) in the case of an individual, his present first name, surname and address; and
- (b) in the case of a company, its name and the address of its registered office.

(3) The Registrar shall keep a register in accordance with subsection (2) and section 273 containing a current listing of directors of companies registered in Bermuda, and such register shall be available for public inspection, on payment of such fee as may be prescribed.

(4) If default is made in complying with subsection (1) or (2), by a company registered in Bermuda, an offence is committed by—

- (a) the company; and
- (b) every officer of the company.

(5) If default is made in complying with this section the company or every officer of the company who is in default shall be liable to a default fine.”.

[Section 25 in force 1 April 2016 by BR 107 / 2015 para. 2]

AMENDMENTS TO THE REVENUE ACT 1898

Repeals and replaces section 85

26 Section 85 of the Revenue Act 1898 is repealed and replaced as follows—

“Penalty for false documents or statements

85 (1) If any person, in connection with a customs and excise matter, makes, signs, or submits or uses a document or makes a statement before a customs officer or otherwise, which is untrue in any particular, the person making, signing, submitting or using the document or making the statement shall forfeit and pay a sum in the level 4 amount.

(2) Any person who, with intent to deceive, in connection with a customs and excise matter—

- (a) makes, signs, submits or uses a document or makes a statement before a customs officer or otherwise, which is untrue in any material particular; or

- (b) counterfeits any document or any seal, signature, initials, or other mark on any document,

shall be guilty of an offence and liable on conviction on indictment to imprisonment for up to a maximum of 5 years or to a maximum fine of the level 7 amount or to both such imprisonment and fine.

(3) In addition to any penalty under subsection (1) or (2), the goods in respect of which the document is made, signed, submitted or used, or the statement is made shall be liable to forfeiture.

(4) In this section—

“a customs and excise matter” includes—

- (a) the collection or protection of revenue;
- (b) the importation or exportation of any goods; or
- (c) the removal of goods from a bonded warehouse or a customs area.”.

AMENDMENTS TO THE PROCEEDS OF CRIME (ANTI-MONEY LAUNDERING AND ANTI-TERRORIST FINANCING) REGULATIONS 2008

Amends regulation 2

27 Regulation 2 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 (the “principal Regulations”) is amended—

- (a) in paragraph (1), by inserting, in the appropriate alphabetical order, the following—

“AML” means anti-money laundering;

“ATF” means anti-terrorist financing;

“chief executive” means a person who, either alone or jointly with one or more persons, is responsible under the immediate authority of the directors for the conduct of the business of a legal entity or legal arrangement;

“Compliance Officer” has the meaning given in regulation 18A;

“International Organisation” means an organisation—

- (a) that is established by formal political agreement between its member countries, where such agreement has the status of international treaty;
- (b) whose existence is recognised by law in its member countries; and
- (c) that is not treated as a resident institutional unit of the country in which it is located;

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“Reporting Officer” means a person designated to carry out the functions set out in regulation 17;” and

- (b) in paragraph (2)(i), by deleting “section 8” and by substituting “section 4”.

Amends regulation 3(3)

28 Regulation 3(3) of the principal Regulations is amended—

- (a) by deleting the full-stop at the end of paragraph (c) and replacing it with a semi-colon; and
- (b) by inserting next after paragraph (c) the following—

“(d) the settlor of the trust.”.

Amends regulation 5

29 Regulation 5 of the principal Regulations is amended—

- (a) by deleting the word “and” at the end of paragraph (b);
- (b) by deleting paragraph (c) and substituting the following—

“(c) in the case of a legal entity or legal arrangement, identifying the name and verifying the identity of the relevant natural person having the position of chief executive or a person of equivalent or similar position;

(d) in the case of a legal entity, identifying and verifying the identity of a natural person (either customer, beneficial owner, person of control or ownership) by some means and, where no natural person has been identified, identifying a relevant natural person holding the position of—

(i) a chief executive; or

(ii) a person of equivalent or similar position to the official under subparagraph (i); and

(e) obtaining information on and taking steps to understand the purpose and intended nature of the business relationship;”

Amends regulation 6

30 Regulation 6 of the principal Regulations is amended—

- (a) by inserting after paragraph (1) the following—

“(1A) Subject to paragraph (1), in the case of a trust or life insurance policy, a relevant person shall apply customer due diligence measures on a beneficiary as soon as the beneficiary is designated—

- (a) for a beneficiary that is identified as a specifically named natural person, legal entity or legal arrangement, taking the name of the person, entity or arrangement;
- (b) for a beneficiary that is designated by characteristics or by class, obtaining sufficient information concerning the beneficiary to satisfy the relevant person that it will be able to establish the identity of the beneficiary at the time of payout.”;
- (b) in paragraph (3)(a), by inserting next after the words “business relationship,” the words “geographic areas, services, delivery channels,”; and
- (c) by inserting next after paragraph (4) the following—

“(5) A relevant person shall not perform customer due diligence measures where doing so may result in a disclosure (tipping off) to any other person—

- (a) information; or
- (b) any other matter,

which is likely to prejudice an investigation or proposed investigation.

(6) Where a relevant person is unable to perform customer due diligence in accordance with paragraph (5) he shall, in lieu, file the necessary disclosure with the FIA.

(7) For the purpose of paragraph (1A), “beneficiary” means the person named as beneficiary in a life insurance policy or a trust instrument.”.

Amends regulation 8

31 Regulation 8 of the principal Regulations is amended—

- (a) in paragraph (1), by—
 - (i) inserting after the words “regulations 6(1)(a) and (b)”, the words “and regulation 6(1A)”;
 - (ii) deleting the words “regulations 5(a) and (b)” and substituting the words “regulation 5”;
- (b) in paragraph (3), by—
 - (i) deleting the full stop at the end of paragraph “(b)” and substituting “; and” ;
 - (ii) inserting next after paragraph (b) the following—
 - “(c) any money laundering or terrorist financing risks that may arise are effectively managed.”;
- (c) in paragraph (4), by—

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- (i) inserting next after the words “life insurance policy” the words “or a trust”; and
- (ii) inserting next after the words “under the policy” the words “or trust”.

Amends regulation 10

32 Regulation 10 of the principal Regulations is amended—

- (a) in paragraph (1), by—
 - (i) deleting the words “regulation 5(a), (b) or (c)” and substituting the words “regulation 5”;
 - (ii) deleting the words “6(1)(a), (b) or (d)” and substituting the words “6(1)(a) or (b), or regulation 6(1A)”;
- (b) in paragraph (2)(b), by—
 - (i) deleting the word “and” at the end of subparagraph (i); and
 - (ii) inserting after subparagraph (i) the following—
 - “(ii) has effectively implemented those requirements; and”;
 - (iii) renumbering the existing subparagraph (ii) as subparagraph (iii); and
- (c) in paragraph (4)(a), by—
 - (i) deleting the word “and” at the end of subparagraph (i);
 - (ii) inserting after subparagraph (i) the following—
 - “(ii) the independent professional has effectively implemented those requirements; and”;
 - (iii) renumbering the existing subparagraph (ii) as subparagraph (iii).

Amends regulation 11

33 Regulation 11 of the principal Regulations is amended—

- (a) in paragraph (1), by deleting paragraph (aa) and substituting the following—
 - “(aa) in instances where a person or a transaction is from or in a country that has been identified as having a higher risk by the Financial Action Task Force;
 - (ab) 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;”;
- (b) in paragraph (4), by deleting the word “A” and by substituting the words “Subject to paragraph (6B), a”;

- (c) in paragraph (5), by deleting the words “paragraph (6)” and by substituting the words “paragraphs (6) and (6A)”;
- (d) at the beginning of paragraph (6), by inserting next after the word “in” the words “or from”;
- (e) in paragraph (6)(a), by inserting immediately after the word “functions” the words “or a prominent function by an international organisation”; and
- (f) by inserting next after paragraph (6) the following—

“(6A) This paragraph applies to any of the following persons who are in or from Bermuda—

- (a) an individual who is or has, at any time in the preceding year, been entrusted with prominent public functions or a prominent function by an international organisation;
- (b) a person who falls into any of the categories listed in paragraph 2(1)(a) of the Schedule;
- (c) an immediate family member of a person referred to in subparagraph (a), including a person who falls into any of the categories listed in paragraph 2(1)(d) of the Schedule; or
- (d) a known close associate of a person referred to in subparagraph (a), including a person who falls into either of the categories listed in paragraph 2(1)(e) of the Schedule.

(6B) In relation to a person described in paragraph (6A), where a relevant person determines that the business relationship or occasional transaction with that person is a higher risk, then the relevant person must carry out the enhanced due diligence measures set out in paragraph (4).”.

Amends regulation 12(1)

34 Regulation 12(1) of the principal Regulations is amended by deleting the words which follow immediately after the words “other than Bermuda”, and by substituting therefor the following—

- “(a) to adopt group-wide policies and procedures that—
 - (i) facilitate the sharing of customer due diligence and transaction information; and
 - (ii) ensure adequate safeguards on the confidentiality and use of information exchanged,
- in order to manage the risk of money laundering and terrorist financing through the application of AML/ATF compliance functions; and

- (b) to apply, to the extent permitted by the law of that country or territory, measures at least equivalent to those set out in these Regulations with regard to customer due diligence measures, ongoing monitoring and record-keeping.”.

Amends regulation 14(1)(b)(i)

35 Regulation 14(1)(b)(i) of the principal Regulations is amended by inserting next after the word “must” the word “immediately”.

Inserts regulation 14A

36 The principal Regulations are amended by inserting next after regulation 14 the following—

“Outsourcing

14A (1) Where a relevant person delegates its AML/ATF compliance function to another entity (outsourcing), the relevant person shall retain ultimate responsibility for the AML/ATF compliance function.

(2) In this regulation, ultimate responsibility includes the obligation to—

(a) ensure that the provider of the outsourced AML/ATF compliance function has in place—

(i) AML/ATF systems;

(ii) AML/ATF controls; and

(iii) AML/ATF procedures,

that are in compliance with the Bermuda AML/ATF requirements;

(b) consider the effect that outsourcing compliance functions has on the money laundering and terrorist financing risk;

(c) assess the money laundering and terrorist financing risk associated with outsourced functions and record its assessment; and

(d) monitor any perceived risk on an ongoing basis and, where the compliance functions (Compliance Officer or Reporting Officer) are involved to—

(i) ensure that the roles, responsibilities and respective duties are clearly defined and documented; and

(ii) ensure that the Compliance Officer or Reporting Officer and all employees understand the roles, responsibilities and the respective duties of all parties.

(3) Where a relevant person delegates its compliance function to another entity (outsourcing), the relevant person shall adopt policies and procedures to monitor and manage the service provider carrying out those compliance functions.

- (4) In this regulation, “outsourcing” and “outsourced” means—
- (a) AML/ATF systems;
 - (b) AML/ATF controls; and
 - (c) AML/ATF procedures,
- obtained outside of a relevant person.”.

Amends regulation 15

37 Regulation 15 of the principal Regulations is amended by inserting next after paragraph (7) the following—

“(7A) A relevant person must not rely on a person referred to in regulation 14(2)(c) (a third party) or enter into outsourcing arrangements, referred to in regulation 14A, where access to records specified under this regulation in paragraphs (2) and (5A) without delay is likely to be impeded by confidentiality or data protection restrictions.”.

Amends regulation 16(1)

38 Regulation 16(1) of the principal Regulations is amended—

- (a) in regulation 16(1), by inserting after the words “risk-sensitive policies and procedures” the words “, approved by its governing body,”;
- (b) in regulation 16(1), by deleting paragraph (e) and by substituting the following—
 - “(e) the performance and documentation of any products or services (prior to launch) and the continual documentation of risk assessment and management of such products and services, in a form available to share with the supervisory authority;
- (ea) risk mitigation mechanisms which include—
 - (i) consideration of the national or of the relevant person’s risk assessment results or conclusions;
 - (ii) the ability to effectively supply information to the supervisory authority; and
 - (iii) the application of enhanced measures where the relevant person’s risk assessments identify a higher risk;”;
- (c) by inserting next after paragraph (1) the following—

“(1A) Where a relevant person intends to introduce a new product, practice or technology, the relevant person must perform and document a risk assessment prior to the launch of such product, practice or technology.”.

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Amends regulation 17

39 Regulation 17 of the principal Regulations is amended—

- (a) in paragraph (1), by inserting after the words “A relevant person must”, the words “appoint a Reporting Officer and”;
- (b) in paragraph (1)(a), by deleting the words “the reporting officer to whom a report is to be made” and by substituting “a report is to be made to the Reporting Officer”;
- (c) in paragraphs 1(b), 1(c) and 1(d), by deleting (where they appear) the words “reporting officer” and by substituting the words “Reporting Officer”; and
- (d) by inserting after paragraph (2) the following—

“(3) The relevant person shall be responsible for ensuring its Reporting Officer is adequately trained to carry out the role.”.

Inserts regulation 17A

40 The principal Regulations are amended by inserting after regulation 17 the following—

“Independent audit function

17A (1) A relevant person must maintain an independent audit function to be conducted by a qualified independent third party or internally by persons independent of any other function, the lines of business over which the function has audit responsibilities, and financial operations.

(2) An independent audit function must provide and document an independent and objective evaluation of the robustness of the AML/ATF framework, and the reliability, integrity and completeness of the design and effectiveness of the AML/ATF risk management function and AML/ATF internal controls framework, and the AML/ATF compliance.”.

Amends regulation 18

41 Regulation 18 of the principal Regulations is amended by inserting next after paragraph (2) the following—

“(3) For the purposes of paragraph (1), the relevant employee includes an individual working on a temporary basis whether under a contract of employment, contract for services or otherwise.”.

Inserts regulation 18A

42 The principal Regulations are amended by inserting next after regulation 18 the following—

“Compliance officer

18A (1) A relevant person shall designate a person employed at managerial level as the Compliance Officer of that AML/ATF regulated financial institution.

(2) The relevant person shall be responsible for ensuring its Compliance Officer is adequately trained to carry out the role.

(3) The Compliance Officer shall—

(a) ensure that the necessary compliance programme procedures and controls required by these Regulations are in place; and

(b) coordinate and monitor the compliance programme to ensure continuous compliance with these Regulations.

(4) A Compliance Officer may also be appointed as a Reporting Officer.”.

Amends regulation 21

43 Regulation 21 of the principal Regulations is amended by inserting before the definition of “complete information on the payer”, the following—

“ “complete information on the payee” means information consisting of the payee’s name and account number, but where the payee does not have an account number, the payee’s PSP shall substitute it with a unique identifier that allows the transaction to be traced to the payee;”.

Amends regulation 23

44 Regulation 23 of the principal Regulations is amended—

(a) in paragraph (1), by deleting the full-stop at the end of paragraph (1) and by substituting the words “and payee,”; and

(b) by deleting paragraph (5) and by substituting the following new paragraphs (5) and (6)—

“(5) A payer’s PSP shall not allow the transfer of funds in accordance with this regulation if the required information for doing so is not available.

(6) The payer’s PSP shall for five years keep records of complete information on the payer and payee that accompanies transfers of funds.”.

Amends regulation 25

45 Regulation 25 of the principal Regulations is amended—

(a) in paragraph (a), by inserting after the word “payer” the words “and payee”; and

(b) in paragraph (b), by—

(i) inserting after the word “payer” the words “and payee”; and

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- (ii) inserting after the word “identifier” the words “where an account number is not available”.

Amends regulation 26

46 Regulation 26 of the principal Regulations is amended—

- (a) in the headnote, by inserting after the word “payer” the words “or payee”;
- (b) in paragraph (1), by inserting after the word “payer” the words “or payee”;
- (c) in paragraph (2), by inserting after the word “payer” the words “or payee”;
- (d) in paragraph (2)(b), by inserting after the word “payer,” the word “and payee”; and
- (e) in paragraph (2)(c) by inserting after the word “payer” the words “and payee”.

Amends regulation 27

47 Regulation 27 of the principal Regulations is amended—

- (a) in the headnote, by inserting after the word “payer” the words “or payee”; and
- (b) in paragraph (1), by inserting after the word “payer” the words “or payee”.

Amends regulation 29

48 The principal Regulations are amended by deleting and substituting regulation 29 as follows—

“Timing of verification and record keeping

29 (1) The payee’s PSP shall, before transferring funds, verify the complete information on the payee on the basis of documents, data or information obtained from a reliable and independent source.

(2) In the case of transfers of funds from an account, the complete information on a payee shall be deemed to have been verified if the payee’s PSP has complied with the requirements of customer due diligence under Part 2.

(3) In the case of transfers of funds not made from an account, the payee’s PSP shall verify the information on the payee only where the amount exceeds \$1,000, unless the transaction is carried out in several operations that appear to be linked and together exceed \$1,000.

(4) The payee’s PSP shall keep for five years records of any information received on the payer and payee.”.

Amends regulation 30

49 Regulation 30 of the principal Regulations is amended—

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- (a) in the headnote, by inserting after the word “payer” the words “and payee”; and
- (b) by inserting after the word “payer” the words “and payee”.

Amends regulation 31

50 Regulation 31 of the principal Regulations is amended—

- (a) in paragraph (2), by—
 - (i) inserting after the word “payer” the words “or payee”;
 - (ii) after the words “transfers of funds to the”, substituting the word “payer’s” with the word “payee’s”;
- (b) in paragraph (3), by inserting after the words “information on the payer” the words “or payee”; and
- (c) in paragraph (4), by inserting after the word “payer” the words “or payee”.

Amends the Schedule

51 The Schedule to the principal Regulations is amended by inserting after paragraph 2(2) the following—

- “(3) For the purposes of regulation 11(6A)—
 - (a) individuals who are or have been entrusted with prominent public functions include the following—
 - (i) the Governor, Premier, Ministers and Junior Ministers;
 - (ii) Members of the Legislature;
 - (iii) Permanent Secretaries;
 - (iv) Judges of the Supreme Court and Court of Appeal and Magistrates;
 - (v) members of the Board or senior management of the Bermuda Monetary Authority and the Bermuda Regulatory Authority;
 - (vi) commissioned officers in the Royal Bermuda Regiment and senior officers above the rank of Sergeant (which includes the Commissioner of Police) of the Bermuda Police Service; and
 - (vii) members of the Board of Directors and the Chief Executive Officer (by whatever name called) of the Bermuda Government owned or controlled enterprises or authorities, including but not limited to— West End Development Corporation; Bermuda Land Development Corporation; Bermuda Development Agency; Bermuda Tourism Authority; Bermuda Deposit Insurance Corporation; Bermuda Casino Gaming Commission;

- (b) the categories set out in subparagraphs (i) to (vi) of paragraph (a) do not include middle-ranking or more junior officials;
- (c) the categories set out in subparagraphs (i) to (v) of paragraph (a) include, where applicable, positions at domestic and international levels;
- (d) immediate family members include the following—
 - (i) a spouse;
 - (ii) children and their spouses; and
 - (iii) parents;
- (e) persons known to be close associates include the following—
 - (i) any individual who is known to have joint beneficial ownership of a legal entity or legal arrangement, or any other close business relations, with a person referred to in regulation 11(6A)(a); and
 - (ii) any individual who has sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit of a person referred to in regulation 11(6A)(a)."

COMMENCEMENT

Commencement

52 (1) The provisions of this Act shall come into operation on such date or on such days as the Minister may appoint by notice in the Gazette.

(2) The Minister may appoint different days for the provisions of this Act to come into operation.

[Assent Date: 23 December 2015]

[Operative Date: 01 January 2016]