

CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE PROLIFERATION FINANCING
(PROHIBITION) LAW (2014 REVISION) IN ORDER TO ENSURE ITS
COMPLIANCE WITH INTERNATIONAL STANDARDS; AND FOR
INCIDENTAL AND CONNECTED PURPOSES**

**THE PROLIFERATION FINANCING (PROHIBITION) (AMENDMENT)
BILL, 2016**

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to amend the Proliferation Financing (Prohibition) Law (2014 Revision) (“the principal Law”) in order to bring some provisions into conformity with the international standards recommended by the Financial Action Task Force for combatting proliferation.

Clause 1 of the Bill specifies the short title of the Bill and the commencement provisions.

Clause 2 amends the principal Law in order to change most references to the Monetary Authority to the Financial Reporting Authority.

Clause 3 amends section 2 of the principal Law by, among other things, inserting new definitions such as “economic resources”, “Financial Reporting Authority”, “freeze”, “funds” and “listed person”.

Clause 4 inserts a new Part IA which deals with the freezing of the funds and economic resources of persons designated by Security Council resolutions, without directions from the Financial Reporting Authority.

Clause 5 amends section 5 of the principal Law to delete reference to the Security Council and to provide for the publication of lists by the Financial Reporting Authority of persons who the FATF or such other international organisation have advised may be involved in unauthorised proliferation activities.

Clause 6 amends section 6 of the principal Law by deleting the words “designated persons” and by substituting the words “listed persons”.

Clause 7 amends section 7 of the principal Law by deleting the words “designated person” and by substituting the words “listed person”. The clause also adds the words “economic resources”.

Clause 8 amends section 8 of the principal Law by deleting the words “designated persons” and by substituting the words “listed persons”. The clause also adds the words “economic resources”.

Clause 9 amends section 9 of the principal Law by deleting the words “designated persons” and by substituting the words “listed persons”.

Clause 10 amends section 10 of the principal Law by deleting the words “designated person” and by substituting the words “listed person”.

Clause 11 amends section 14 of the principal Law to provide that an enforcement officer, at the discretion of the enforcement officer, in requiring the provision of information or documents under section 14, may require that a relevant person provide such information within a period not exceeding seventy-two hours. It further amends the section to give a relevant person the right to apply for an extension of a period to provide information or documents.

Clause 12 inserts a new section 23A to provide that the funding of unauthorised proliferation activities is a money laundering offence and that the Proceeds of Crime Law shall apply accordingly.

Clause 13 amends section 28 of the principal Law to provide that the Financial Reporting Authority must prepare and submit its report of its functions under the legislation within three months of the end of the year and not six.

Clause 14 repeals section 31 of the principal Law consequent upon the deletion of reference to terrorist activity.

Clause 15 repeals and replaces section 37 of the principal Law to provide, among other things, that regulations under this legislation may provide penalties for offences against the regulations but such penalties shall not exceed any penalty provided in this legislation.

**THE PROLIFERATION FINANCING (PROHIBITION) (AMENDMENT)
BILL, 2016**

ARRANGEMENT OF CLAUSES

1. Short title and commencement
2. Amendment of the Proliferation Financing (Prohibition) Law (2014 Revision)
3. Amendment of section 2 - interpretation
4. Insertion of Part IA - Security Council measures generally
5. Amendment of section 5 - conditions for giving a direction
6. Amendment of section 6 - requirements imposed by the Monetary Authority
7. Amendment of section 7- customer due diligence
8. Amendment of section 8 - ongoing monitoring
9. Amendment of section 9 - systematic reporting
10. Amendment of section 10 - restricting or ceasing business
11. Amendment of section 14 - power to require information or documents
12. Insertion of new section - application of the Proceeds of Crime Law (2014 Revision)
13. Amendment of section 28 - report to the Legislative Assembly
14. Repeal of section 32- exercise of powers under this Law, the Proceeds of Crime Law (2014 Revision), the Money Laundering Regulations (2013 Revision), the Terrorism Law (2011 Revision) and the Terrorism (United Nations Measures) (Overseas Territories) Order, 2001
15. Repeal of section 37 and substitution - regulations

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INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Proliferation Financing (Prohibition) (Amendment) Law, 2016. Short title and commencement

(2) This Law shall come into force on such date as may be appointed by order made by the Cabinet.

2. The Proliferation Financing (Prohibition) Law (2014 Revision), in this Law referred to as the “principal Law”, is amended by deleting the words “the Monetary Authority” wherever they appear, except in the definition of Monetary Authority in section 2, and by substituting the words “the Financial Reporting Authority”. Amendment of the Proliferation Financing (Prohibition) Law (2014 Revision)

3. The principal Law is amended in section 2 as follows - Amendment of section 2 - interpretation

(a) in subsection (1) -

- (i) by repealing the definition of “designated person” and by the substituting the following definition -

“ “designated person” means a person, including any subsidiary or other entity owned or controlled by that person, to whom Security Council anti-proliferation financing measures relates;”;

- (ii) by repealing the definition of “money laundering” and by substituting the following definition -

“ “money laundering” means conduct that constitutes an offence under section 23A;”

- (iii) by deleting the definitions of “terrorism” and “terrorist financing”; and

- (iv) by inserting the following definitions in their appropriate alphabetical sequence -

“ “economic resources” means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services;

(2014 Revision)

“Financial Reporting Authority” means the Authority established under section 3 of the Proceeds of Crime Law (2014 Revision);

“freeze” means to prohibit the transfer, conversion, disposition, movement or use of any funds or economic resources of a designated person that are specified in section 2B;

“funds” means financial assets and benefits of every kind, including -

- (a) cash, cheques, claims on money, drafts, money orders and other payment instruments;
- (b) deposits with relevant institutions or other persons, balances on accounts, debts and debt obligations;
- (c) publicly and privately traded securities and debt instruments, including stocks and shares,

- certificates representing securities, bonds, notes, warrants, debentures and derivative products;
- (d) interest, dividends and other income on or value accruing from or generated by assets;
- (e) credit, rights of set-off, guarantees, performance bonds and other financial commitments;
- (f) letters of credit, bills of lading and bills of sale;
- (g) documents providing evidence of an interest in funds or financial resources; and
- (h) any other instrument of export financing;

“listed person” in relation to a direction, means a person, including any subsidiary or other entity owned or controlled by that person, in relation to whom a direction is given; and

“Security Council” means the Security Council of the United Nations;” and

- (b) in subsection (2), by inserting after paragraph (h) the following paragraph -

“(ha) Directors Registration and Licensing Law, 2014;”.

- 4. The principal Law is amended by inserting after Part I the following Part -

Insertion of Part IA -
Security Council
measures generally

“Part IA - Security Council measures and freezing of funds and economic resources

Lists of designated
persons

2A. (1) Where the Security Council has published a list of designated persons to whom, or a list of funds or economic resources or a class of funds and economic resources to which, measures against proliferation financing shall apply, the Financial Reporting Authority shall, as soon as reasonably practical, disseminate the list in such media as it considers appropriate.

(2) In addition to publishing a list in accordance with subsection (1), the Financial Reporting Authority shall provide the list to the Monetary Authority and the department in Government charged with the responsibility for monitoring compliance with anti-

money laundering and combating the financing of terrorism measures for designated non-financial businesses and professions.

Freezing of funds and economic resources without direction from the Financial Report Authority

2B. (1) Subject to any regulations, a person that has in that person's possession, custody or control in the Islands, any funds or economic resources or is otherwise dealing with all funds or economic resources that are -

- (a) wholly or jointly owned or controlled, directly or indirectly, by a designated person; or
- (b) derived or generated from funds or economic resources owned or controlled, directly or indirectly, by a designated person,

shall -

- (i) immediately freeze all such funds or economic resources; and
- (ii) ensure that such funds or economic resources are not made available, whether directly or indirectly, to or for the benefit of the designated person.

(2) For the purposes of subsection (1), any funds or economic resources that are held by -

- (a) any entity owned or controlled, directly or indirectly, by a designated person; or
- (b) any individual or entity who acts on behalf of or under the direction of any designated person,

are treated as funds or economic resources owned or controlled by the designated person.

Reporting action taken under section 2B

2C. A person who has taken action under section 2B(1) shall, as soon as reasonably practicable, disclose to the Financial Reporting Authority details of any frozen funds or economic resources or actions taken in compliance with the prohibition requirements of the relevant Security Council measures, including

attempted transactions.

Power to impose
civil penalties under
this Part

2D. (1) The Financial Reporting Authority may impose a penalty of such amount as it considers appropriate on a person who fails to comply with section 2B(1) or 2C and for this purpose, “appropriate” means effective, proportionate and dissuasive.

(2) In imposing and otherwise dealing with a civil penalty under this Part, the provisions of Part VI shall apply, with such necessary changes.

(3) A person on whom a penalty is imposed under this section is not liable to be proceeded against for an offence under section 2E in respect of the same failure.

Criminal penalties

2E. (1) Subject to subsection (2), a person who fails to comply with section 2B(1) or 2C commits an offence.

(2) A person has not committed an offence under subsection (1) if that person took all reasonable steps and exercised all due diligence to ensure compliance with the requirement.

(3) In deciding whether a person has committed an offence under this section, the court shall consider whether the person followed any relevant guidance that was at the time -

- (a) issued by the Financial Reporting Authority or by a professional body whose members, whether wholly or partly, operate in the financial sector; and
- (b) published in a manner approved by the Financial Reporting Authority or other supervisory body or by the professional body as suitable in its opinion to bring the guidance to the attention of persons likely to be affected by it.

(4) A person who fails to comply with section 2B(1) is liable -

- (a) on summary conviction, to a fine of fifty thousand dollars; or
- (b) on conviction on indictment, to a fine of seventy thousand dollars or imprisonment for a term of three years, or to both.

(5) A person who fails to comply with section 2C is liable on summary conviction to a fine of ten thousand dollars.

(6) A person who is convicted of an offence under this section is not liable to a penalty under section 2D in respect of the same offence.

De-listing of
designated persons

2F. (1) The Financial Reporting Authority may, in accordance with any regulations, submit to the United Kingdom, requests for de-listing of designated persons if the Financial Reporting Authority is satisfied that subsection (3) applies and -

- (a) if the designated persons are individuals, they reside in the Islands; or
- (b) if the designated persons are not individuals, they are incorporated or otherwise established in the Islands.

(2) The Financial Reporting Authority may submit a request for de-listing either at the Financial Reporting Authority's own instigation or on application by a designated person.

(3) In so far as a listing by the Security Council gives effect to a particular decision of the Security Council, the listing is revoked when Article 25 of the Charter of the United Nations ceases to require the United Kingdom to carry out that decision.”.

5. The principal Law is amended in section 5 as follows -

Amendment of section
5- conditions for giving
a direction

(a) in subsection (1) -

(i) by repealing paragraph (a) and by substituting the following paragraph -

“(a) the Financial Action Task Force, or such other international or inter-governmental organisation has advised that measures should be taken in relation to the country because of the risks of proliferation activities being carried on -

- (i) in the country;
- (ii) by the government of the country; or
- (iii) by persons resident or incorporated in the country;”;

(ii) in paragraph (b), by deleting the words “terrorist financing or money laundering activities” and by substituting the words “proliferation activities”; and

(b) by inserting after subsection (2) the following subsections -

“(3) The Financial Reporting Authority shall, in accordance with subsection (4), publish a list of any persons or countries to whom directions shall apply and shall disseminate such lists in such media as it considers appropriate.

(4) The Cabinet may make regulations prescribing the matters of which the Financial Reporting Authority must be satisfied before listing a person under subsection (3).

(5) In addition to publishing a list under subsection (3), the Financial Reporting Authority shall provide such list to the Monetary Authority and the department in Government charged with the responsibility for monitoring compliance with anti-money laundering and combating the financing of terrorism measures for designated non-financial businesses and professions.

(6) The Financial Reporting Authority may, in accordance with regulations, revoke a listing if the Financial Reporting Authority is satisfied that the conditions in subsection (1) no longer apply.”.

The Proliferation Financing (Prohibition) (Amendment) Bill, 2016

- Amendment of section 6- requirements imposed by the Monetary Authority
6. The principal Law is amended in section 6(3)(a), by deleting the words “designated persons” and by substituting the words “listed persons”.
- Amendment of section 7- customer due diligence
7. The principal Law is amended in section 7 as follows -
- (a) in subsection (1)(a) and (b), by deleting the words “designated person” and by substituting the words “listed person”;
 - (b) in subsection (4)(a) as follows -
 - (i) in subparagraph (i), by deleting the words “designated person” and by substituting the words “listed person”;
 - (ii) in subparagraph (ii) -
 - (A) by deleting the words “designated person” and by substituting the words “listed person”; and
 - (B) by inserting after the word “funds” the words “and economic resources”; and
 - (iii) in subparagraph (iii) -
 - (A) by deleting the words “designated person” and by substituting the words “listed person”; and
 - (B) by deleting the words “relevant activities” and by substituting the word “proliferation”; and
 - (C) by repealing paragraph (b).
- Amendment of section 8- ongoing monitoring
8. The principal Law is amended in section 8 as follows -
- (a) in subsection (1), by deleting the words “designated person” and by substituting the words “listed person”; and
 - (b) by repealing subsection (3)(b) and substituting the following subsection -
 - “(b) scrutinising transactions undertaken during the course of the business relationship and, where appropriate, the source of funds and economic resources for those transactions, to ascertain whether the transactions are consistent with the relevant person’s knowledge of the listed person and the business of that listed person.”.
- Amendment of section 9- systematic reporting
9. The principal Law is amended in section 9(1) by deleting the words “designated persons” and by substituting the words “listed persons”.

10. The principal Law is amended in section 10(a), (b) and (c) by deleting the words “designated person” and by substituting the words “listed person”. Amendment of section 10 - restricting or ceasing business

11. The principal Law is amended in section 14 - Amendment of section 14 - power to require information or documents

(a) by repealing subsection (3) and substituting the following subsection -

“(3) Where an enforcement officer requires information to be provided or documents to be produced under this section -

(a) the notice shall set out -

(i) the reasons why the enforcement officer requires the information to be provided or the documents to be produced;

(ii) a period of seventy-two hours or such longer period as the enforcement officer considers reasonable, within which the information or the documents are to be produced; and

(b) the information shall be provided or the documents produced -

(i) by or before the end of the period specified in the notice; and

(ii) at such place as may be so specified.”;

and

(b) by inserting after subsection (3) the following subsection -

“(3A) A relevant person may apply in writing to the enforcement officer for an extension of the period in the notice, before such period has expired, and shall provide reasons why an extension is required.”.

12. The principal Law is amended by inserting after section 23 the following section - Insertion of new section - application of the Proceeds of Crime Law (2014 Revision)

“Application of the Proceeds
of Crime Law (2014
Revision)

23A. A person who -

- (a) provides funds and economic resources to fund unauthorised proliferation activities; or
- (b) enters into or becomes concerned in an arrangement which that person knows or suspects facilitates, by whatever means, the acquisition, retention, use or control of funds and economic resources to fund unauthorised proliferation activities,

commits a money laundering offence for the purposes of the Proceeds of Crime Law (2014 Revision) and the provisions of that Law shall apply in the investigation and prosecution of the offence and to any other procedure relating to that offence.”.

Amendment of section
28- report to the
Legislative Assembly

13. The principal Law is amended in section 28(1) by deleting the word “six” and by substituting the word “three”.

Repeal of section 32 -
exercise of powers under
this Law, the Proceeds
of Crime Law (2014
Revision), the Money
Laundering Regulations
(2013 Revision), the
Terrorism Law (2011
Revision) and the
Terrorism (United
Nations Measures)
(Overseas Territories)
Order, 2001

14. The principal Law is amended by repealing section 32.

Repeal of section 37 and
substitution - regulations

15. The principal law is amended by repealing section 37 and by substituting the following section -

“37. (1) The Cabinet may make regulations for the effective carrying out of the provisions of this Law and such regulations may include regulations dealing with -

- (a) the publication of lists of designated persons;

- (b) the publication of lists of listed persons;
- (c) de-listing of persons;
- (d) the freezing of funds and economic resources;
- (e) exemptions from a requirement to freeze funds and economic resources; and
- (f) remedies for persons wrongly affected by the freezing of funds and economic resources.

(2) Regulations under this Law may provide penalties for offences against the regulations but such penalties shall not exceed any penalty provided in this Law.”.

Passed by the Legislative Assembly the day of , 2016.

Speaker.

Clerk of the Legislative Assembly.