

CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE PROCEEDS OF CRIME LAW
(2014 REVISION); TO MAKE CHANGES NECESSARY FOR
COMPLIANCE WITH INTERNATIONAL STANDARDS RELATING TO
THE PREVENTION OF MONEY LAUNDERING, TERRORIST
FINANCING AND PROLIFERATION FINANCING; AND TO PROVIDE
FOR INCIDENTAL AND CONNECTED PURPOSES**

THE PROCEEDS OF CRIME (AMENDMENT) BILL, 2016

MEMORANDUM OF OBJECTS AND REASONS

This Bill amends the Proceeds of Crime Law (2014 Revision) referred to as the principal Law to make changes necessary for compliance with international standards relating to the prevention of money laundering, terrorist financing and proliferation financing and provides for incidental and connected purposes.

Clause 1 of the Bill sets out the short title.

Clause 2 of the Bill amends section 2 of the principal Law and inserts definitions for the words “relevant financial business” and “securities investment business”.

Clause 3 of the Bill amends section 4 of the principal Law so that the powers, functions and duties of the Financial Reporting Authority includes monitoring compliance with Regulations prescribing anti-terrorism financing and anti-proliferation financing measures. The clause allows the Cabinet to assign the monitoring of compliance with anti-money laundering measures for entities conducting “relevant financial business”, which are not monitored by the Cayman Islands Monetary Authority, to a public sector body or a self-regulatory body.

Clause 4 of the Bill amends section 5 of the principal Law so that the Chief Officer or the Chief Officer’s designate is the deputy Chairperson of the Anti-Money Laundering Steering Group. The clause also includes the Director of Public Prosecutions and the Chief Officer or Director of the Government Department regulating compliance of designated non-financial business and professions. The clause also permits the Steering Group to set up committees to implement the policies set by the Steering Group.

Clause 5 of the Bill amends section 45 of the principal Law so that a restraint order does not prohibit the payment of legal aid expenses.

Clause 6 of the Bill amends section 136 of the principal Law so that the conditions excluding a person from the commission of an offence under this section are alternative rather than cumulative.

Clause 7 of the Bill amends section 138 of the principal Law so that Financial Reporting Authority may, in addition to making disclosures to the Cayman Islands Monetary Authority, make disclosures under this section to the Tax Information Authority.

Clause 8 of the Bill amends section 145 of the principal Law to increase the fine permitted to be made by Regulations under the principal Law and to permit the making and implementing of an administrative penalty regime by Regulations.

Clause 9 of the Bill amends Schedule 4 of the principal Law by deleting a reference to the Regulations for the meaning of “relevant financial business” which will be defined in the principal Law.

Clause 10 of the Bill inserts Schedule 6 into the principal Law which lists the activities falling within the definition of “relevant financial business”.

Clause 11 of the Bill inserts a provision into the principal Law bringing the amendment to section 45 of the principal Law into force retroactively.

THE PROCEEDS OF CRIME (AMENDMENT) BILL, 2016

ARRANGEMENT OF CLAUSES

1. Short title
2. Amendment of section 2 of the Proceeds of Crime Law (2014 Revision) - interpretation
3. Amendment of section 4 - powers, functions and duties of Financial Reporting Authority
4. Amendment of section 5 - Anti-Money Laundering Steering Group
5. Amendment of section 45 - restraint orders
6. Amendment of section 136 - failure to disclose
7. Amendment of section 138 - disclosure by the Financial Reporting Authority
8. Amendment of section 145 - regulations
9. Amendment of Schedule 4 - regulated sector
10. Insertion of Schedule 6 - List of activities falling within the definition of “relevant financial business”
11. Provision for commencement of section 45 - restraint orders

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ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Proceeds of Crime (Amendment) Law, 2016. Short title

2. The Proceeds of Crime Law (2014 Revision) in this Law referred to as the principal Law, is amended in section 2 by inserting, in the appropriate alphabetical sequence, the following definitions - Amendment of section 2
of the Proceeds of Crime
Law (2014 Revision) -
interpretation

“ “relevant financial business” means the business of engaging in one or more of the following -
 - (a) banking or trust business carried on by a person who is for the time being a licensee under the Banks and Trust Companies Law (2013 Revision);
 - (b) acceptance by a building society of deposits made by any person (including the raising of money from members of the society by the issue of shares);
 - (c) business carried on by a co-operative society within the meaning of the Co-operative Societies Law (2001 Revision);

- (d) insurance business and the business of an insurance manager, an insurance agent, an insurance sub-agent or an insurance broker within the meaning of the Insurance Law, 2010;
- (e) mutual fund administration or the business of a regulated mutual fund within the meaning of the Mutual Funds Law (2013 Revision);
- (f) the business of company management as defined by the Companies Management Law (2003 Revision), except that the services specified in section 3(4)(a) of that Law shall not be excluded for the purposes of Regulations made under this Law from the provision of the specified services as defined in subsection (2) of that section; and
- (g) any of the activities set out in Schedule 6, other than an activity falling within paragraphs (a) to (f) of this definition;

“securities investment business” has the meaning assigned in the Securities Investment Business Law (2015 Revision);”.

Amendment of section 4 - powers, functions and duties of Financial Reporting Authority

3. The principal Law, is amended in section 4 as follows -

- (a) by inserting after paragraph (2)(e) the following paragraph -
“(ea) shall monitor compliance with Regulations made under this Law for the purpose of anti-terrorism financing and anti-proliferation financing measures;”;
and
- (b) in subsection (9) by inserting after the words “the Financial Reporting Authority” the words “, a public sector body or a self-regulatory body”.

Amendment of section 5 - Anti-Money Laundering Steering Group

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

- (a) in subsection (1) -
 - (i) in paragraph (b) by inserting after the words “Chief Officer’s designate” the words “who is the deputy chairman”;
 - (ii) by deleting the word “and” at the end of paragraph (e);
 - (iii) by deleting the full stop at the end of paragraph (f);
 - (iv) by inserting after paragraph (f) the following paragraphs -
 - “(g) the Director of Public Prosecution; and
 - (h) the Chief Officer or Director, as the case may be, of the department in Government charged with responsibility for monitoring compliance with anti-money laundering and counter terrorism measures for designated non-financial businesses and professions.”;
- (b) by inserting after subsection (3) the following subsection -

“(3A) The Steering Group shall appoint a committee for the purposes set out in subsection (3B) whose members shall consist of the following persons -

- (a) the person at the head of the department of Government tasked with ensuring compliance with anti-money laundering, counter terrorism financing and anti-proliferation financing measures who shall be the Chairperson of the committee; and
- (b) a representative from the following -
 - (i) the Financial Reporting Authority;
 - (ii) each statutory authority, department of Government or agency tasked with regulation for anti-money laundering, counter terrorism financing and anti-proliferation financing purposes;
 - (iii) the unit within the Royal Cayman Islands Police Service tasked with the responsibility of investigating and prosecuting an offence relating to a financial crime;
 - (iv) the department of Government known as the Customs Department; and
 - (v) the Office of the Director of Public Prosecution,

and any other person that the Steering Group considers it necessary to appoint for the purposes for which the committee is appointed.

(3B) A committee appointed pursuant to subsection (3A) shall -

- (a) implement or cause the implementation of the policies established by the Steering Group;
- (b) facilitate the coordination and cooperation between each statutory authority, department of Government or agency tasked with regulation for anti-money laundering, counter terrorism financing and anti-proliferation financing purposes; and
- (c) assess the risks to the Cayman Islands related to money laundering, counter terrorism financing and proliferation financing.”.

Amendment of section 45 - restraint orders 5. The principal Law is amended in section 45 by inserting after subsection (4) the following subsections -

“(4A) Without prejudice to subsections (1) and (4), a restraint order is subject to an exemption enabling relevant legal aid payments.

(4B) For the purposes of subsection (4A) a relevant legal aid payment is a payment that the specified person is obliged to make -

- (a) in accordance with the Legal Aid Law (1999 Revision); and
- (b) in connection with legal aid services provided under the Law mentioned in paragraph (a) to the specified person to deal with the offence in respect of which the restraint order is made,

whether the obligation arises before or after the restraint order is made.

(4C) A legal aid payment under subsection (4A) -

- (a) shall be made subject to any prescribed restrictions on -
 - (i) the circumstances in which payment may be made in reliance on the exception; or
 - (ii) the amount of the payments that may be made in reliance on the exception;
- (b) shall be subject to any other prescribed conditions; and
- (c) may be subject to other conditions.”.

Amendment to section 136 - failure to disclose 6. The principal Law is amended in section 136(2) by deleting at the end of paragraph (b) the word “and” and substituting the word “or”.

Amendment of section 138 - disclosure by the Financial Reporting Authority 7. The principal Law is amended in section 138(1)(b) by inserting after the words “Monetary Authority Law (2013 Revision),” the words “the department in Government charged with responsibility for international tax matters.

Amendment of section 145 - regulations 8. The principal Law is amended in section 145(2) as follows -

- (a) by deleting the word “and” at the end of paragraph (a);
- (b) in paragraph (b)(ii) by deleting the words “six thousand dollars.” and substituting the words “five hundred thousand dollars; and”;
- (c) inserting after paragraph (b) the following paragraph -

“(c) prescribe the manner in which an administrative penalty system with a maximum penalty of two hundred and fifty thousand dollars may be implemented.”.

Amendment of Schedule 4 - regulated sector 9. The principal Law is amended in Schedule 4 by repealing paragraph 2.

10. The principal Law is amended by inserting after Schedule 5 the following Schedule -

Insertion of Schedule 6 -
List of activities falling
within the definition of
“relevant financial
business”

“SCHEDULE 6

**LIST OF ACTIVITIES FALLING WITHIN THE DEFINITION OF
“RELEVANT FINANCIAL BUSINESS”**

1. Acceptance of deposits and other repayable funds from the public.
2. Lending.
3. Financial leasing.
4. Money transmission services.
5. Issuing and administering means of payment (e.g. credit cards, travellers cheques and bankers drafts).
6. Guarantees and commitments.
7. Trading for own account or for account of customers in -
 - (a) money market instruments (cheques, bills, CDs, etc.);
 - (b) foreign exchange;
 - (c) financial futures and options;
 - (d) exchange and interest rate instruments; or
 - (e) transferable securities.
8. Participation in securities issues and the provision of services related to such issues.
9. Advice to undertakings on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings.
10. Money broking.
11. Portfolio management and advice.
12. Safekeeping and administration of securities.
13. Safe custody services.

14. Financial, estate agency, legal and accounting services provided in the course of business relating to -
 - (a) the sale, purchase or mortgage of land or interests in land on behalf of clients or customers;
 - (b) management of client money, securities or other assets;
 - (c) management of bank, savings or securities accounts; and
 - (d) the creation, operation or management of legal persons or arrangements, and buying and selling of business entities.
15. The services of listing agents and broker members of the Cayman Islands Stock Exchange as defined in the CSX Listing Rules and the Cayman Island Stock Exchange Membership Rules respectively.
16. The conduct of securities investment business.
17. Dealing in precious metals or precious stones, when engaging in a cash transaction of fifteen thousand dollars or more.
18. The provision of registered office services to a private trust company by a company that holds a Trust licence under section 6(5)(c) of the Banks and Trust Companies Law (2013 Revision).

Provision for commencement of section 45 - restraint orders

11. Sections 45(4A), (4B) and (4C) are deemed to have come into force on 30th September, 2008.

Passed by the Legislative Assembly the day of , 2016.

Speaker.

Clerk of the Legislative Assembly.