

CAYMAN ISLANDS



Supplement No. 1 published with Extraordinary
Gazette No. 86 dated 13th October, 2017.

**A BILL FOR A LAW TO AMEND THE PROCEEDS OF CRIME LAW
(2017 REVISION) TO ENSURE THAT THE LAW COMPLIES WITH
INTERNATIONAL BEST PRACTICES; AND FOR INCIDENTAL AND
CONNECTED PURPOSES**

THE PROCEEDS OF CRIME (AMENDMENT) BILL, 2017

MEMORANDUM OF OBJECTS AND REASONS

This Bill amends the Proceeds of Crime Law (2017 Revision), referred to as the principal Law, to ensure that the Law complies with international best practices and provides for incidental and connected purposes.

Clause 1 of the Bill sets out the short title and commencement.

Clause 2 of the Bill amends section 2 of the principal Law to include definitions for the terms “competent authorities”, “financial year” and “insurance business”.

Clause 3 of the Bill amends section 4 of the principal Law so as to permit the Financial Reporting Authority to disseminate information and results of analysis conducted by the Financial Reporting Authority to the Monetary Authority, public bodies to whom the Cabinet has assigned the responsibility of monitoring compliance with money laundering regulations under section 4(9) and law enforcement agencies. This clause also stipulates the types of analyses to be conducted by the Financial Reporting Authority.

Clause 4 of the Bill amends section 11 of the principal Law to change the date for the submission of the report by the Director.

Clause 5 of the Bill amends section 114 of the principal Law to place an obligation on the Collector of Customs to report seizures under the section to the Financial Reporting Authority.

Clause 6 of the Bill amends section 136 of the principal Law to permit the court to consider guidance issued by a public section body or self-regulatory body to whom the Cabinet has assigned the responsibility of monitoring compliance with money laundering regulations under section 4(9) in addition to that issued by the Monetary Authority when determining the matters relating to the commission of offences under the section.

Clause 7 of the Bill amends section 137 of the principal Law to permit the court to consider guidance issued by a public section body or self-regulatory body to whom the Cabinet has assigned the responsibility of monitoring compliance with money laundering regulations under section 4(9) in addition to that issued by the Monetary Authority when determining the matters relating to the commission of offences under the section.

Clause 8 of the Bill amends section 138 of the principal Law to permit the Financial Reporting Authority to make further disclosures under the principal Law without having to obtain the consent of the Attorney General.

Clause 9 of the Bill amends section 144 to stipulate the issues that are to be considered when a determination is to be made as to whether a person is the beneficiary of the proceeds of criminal conduct.

Clause 10 of the Bill amends paragraph 6(2) of Schedule 5 of the principal Law to specify a cross reference to section 45(2) to (7).

Clause 11 of the Bill amends paragraph 11 of Schedule 6 to insert the word “and”.

THE PROCEEDS OF CRIME (AMENDMENT) BILL, 2017

ARRANGEMENT OF CLAUSES

1. Short title and commencement
2. Amendment of section 2 of the Proceeds of Crime Law (2017 Revision) - definitions and interpretation
3. Amendment of section 4 - powers, functions and duties of Financial Reporting Authority
4. Amendment of section 11 - annual report of Financial Reporting Authority
5. Amendment of section 114 - seizure of cash
6. Amendment of section 136 - failure to disclose
7. Amendment of section 137 - failure to disclose: nominated officers
8. Amendment of section 138 - disclosure by the Financial Reporting Authority
9. Amendment of section 144 - interpretation
10. Amendment of Schedule 5 - modifications to the Law when applied to external confiscation orders and related proceedings
11. Amendment of Schedule 6 - activities falling within the definition of “relevant financial business”

CAYMAN ISLANDS

**A BILL FOR A LAW TO AMEND THE PROCEEDS OF CRIME LAW
(2017 REVISION) TO ENSURE THAT THE LAW COMPLIES WITH
INTERNATIONAL BEST PRACTICES; AND FOR INCIDENTAL AND
CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the Proceeds of Crime (Amendment) Law, 2017.

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 Proceeds of Crime Law (2017 Revision), in this Law referred to as the “principal Law”, is amended in section 2 by inserting the following definitions in the appropriate alphabetical sequence -

Amendment of section 2
of the Proceeds of Crime
Law (2017 Revision) -
definitions and
interpretation

“competent authority” means a public body in the Islands charged with responsibility for combating money laundering and terrorist financing including -

- (a) the Financial Reporting Authority and any authority charged with the responsibility for investigating and prosecuting money

laundering, associated predicate offences and terrorist financing, and seizing or freezing and confiscating criminal assets;

- (b) any authority receiving reports on cross-border transportation of currency and bearer negotiable instruments; and
- (c) any authority having anti-money laundering or counter terrorist financing supervisory or monitoring responsibility aimed at ensuring compliance by a relevant financial business with anti-money laundering or counter terrorist financing requirements;

“financial year” in relation to the Financial Reporting Authority, means a year ending on 31st December; and

“insurance business” means business of any of the classes of business specified in the Schedule to the Anti-Money Laundering Regulations, 2017;”.

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

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

- (a) in subsection (1), by deleting the words “(and, as permitted, requesting)” and by substituting the word “requesting”;
- (b) by inserting after subsection (1) the following subsection -

“(1A) In analysing disclosures under subsection (1) the Financial Reporting Authority shall, among other types of analyses, carry out the following types of analyses -

- (a) operational analysis, in which the Financial Reporting Authority shall use available and obtainable information to -
 - (i) identify specific targets;
 - (ii) follow the trail of particular activities or transactions; and
 - (iii) determine links between targets under subparagraph (i) and possible proceeds of crime, money laundering, predicate offences and terrorist financing; and
- (b) strategic analysis, in which the Financial Reporting Authority shall use available and obtainable information, including data that may be provided by other competent authorities, to identify money laundering and terrorist financing related trends and patterns.”;
- (c) in subsection (2) as follows -
 - (i) by inserting after paragraph (c) the following paragraph -

- “(ca) may disseminate, in its discretion or upon request, information and results of any analysis to the Monetary Authority, any public body to whom the Cabinet has assigned the responsibility of monitoring compliance with money laundering regulations under section 4(9), and any law enforcement agency within the Islands, and shall use dedicated, secure and protected channels for such dissemination;” and
- (ii) in paragraph (e), by deleting the words “with the consent of”; and by substituting the words “ after consultation with”;
- (d) in subsection (9) by deleting the word “sector”; and
- (e) by inserting after subsection (9) the following subsections -

“(10)For the purpose of this section “dedicated, secure and protected channels” means the method by which information is disseminated.

(11) The method employed under subsection (10) should disseminate information in such a manner so as to ensure that the information is not accessed by a person for whom the information was not intended”.

4. The principal Law is amended in section 11(b) by deleting the words “on or before 30 September in each year” and substituting the words “no later than three months after the date of the end of the financial year”. Amendment of section 11- annual report of Financial Reporting Authority

5. The principal Law is amended in section 114 by inserting after subsection (2) the following subsection - Amendment of section 114 - seizure of cash

“(3) As soon as reasonably possible after a seizure is made by a customs officer under this section, the Collector of Customs shall report the seizure to the Financial Reporting Authority.”.

6. The principal Law is amended in section 136(5)(a) by inserting after the words “Monetary Authority” the words “or by any other public body or self-regulatory body to whom the Cabinet has assigned the responsibility of monitoring compliance with money laundering regulations under section 4(9).” . Amendment of section 136 - failure to disclose

7. The principal Law is amended in section 137 as follows - Amendment of section 137 - failure to disclose: nominated officers

(a) in subsection (4)(a), by deleting the words “or any other appropriate body” and substituting the words “ or by any other public body or self-regulatory body to whom the Cabinet has

assigned the responsibility of monitoring compliance with money laundering regulations under section 4(9);”;

- (b) in subsection (4)(b), by inserting after the words “Monetary Authority” the words “or by any other public body or self-regulatory body to whom the Cabinet has assigned the responsibility of monitoring compliance with money laundering regulations under section 4(9)”; and
- (c) by repealing subsection (5).

Amendment of section 138 - disclosure by the Financial Reporting Authority

8. The principal Law is amended in section 138 (1)(b) by inserting after the words “responsibility for international tax matters” the words “, any public body to whom the Cabinet has assigned the responsibility of monitoring compliance with money laundering regulations under section 4(9)”.

Amendment of section 144 - interpretation

9. The principal Law is amended in section 144 by repealing subsection (5) and substituting the following subsections -

“(5) A person benefits from criminal conduct if that person obtains property as a result of or in connection with the conduct.

(5A) Where a person is required to make a determination as to whether property was obtained through criminal conduct under this Law -

- (a) it is immaterial whether or not any money, goods or services were provided in order to put the person in question in a position to carry out the conduct; and
- (b) it is not necessary to show that the conduct was of a particular kind if it is shown that the property was obtained through conduct of one of a number of kinds, each of which would have been criminal conduct.”.

Amendment of Schedule 5 - modifications to the Law when applied to external confiscation orders and related proceedings

10. The principal Law is amended in paragraph 6(2) of Schedule 5 by deleting the words “section 45” and substituting the words “section 45(2) to (7)”.

11. The principal Law is amended in paragraph 11 of Schedule 6 by inserting after the word “management” the word “and”.

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

Passed by the Legislative Assembly the day of , 2017.

Speaker.

Clerk of the Legislative Assembly.