

CAYMAN ISLANDS



THE PROCEEDS OF CRIME (AMENDMENT) BILL, 2019

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A BILL FOR A LAW TO AMEND THE PROCEEDS OF CRIME LAW (2019 REVISION) TO PROVIDE FOR THE INCLUSION OF THE ANTI-CORRUPTION COMMISSION IN THE ANTI-MONEY LAUNDERING STEERING GROUP; TO PROVIDE FOR THE INCLUSION OF VIRTUAL SERVICE PROVIDERS IN THE LAW; TO ADDRESS OTHER DEFICIENCIES IN THE COMPLIANCE FRAMEWORK; AND FOR INCIDENTAL AND CONNECTED PURPOSES

PUBLISHING DETAILS

Sponsoring Ministry/Portfolio: Portfolio of Legal Affairs (PLA)

**Memorandum of
OBJECTS AND REASONS**

This Bill seeks to amend the *Proceeds of Crime Law (2019 Revision)* (“the principal Law”) pursuant to the mutual evaluation report of the Cayman Islands of November 23, 2018. The report was prepared along the lines of the Financial Action Task Force’s methodology for assessment and the evaluation was carried out by the Caribbean Financial Action Task Force.

The report considered the effectiveness with which anti-money laundering measures and measures to combat the financing of terrorism are implemented. The report identified certain technical compliance deficiencies which are required to be addressed prior to November 2019. The Bill seeks to address these identified compliance deficiencies in the principal Law.

Clause 1 provides for the short title of the legislation.

Clause 2 provides for amendments to the interpretation provisions of the legislation.

Clause 3 provides for amendments to section 4 of the principal Law that would include in the duties of the Financial Reporting Authority, the receipt of disclosures required by law which may include cash transactions reports, wire transfer reports and threshold based declarations.

Clause 4 provides for the amendment of section 5 of the principal Law to, among other things, include —

- (a) the Chairman of the Anti-Corruption Commission as a member of the Anti-Money Laundering Steering Group; and
- (b) a representative of the Anti-Corruption Commission as a member of the committee established by the Steering Group under section 5(3A) to see to the implementation of its policies.

These amendments seek to satisfy the requirement that the relevant policy makers, enforcement authorities and other relevant competent authorities co-operate and co-ordinate their actions relating to anti-money laundering and combating terrorist financing.

Clause 4 also seeks to satisfy the requirements for compatibility of the anti-money laundering and combating terrorist financing requirements with the laws regarding data protection and privacy. The amendments at clauses 4(b) and (e) seek to address these requirements.

Clause 5 provides for amendments to section 139 of the principal Law. The amendment to subsection (1) seeks to provide that it is an offence to disclose that a disclosure required under the Law has been or is being or is likely to be made to the Financial Reporting Authority. Currently the offence arises where the disclosure is likely to prejudice an investigation. The clause also amends subsection (2)(a) to make it clear that a person does not commit an offence where the disclosure under subsection (1) is further to information sharing obligations that are group-wide within a financial group.

Clause 6 seeks, among other things, to amend section 201 of the principal Law to make it clear that the Islands may impose counter measures that are proportionate to the risk posed by a jurisdiction designated as one which has serious deficiencies in its compliance with recognized international standards for combating money laundering and terrorist financing. It provides that such countermeasures may be imposed in response to a recommendation by the Financial Action Task Force or the Anti-Money Laundering Steering Group.

Clause 7 seeks to amend Schedule 6 of the principal Law to adjust paragraph 17 to ensure that the provision meets the more stringent standard required by the Financial Action Task Force. The provision, as it pertains to dealers in precious metals or precious stones, defines “relevant financial business” as an

activity that engages in a cash transaction of fifteen thousand dollars. The amendment states that the cash transaction is for the equivalent of fifteen thousand United States dollars.

Clause 7 also seeks to include within the definition of “relevant financial business” the organization of contributions for the creation, operation or management of companies by, among other professionals, legal and accounting professionals in the course of business. The clause also seeks to amend the principal Law to include the provision of virtual asset services as an activity falling with the definition of “relevant financial business”.

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ENACTED by the Legislature of the Cayman Islands.

Short title

1. This Law may be cited as the *Proceeds of Crime (Amendment) Law, 2019*.

Amendment of section 2 of the Proceeds of Crime Law (2019 Revision) - interpretation

2. The *Proceeds of Crime Law (2019 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 —

“**fiat currency**” means currency that is issued by the relevant body in a country or by a government that is designated as legal tender in its country of issuance through, among other things, government decree, regulation or law;

“**transfer**”, in relation to a virtual asset, means conducting a transaction on behalf of another natural or legal person that moves a virtual asset from one virtual asset address or account to another;

“**virtual asset**” means a digital representation of value that can be digitally traded or transferred, and can be used for payment or investment purposes; and

“**virtual asset service**” means the business of conducting one or more of the following activities or operations for or on behalf of a person —

- (a) exchanging between virtual assets and fiat currencies;
- (b) exchanging between one or more other forms of convertible virtual assets;
- (c) transferring virtual assets;
- (d) safekeeping or administering virtual assets or instruments enabling control over virtual assets; and
- (e) participating in and providing financial services related to an issuer’s offer or sale of a virtual asset;”.

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

3. The principal Law is amended in section 4(2)(a) by repealing subparagraph (ii) and substituting the following subparagraphs —

- “(ii) are relevant to its responsibilities as a financial intelligence unit; and
- (iii) are required by any law, such disclosures including cash transaction reports, wire transfer reports and threshold-based declarations or disclosures;”.

Amendment of section 5 of the principal Law- Anti-Money Laundering Steering Group

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

- (a) in subsection (1), by inserting after paragraph (f) the following paragraph —
“(fa)the Chairman of the Anti-Corruption Commission;”;
- (b) in subsection (2)(e), by deleting the words “between regulators and law enforcement agencies” and substituting the words “among competent authorities in a manner that ensures the compatibility of the requirements for combating money laundering and terrorist financing with the law protecting personal data, privacy and related matters in the Islands”;
- (c) in subsection (3A)(a), by deleting the word “ensuring” and substituting the word “promoting”;
- (d) in subsection (3A)(b), by inserting after subparagraph (iii) the following paragraph —
“(iiia) the Anti-Corruption Commission;”;
- (e) in subsection (3B), by inserting after paragraph (a) the following paragraph —
“(aa)ensure the compatibility of requirements for combating of money laundering and terrorist financing with the law protecting personal data and privacy and related matters in the Islands;”.

Amendment of section 139 of the principal Law - tipping off

5. The principal Law is amended in section 139 as follows —

- (a) by repealing subsection (1) and substituting the following subsection —
“(1) A person commits an offence if the person discloses that a disclosure which is required to be made under this Law, or any information related to that disclosure, has been, is being or is likely to be made to the Financial Reporting Authority.”;
- (b) in subsection (2), by repealing paragraph (a) and substituting the following paragraph —
“(a) the disclosure of the information was done in accordance with information sharing obligations under a financial group’s group-wide programmes against money laundering and terrorist financing as may be prescribed under section 145;”.

Amendment of section 201 of the principal Law - regulations

6. The principal Law is amended in section 201 as follows —

- (a) by repealing subsection (3) and substituting the following subsections —
“(3) The Cabinet may, by Order, designate a jurisdiction as one which has serious deficiencies in its compliance with recognized international standards for combating money laundering and the financing of terrorism and, as a result of that, require the application of counter measures proportionate to the risk posed by that jurisdiction.
(3A)The counter measures under subsection (3) may include that dealings shall not be conducted with that jurisdiction or that enhanced due diligence be applied to —
(a) transactions involving certain entities or class of entities; or
(b) certain transactions or class of transactions.

- (3B) An Order under subsection (3) may also be made by the Cabinet on the recommendation of either the Anti-Money Laundering Steering Group or the Financial Action Task Force.”;
- (b) in subsection (4), by deleting the words “subsection (3)” and substituting the words “subsection (3B)”;
- (c) by inserting after subsection (4) the following subsection —
- “(5) For the purposes of this Part, “Financial Action Task Force” means the task force established by the Group of Seven to develop and promote national and international policies to combat money laundering and terrorist financing.”.

Amendment of Schedule 6 - activities falling within the definition of "Relevant Financial Business"

7. The principal Law is amended in Schedule 6 as follows —

- (a) in paragraph 14, by inserting after subparagraph (b) the following subparagraph —
- “(ba) organization of contributions for the creation, operation or management of companies”;
- (b) in paragraph 17, by deleting the words “of fifteen thousand dollars” and substituting the words “that is equivalent to fifteen thousand United States Dollars”; and
- (c) by inserting after paragraph 20 the following paragraph —
- “21. Providing virtual asset services.”.

Passed by the Legislative Assembly the day of , 2019.

Speaker.

Clerk of the Legislative Assembly.

