

CAYMAN ISLANDS



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THE PROCEEDS OF CRIME (AMENDMENT) LAW, 2017

(LAW 49 OF 2017)

THE PROCEEDS OF CRIME (AMENDMENT) LAW, 2017

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CAYMAN ISLANDS

Law 49 of 2017.

I Assent

Franz Manderson

Acting Governor.

November 27th, 2017

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 as follows -

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

(a) in the definition of the words “relevant financial business”, by deleting paragraph (d) and substituting the following paragraph -

“(d) insurance business and the business of an insurance manager, an insurance agent and an insurance broker, who

is licenced pursuant to the Insurance Law, 2010, Law 32 of 2010, that is connected with insurance business;” and

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

“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 and for the avoidance of doubt, does not include “reinsurance business” as defined in the Insurance Law, 2010, Law 32 of 2010;”.

Amendment of section
3 - Financial Reporting
Authority

3. The principal Law is amended in section 3 by deleting subsection (2) and substituting the following subsections -

“(2) The Director of the Financial Reporting Authority shall be appointed in writing by the Governor acting in the discretion of the Governor after consultation with the Anti-Money Laundering Steering Group and shall hold office for such period of time and subject to such terms and conditions as the Governor may see fit.

(2A) The persons specified in subsection (1)(b), (c) and (d) shall be appointed in writing by the Chief Officer of the Portfolio charged with responsibility for Legal Affairs, after consultation with the chairman of the Anti-Money Laundering Steering Group.”.

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

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

- (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;”;
 - (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”.

Amendment of section 11- annual report of Financial Reporting Authority

5. 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 114 - seizure of cash

6. The principal Law is amended in section 114 by inserting after subsection (2) the following subsection -

“(3) After a seizure is made by a customs officer under this section, the Collector of Customs shall within thirty days of the seizure, report that seizure to the Financial Reporting Authority.”.

Amendment of section 136 - failure to disclose

7. 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 137 - failure to disclose: nominated officers

8. The principal Law is amended in section 137 as follows -

- (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).

9. 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 138 - disclosure by the Financial Reporting Authority

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

Amendment of section 144 - interpretation

“(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.”.

11. 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)”.

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

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

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

Passed by the Legislative Assembly the 16th day of November, 2017.

Dr. Hon. W. McKeeva Bush

Speaker.

Zena Merren-Chin

Clerk of the Legislative Assembly.