

CAYMAN ISLANDS



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**THE PROCEEDS OF CRIMINAL CONDUCT (AMENDMENT) LAW,
2003**

(LAW 17 OF 2003)

**THE PROCEEDS OF CRIMINAL CONDUCT (AMENDMENT) LAW,
2003**

ARRANGEMENT OF SECTIONS

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5. Insertion of sections 21A to 21 I – additional provisions relating to Reporting Authority.
6. Amendment of section 22 - assisting another to retain the benefit of criminal conduct.
7. Amendment of section 23 - acquisition, possession or use of property representing proceeds of criminal conduct.
8. Savings and transitional provisions.

CAYMAN ISLANDS

Law 17 of 2003.

I Assent

B. H. Dinwiddy

Governor.

3 November, 2003

**A LAW TO AMEND THE PROCEEDS OF CRIMINAL CONDUCT LAW
(2001 REVISION) TO REPLACE THE REPORTING AUTHORITY WITH
A FINANCIAL INTELLIGENCE UNIT TO BE CALLED THE
FINANCIAL REPORTING AUTHORITY; 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 Criminal Conduct (Amendment) Law, 2003.

Short title and
commencement

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

2. The Proceeds of Criminal Conduct Law (2001 Revision), in this Law referred to as the “principal Law”, is amended in section 2(1) -

Amendment of section 2
of the Proceeds of
Criminal Conduct Law
(2001 Revision) –
definitions and
interpretation

(a) by inserting the following definitions in their appropriate alphabetical order -

“ “Director” means the Director of the Reporting Authority appointed pursuant to section 21(2)(a);

“Financial Reporting Authority” or “Reporting Authority” means the Financial Reporting Authority established pursuant to section 21(2);

“overseas financial intelligence unit” means a financial intelligence unit in a country other than the Islands; and

“Steering Group” means the Anti-Money Laundering Steering Group appointed pursuant to section 21B;”and

- (b) in paragraph (a) of the definition of “financial intelligence unit”, by repealing the word “crime” wherever it appears and substituting the words “criminal conduct”.

Insertion of section 3A –
definition of “terrorism”

3. The principal Law is amended by inserting after section 3 the following section -

“Definition of
“terrorism”

3A. (1) In this Law, "terrorism" means the use or threat of action where -

- (a) the action falls within subsection (2);
- (b) the use or threat is designed to influence the government or to intimidate the public or a section of the public; and
- (c) the use or threat is made for the purpose of advancing a political, religious or ideological cause.

(2) Action falls within this subsection if it -

- (a) involves serious violence against a person;
- (b) involves serious damage to property;
- (c) endangers a person's life, other than that of the person committing the action;
- (d) creates a serious risk to the health or safety of the public or a section of the public; or
- (e) is designed seriously to interfere with or seriously to disrupt an electronic system.

(3) The use or threat of action falling within subsection (2) which involves the use of firearms or explosives is terrorism whether or not subsection (1)(b) is satisfied.

(4) In subsections (1), (2) and (3) -

- (a) "action" includes action outside the Islands;

- (b) a reference to any person or to property is a reference to any person, or to property, wherever situated;
- (c) a reference to the public includes a reference to the public of a territory or country other than the Islands; and
- (d) "the government" means the government of the Islands, or of a territory or country other than the Islands."

4. The principal Law is amended in section 21 -

Amendment of section
21 - Code of Practice
and Reporting Authority

- (a) by repealing subsection (2) and substituting the following subsection -

"(2) There is established a financial intelligence unit to be called the Financial Reporting Authority, consisting of the following persons -

- (a) the Director of the Financial Reporting Authority;
- (b) an attorney-at-law;
- (c) an accountant; and
- (d) such other persons, having suitable qualifications and experience, as may be necessary to provide services to the Reporting Authority."

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

"(2A) The persons specified in paragraphs (a), (b), (c) and (d) of subsection (2) shall each be appointed in writing by the Governor acting in his discretion, after consultation with the Steering Group and the Cabinet, for such period of time and subject to such terms and conditions as he may see fit."; and

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

"(3) The Governor in Cabinet may make regulations to give effect to the provisions of subsections (2) and (2A) and sections 21A to 21 I."

Insertion of sections 21A to 21 I – additional provisions relating to Reporting Authority

5. The principal Law is amended by inserting after section 21 the following sections –

“Powers, functions and duties of the Reporting Authority

21A. (1) The Reporting Authority shall be responsible for receiving (and, as permitted, requesting), analysing and disseminating disclosures of financial information -

- (a) concerning proceeds of criminal conduct or suspected proceeds of criminal conduct; or
- (b) required by any law in order to counter money laundering.

(2) Without limiting the foregoing and notwithstanding any other Law to the contrary, the Reporting Authority -

- (a) shall receive all disclosures of information (including information from any overseas financial intelligence unit) which –
 - (i) concern proceeds of criminal conduct, suspected proceeds of criminal conduct, money laundering, suspected money laundering, terrorism or the financing of terrorism; and
 - (ii) are relevant to its responsibilities as a financial intelligence unit;
- (b) may, subject to subsection (3) –
 - (i) where information is disclosed to the Reporting Authority under section 22(3) or 23(5); or
 - (ii) upon receipt of a request from an overseas financial intelligence unit,

order any person to refrain from dealing with a person's bank account for a period not exceeding twenty-one days if satisfied that there is reasonable cause to believe that the information or the request, as the case may be, relates to proceeds of criminal conduct, suspected proceeds of criminal conduct, money laundering, suspected money laundering, terrorism or the financing of terrorism;

- (c) may, in writing, require the provision by any person of information (excluding information coming to a professional legal adviser in privileged circumstances) for the purpose of clarifying or amplifying information disclosed to the Reporting Authority under section 22(3) or 23(5);
- (d) shall retain a record for a minimum of five years of -
 - (i) all information received or disseminated by the Authority;
 - (ii) any agreement entered into under subparagraph (e); and
 - (iii) any consent given by the Attorney-General under section 22 or 23;
- (e) may, with the consent of the Steering Group, enter into any agreement or arrangement, in writing, with an overseas financial intelligence unit which the Director considers necessary or desirable for the discharge or performance of the responsibilities and functions of the Reporting Authority;
- (f) shall collect, compile and annually publish, in such manner as the Reporting Authority shall determine, statistical information relating to -
 - (i) disclosures made to the Reporting Authority concerning proceeds of criminal conduct, suspected proceeds of criminal conduct, money laundering, suspected money laundering, terrorism or the financing of terrorism; and
 - (ii) any onward disclosures of such financial information by the Reporting Authority; and
- (g) shall have, exercise and perform such other responsibilities, powers, functions and duties as may be assigned to the Reporting Authority by this or any other Law.

(3) The power conferred by subsection (2)(b) is not exercisable unless the Grand Court, upon application by the Reporting Authority, makes an order under this subsection

permitting the exercise of that power.

(4) Any person who without reasonable excuse fails or refuses to provide such information as is required by subsection (2)(c) is guilty of an offence and liable on summary conviction to a fine of fifty thousand dollars or to imprisonment for a term of two years or to both such fine and imprisonment.

(5) An aggrieved person may, upon notice to the Attorney-General, apply to a judge in chambers to discharge an order made by the Grand Court under subsection (3), but such order shall remain in full force and effect until -

- (a) the judge in chambers determines otherwise; or
- (b) the expiration of the period during which a person is required, by an order made under subsection (2)(b), to refrain from dealing with another person's bank account,

whichever is sooner.

(6) For the purposes of subsection (2)(c), any information comes to a professional legal adviser in privileged circumstances if it is communicated or given to him -

- (a) by, or by a representative of, a client of his in connection with the giving by the adviser of legal advice to the client;
- (b) by, or by a representative of, a person seeking legal advice from the adviser; or
- (c) by any person -
 - (i) in contemplation of, or in connection with, legal proceedings; and
 - (ii) for the purpose of those proceedings.

(7) The Reporting Authority shall perform its functions through the Director who shall have charge of the day-to-day management and operation of the Reporting Authority.

(8) If the Director is for any reason unable to perform the functions of his post, the Director may appoint any person mentioned in paragraph (b), (c) or (d) of section 21(2), to act as Director.

(9) Statistical information published pursuant to subsection (2)(f), shall without charge be made available by the Reporting Authority for inspection at its office.

(10) In this section -

“money laundering” means doing any act -

- (a) which constitutes an offence under section 22, 23 or 24 of this Law or section 47 or 48 of the Misuse of Drugs Law (2000 Revision); or
- (b) in the case of an act done otherwise than in the Islands, which would constitute such an offence as is referred to in paragraph (a) if done within the Islands,

and for the purposes of this subsection, having possession of any property shall be taken to be doing an act in relation to it.

Anti-Money Laundering
Steering Group

21B. (1) The Governor in Cabinet shall appoint a body to be called the Anti-Money Laundering Steering Group, consisting of –

- (a) the Attorney-General, who shall be the chairman;
- (b) the Financial Secretary, who shall be the deputy chairman;
- (c) the Commissioner of Police;
- (d) the Collector of Customs;
- (e) the Managing Director of the Monetary Authority established under section 5 of the Cayman Islands Monetary Authority Law (2003 Revision); and
- (f) the Solicitor General.

(2) The Steering Group shall be responsible for –

- (a) the general oversight of the anti-money laundering policy of the Government;
- (b) determining the general administration of the business of the Reporting Authority;
- (c) overseeing and inspecting the work of the Reporting Authority;
- (d) reviewing annual reports submitted by the Director under section 21H(b);

- (e) promoting effective collaboration between regulators and law enforcement agencies; and
- (f) monitoring interaction and co-operation with overseas financial intelligence units.

(3) The Director shall normally be present at meetings of the Steering Group, but at the discretion of the Steering Group; and the Director shall not take part in the proceedings unless specifically invited by the chairman so to do.

(4) The Steering Group may regulate its own procedure.

(5) The validity of any proceedings of the Steering Group shall not be affected by any vacancy among the members or by any defect in the appointment of a member.

Issue of policy directions
to the Reporting
Authority

21C. The Governor in his discretion may, after consultation with the Steering Group, give to the Reporting Authority directions of a general character as to the policy to be followed in the exercise and performance of its functions in relation to matters appearing to the Governor to concern the public interest, and the Reporting Authority shall give general effect to any such directions.

Reporting Authority
restricted from providing
information

21D. Notwithstanding the provisions of any other Law -

- (a) the Reporting Authority;
- (b) the Director, officers and personnel of the Reporting Authority;
- (c) the Steering Group; and
- (d) the members of the Steering Group,

shall not be required to provide any information, documents or evidence except in accordance with the provisions of this Law or in compliance with an order made by the Grand Court.

Immunity of Reporting
Authority

21E. Neither the Reporting Authority, the Director, nor any officer, employee or agent of the Reporting Authority, shall be liable in damages for anything done or omitted in the discharge or purported discharge of their respective functions under this Law unless it is shown that the act or omission was

in bad faith or constituted wilful misconduct or negligence.

Protection upon
disclosure of information
to Reporting Authority

21F. (1) Without prejudice to any other provision of this Law, where a person discloses to the Reporting Authority information concerning proceeds of criminal conduct, suspected proceeds of criminal conduct, money laundering, suspected money laundering, terrorism or the financing of terrorism, the disclosure shall not be treated as a breach of any restriction upon the disclosure of information by any enactment or otherwise and shall not give rise to any civil liability.

(2) In subsection (1) -

“money laundering” means doing any act -

- (a) which constitutes an offence under section 22, 23 or 24 of this Law or section 47 or 48 of the Misuse of Drugs Law (2000 Revision);
or
- (b) in the case of an act done otherwise than in the Islands, which would constitute such an offence as is referred to in paragraph (a) if done within the Islands,

and for the purposes of this subsection, having possession of any property shall be taken to be doing an act in relation to it.

Confidentiality of
employees of Reporting
Authority

21G. (1) A person who, being an employee or agent of the Reporting Authority, obtains information in any form as a result of his connection with the Reporting Authority or the Steering Group, shall not disclose that information to any person except so far as it is required or permitted under this or any other Law or by an order of the Grand Court.

(2) Any person who communicates any information in breach of subsection (1) commits an offence and is liable on summary conviction to a fine of twenty-five thousand dollars or to a term of imprisonment of five years or to both such fine and imprisonment.

Annual report of
Reporting Authority

21H. The Director shall -

- (a) advise the Steering Group on the work of the Reporting Authority and in particular on

matters that could affect public policy or the priorities to be set by the Reporting Authority; and

- (b) prepare and submit to the Steering Group on or before 30 September in each year an annual report reviewing the work of the Reporting Authority and containing such other information as the Steering Group in its discretion shall require.

Guidelines

21 I. (1) The Reporting Authority may, with the approval of the Steering Group, issue guidelines setting out -

- (a) any features of a transaction that may give rise to a suspicion that the transaction is or may be relevant to the enforcement of this Law;
- (b) the forms and procedures for making a report of any such transaction; and
- (c) the Authority's operational procedures in connection with disclosures made to it under this Law.

(2) The Reporting Authority -

- (a) shall from time to time review any guidelines issued under subsection (1); and
- (b) may, with the approval of the Steering Group, issue an amendment or revocation of the guidelines.

(3) The Reporting Authority shall, without charge, make available for inspection at its office all guidelines issued under subsection (1), and all amendments to and revocations of the guidelines.”.

Amendment of section 22 - assisting another to retain the benefit of criminal conduct

6. Section 22 of the principal Law is amended by repealing subsection (8) and substituting the following subsection -

“(8) The Reporting Authority -

- (a) without having to obtain the consent of the Attorney-General, shall disclose to any law enforcement agency in the Islands any information received under this section, where there is prima facie evidence of criminal conduct or where the Reporting Authority has cause to suspect criminal conduct;

- (b) without having to obtain the consent of the Attorney-General, may disclose any information received under this section in relation to criminal conduct, to the Cayman Islands Monetary Authority established by section 5 of the Monetary Authority Law (2003 Revision), or to such other institutions or persons in the Islands as may be designated in writing by the Steering Group; and
- (c) subject to subsection (6), may disclose any information received under this section in relation to conduct defined in paragraph 3(1)(b) of the Schedule, to any overseas financial intelligence unit,

in order to-

- (i) report the possible commission of an offence;
- (ii) initiate a criminal investigation respecting the matter disclosed;
- (iii) assist with any investigation or criminal proceedings respecting the matter disclosed;
- (iv) facilitate the effective regulation of the financial services industry; or
- (v) generally give effect to the purposes of this Law.”.

7. Section 23 of the principal Law is amended by repealing subsection (9) and substituting the following subsection -

Amendment of section 23 - acquisition, possession or use of property representing proceeds of criminal conduct

“(9) The Reporting Authority -

- (a) without having to obtain the consent of the Attorney-General, shall disclose to any law enforcement agency in the Islands any information received under this section, where there is prima facie evidence of criminal conduct or where the Reporting Authority has cause to suspect criminal conduct;
- (b) without having to obtain the consent of the Attorney-General, may disclose any information received under this section in relation to criminal conduct, to the Cayman Islands Monetary Authority established by section 5 of the Monetary Authority Law (2003 Revision), or to such other institutions or persons in the Islands as may be designated in writing by the Steering Group; and
- (c) subject to subsection (7), may disclose any information received under this section in relation to conduct defined in paragraph 3(1)(b) of the Schedule, to any overseas financial intelligence unit,

in order to -

- (i) report the possible commission of an offence;
- (ii) initiate a criminal investigation respecting the matter disclosed;
- (iii) assist with any investigation or criminal proceedings respecting the matter disclosed;
- (iv) facilitate the effective regulation of the financial services industry; or
- (v) generally give effect to the purposes of this Law.”.

Savings and transitional provisions

8. (1) On the date of commencement of this Law, all property, rights and liabilities to which the former Reporting Authority was entitled shall vest in the Financial Reporting Authority.

(2) Every request for the disclosure of financial information concerning proceeds of criminal conduct, suspected proceeds of criminal conduct, money laundering, suspected money laundering, terrorism or the financing of terrorism, made under the former Law and wholly or partly heard by the former Reporting Authority when the new Law comes into force, is to be continued and dealt with in all respects as if the new Law had not come into force.

(3) Every request for the disclosure of financial information concerning proceeds of criminal conduct, suspected proceeds of criminal conduct, money laundering, suspected money laundering, terrorism or the financing of terrorism, made under the former Law and not wholly or partly heard by the former Reporting Authority when the new Law comes into force, is to be taken to be a request made under the new Law and the provisions of the new Law are to apply accordingly.

(4) In this section -

“Financial Reporting Authority” means the Financial Reporting Authority established pursuant to section 21(2) of the new Law;

“former Reporting Authority” means the Reporting Authority appointed pursuant to section 21(2) of the former Law;

“former Law” means the principal Law in force immediately before the date of commencement of this Law; and

“new Law” means the principal Law as amended by this Law.

Passed by the Legislative Assembly the 1st day of October , 2003.

JULIANNA O'CONNOR-CONNOLLY

Speaker.

WENDY LAUER EBANKS

Clerk of the Legislative Assembly.