

No. of 2021

VIRGIN ISLANDS

PROCEEDS OF CRIMINAL CONDUCT (AMENDMENT) ACT, 2021

ARRANGEMENT OF SECTIONS

Section

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No. of 2021

**Proceeds of Criminal Conduct
(Amendment) Act, 2021**

**Virgin
Islands**

I Assent

Governor

, 2021

VIRGIN ISLANDS

No. of 2021

A BILL for

An Act to amend the Proceeds of Criminal Conduct Act, 1997 (No. 5 of 1997) and to provide for other matters connected therewith.

[Gazetted , 2021]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and commencement. **1.** (1) This Act may be cited as the Proceeds of Criminal Conduct (Amendment) Act, 2021.

(2) This Act shall come into force on such date as the Governor may, by Proclamation published in the *Gazette*, appoint.

Section 2 amended. **2.** Section 2 of the Proceeds of Criminal Conduct Act, 1997 (hereinafter referred to as the “principal Act”) is amended –

(a) in subsection (1) –

- (i) in the definition of “criminal conduct”, by deleting the words “and, for the purposes of a confiscation order, includes a person against whom proceedings have been instituted for an offence under the Drugs (Prevention of Misuse) Act”;
- (ii) by deleting the definition of “property” and substituting the following definition –

“property” includes money and all other property, real or personal, including things in action, virtual assets and other intangible or incorporeal property, and “virtual assets” shall be interpreted as referring to any digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes;”;

- (iii) by inserting in their appropriate alphabetical order, the following new definitions –

““money laundering” means the doing of any act which constitutes an offence under section 28, 29, 30 or 30A or, in the case of an act done otherwise than in the Territory, would constitute such an offence if done in the Territory, and, for that purpose, having possession of any property shall be taken to be doing an act in relation to the property;

“terrorist financing” has the meaning ascribed to it in section 2 (1) of the Financial Investigation Agency Act, 2003;”;

- (iv) by deleting the definition of “Steering Committee”;

- (b) by deleting subsection (1A) and substituting the following new subsection –

“(1A) Unless the context otherwise requires, a reference in this Act to “money laundering”, “countering the financing of terrorism” and “terrorist financing” shall be construed to include proliferation financing within the meaning of the Proliferation Financing (Prohibition) Act and, if applicable, the Financial Investigation Agency Act.”;

- (c) in subsection (5) (d), by deleting the word “indictable”.

New section
5A inserted.

- 3.** The principal Act is amended by inserting immediately after section 5, the following new section –

“Investigation
of predicate
and related
offences.

5A. (1) Where a police officer or the Agency institutes investigations in respect of a criminal conduct or a financial offence, the police officer or the Agency, as the case may be, shall, where it is reasonable to do so having regard to the nature and circumstance of the criminal conduct or financial offence, at the same time investigate any related money laundering or terrorist financing offence.

(2) Subsection (1) also applies where the Agency, acting in accordance with the powers conferred on it under section

4 (2) (1) of the Financial Investigation Agency Act, 2003, provides documents and other information to the Commissioner of Police in relation to the commission of an offence.

(3) The term “financial offence” bears the same meanings ascribed to it in section 2 (1) of the Financial Investigation Agency Act, 2003.”.

Section 11
amended.

4. Section 11 of the principal Act is amended –

(a) by inserting after subsection (4), the following new subsection –

“(4A) Subsection (4) shall not affect the power of the court to deal with the defendant in respect of a failure to comply with an order under this section.”;

(b) by adding after subsection (6), the following new subsections –

“(7) Where the court makes an order under this section, it may at any time vary it by making another order.

(8) No information given under this section which amounts to an admission by the defendant that he has benefitted from criminal conduct is admissible in evidence in proceedings for an offence, but such document or information is otherwise admissible in evidence in proceedings for a confiscation or forfeiture order.”.

New section
26A inserted.

5. The principal Act is amended by inserting under the heading “MONEY LAUNDERING AND OTHER OFFENCES” before section 27, the following new sections –

“Authority for
receipt of
suspicious
transaction
reports.

26A. (1) The Agency shall be the authority responsible for the receipt of reports on suspicious transactions and other disclosures relating to money laundering and terrorist financing.

(2) Where an obligation is placed on a person under this Act or any other enactment to make a suspicious transaction report or other disclosure in relation to a money laundering or terrorist financing activity, that report or disclosure shall be made to the Agency.

(3) Where the Agency receives a suspicious transaction report or other disclosure relating to money laundering or terrorist financing, it shall deal with the report or other disclosure in accordance with its functions under the Financial Investigation Agency Act, 2003

or in such other manner as may be provided under this Act or any other enactment.

Establishment
of National
Anti-money
Laundering and
Terrorist
Financing
Coordinating
Council.

26B. (1) There is established a council to be known as the National Anti-money Laundering and Terrorist Financing Coordinating Council (“the Coordinating Committee”) which shall consist of –

- (a) the Premier, as Chairperson;
- (b) the Governor;
- (c) the Deputy Governor;
- (d) the Attorney General;
- (e) the Managing Director of the Commission;
- (f) a member of the Joint Anti-money Laundering and Terrorist Financing Advisory Committee established under section 27A;
- (g) a member of the Inter-governmental Committee on Anti-money Laundering and Terrorist Financing Group established pursuant to section 50 of the Anti-money Laundering and Terrorist Financing Code of Practice;
- (h) a member of the Council of Competent Authorities established under section 10A of the Criminal Justice (International Cooperation) Act, 1993; and
- (i) not more than two members of the public who are versed in laws and policies relating to money laundering and terrorist financing matters.

(2) The Council shall act as the Territory’s focal point for the coordination of all policies, including ensuring the Territory’s compliance with established international standards to which the Territory is a party or has subscribed to, relating to the activities of money laundering and terrorist financing.

(3) Without prejudice to any specific function or power that may be imposed or conferred under an enactment on a member of the Council, institution or any other person, the Council may exercise such powers as are reasonable to ensure the Territory's compliance with enactments and any established policies relating to the activities of money laundering and terrorist financing and, in that regard, may –

- (a) give such orders or directives as it considers appropriate;
- (b) cause surveys or internal self-assessments to be carried out to determine the risks of money laundering and terrorist financing in the Territory, including the level of compliance with laws and policies in respect thereof; and
- (c) provide or recommend the provision of necessary resources to ensure the efficient and effective implementation of laws and policies relating to money laundering and terrorist financing.

(4) In the discharge of its functions and the exercise of its powers under this section, the Council shall determine its own rules of procedure.”.

Section 27
amended.

6. Section 27 of the principal Act is amended –

- (a) in subsection (1), by deleting the opening paragraph and substituting the following new opening paragraph –

“The Commission may, after consultation with the Joint Anti-money Laundering and Terrorist Financing Advisory Committee established under section 27A, issue a Code of Practice for the purpose of –”;

- (b) in paragraph (b) of subsection (8), by deleting the words “Assets Sharing Fund of the Agency” and substituting the words “Financial Investigation Agency Asset Fund”; and

- (c) by deleting subsection (8A).

Section 28
amended.

7. Section 28 of the principal Act is amended –

- (a) in subsection (2), by deleting the words “Reporting Authority” wherever they appear in the opening paragraph and substituting the word “Agency”;

- (b) in subsection (3) (c), by deleting the words “Reporting Authority” and substituting the word “Agency”;
- (c) in subsection (4), by deleting the words “Reporting Authority” and substituting the word “Agency”;
- (d) in subsection (5) –
 - (i) in the opening paragraph, by deleting the words “Steering Committee” wherever they appear and substituting the word “Agency”;
 - (ii) in paragraph (a), by inserting after the word “any”, the word “other”;
- (e) in subsection (5A), by deleting the words “Steering Committee” and substituting the word “Agency”; and
- (f) in subsection (8A), by deleting the words “the Steering Committee or”.

Section 29
amended.

8. Section 29 of the principal Act is amended –

- (a) in subsection (5), by deleting the words “Reporting Authority” wherever they appear in the opening paragraph and substituting the word “Agency”;
- (b) in subsection (6) –
 - (i) in the opening paragraph, by deleting the words “Steering Committee” and substituting the word “Agency”;
 - (ii) in paragraph (a), by inserting after the word “any”, the word “other”;
- (c) in subsection (6A), by deleting the words “Steering Committee” and substituting the word “Agency”;
- (d) in subsection (9), by deleting the words “Reporting Authority” and substituting the word “Agency”;
- (e) in subsection (10), by deleting the words “Reporting Authority” and substituting the word “Agency”; and
- (f) in subsection (12), by deleting the words “Reporting Authority” and substituting the word “Agency”.

Section 30
amended.

9. Section 30 of the principal Act is amended in subsection (3B) by deleting the words “the Steering Committee or”.

Section 30A
amended.

10. Section 30A of the principal Act is amended –

- (a) in subsection (1) (c), by deleting the words “Steering Committee” and substituting the word “Agency”; and
- (b) in subsection (4), by deleting the words “Steering Committee” in the opening paragraph and substituting the word “Agency”.

Section 31
amended.

11. Section 31 of the principal Act is amended –

- (a) in subsection (1) (a), by deleting the words “Reporting Authority” and substituting the word “Agency”;
- (b) in subsection (2) (a) by deleting the words “Steering Committee” and substituting the word “Agency”;
- (c) by repealing subsection (7);
- (d) by repealing subsection (8); and
- (e) in subsection (10), by deleting the words “Reporting Authority” and substituting the word “Agency”.

Section 34B
amended.

12. Section 34B of the principal Act is amended –

- (a) in subsection (2), by deleting the words “, the Steering Committee”; and
- (b) in subsection (4) (b), by deleting the words “, the Steering Committee”.

Section 37A
amended.

13. Section 37A of the principal Act is amended –

- (a) in subsection (1) (b) by deleting the words “section 6 of the Customs Ordinance” and substituting the words “section 4 (1) of the Customs Management and Duties Act, 2010”; and

- (b) by deleting subsection (2) and substituting the following subsection –

“(2) A police officer or customs officer may seize and detain any cash which –

(a) is found in the Territory, or

(b) is being imported into or exported from the Territory if its amount is not less than \$10,000,

and he or she has reasonable grounds for suspecting that the cash –

- (i) is intended by any person for use in criminal conduct; or
- (ii) directly or indirectly represents any person's proceeds of criminal conduct.”.

Passed by the House of Assembly this day of , 2021.

Speaker

Clerk of the House of Assembly

OBJECTS AND REASONS

As part of the Territory's ongoing reform process to ensure full technical and effectiveness compliance standards under the FTAF Recommendations, this Bill seeks to amend the Proceeds of Criminal Conduct Act, 1997 ("the Act") to provide for necessary reforms. The Act is the Territory's primary legislation on matters relating to money laundering activities and it is complemented by necessary subsidiary and other principal legislation.

The Bill defines "money laundering" by relating the definition to the relevant sections of the Act. In a similar vein, it defines "terrorist financing" to coincide with the definition ascribed to that term in the Financial Investigation Agency Act, 2003 (FIAA). Furthermore, the Bill makes it clear that any reference in the Act to "money laundering", "terrorist financing" and "countering the financing of terrorism" shall be interpreted to include "proliferation financing". This streamlining will ensure a better and more effective law enforcement process in combatting activities relating to money laundering (ML), terrorist financing (TF) and proliferation financing" (PF).

Specific provision is made to make it a requirement, in respect of every predicate offence where it is considered reasonable to do so having regard to the nature and circumstances of any particular case, for an investigating officer or the Financial Investigation Agency (FIA) to expand the investigation to establish whether or not a ML, TF or PF offence may also have been committed. This will ensure that investigating officers are not confined to investigating only the normal established offences under the law, but also widen the net to better protect the Territory against activities relative to ML, TF and PF.

Furthermore, the Bill formally establishes the FIA as the central institution in the Territory with the responsibility for receiving suspicious transactions reports (STRs) (also referred to as suspicious activity reports (SARs)). This accords with the established FATF standards, such that no doubt is created as to which institution has the primary duty of collecting and analysing STRs (considering that one of the functions of the FIA is to receive and analyse STRs).

With the proposed reforms to the FIAA whereby the work assigned to the Steering Committee established under that Act is now to be performed exclusively by the FIA, the Bill has been amended in relevant sections removing the references to "Steering Committee" and "Reporting Authority" and substituting or retaining the FIA. In addition, section 37A of the Act is being amended to make it clear that a police officer may seize and detain any cash found within the Territory if reasonable grounds exist to suspect that the cash is intended to be used in relation to criminal conduct or that it represents the proceeds of criminal conduct. The same rule applies in relation to the import and export of cash above the established threshold of \$10,000 without complying with the required declarations to a customs officer. These enforcement powers will ensure greater certainty with regard to the ability of law enforcement to appropriately deal with cash found in the

Territory without attaching any specific threshold; the governing rule will be the suspicion attached to it in relation to criminal conduct.

The remaining areas of the Bill merely update and better streamline the provisions of the Act. Accordingly, the support of the Hon. Members of the House of Assembly is sought with respect to the enactment of the Bill.

Attorney General