

No. 7 of 2023

VIRGIN ISLANDS

DRUG TRAFFICKING OFFENCES (AMENDMENT) ACT, 2023

ARRANGEMENT OF SECTIONS

SECTION

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I ASSENT
(Sgd.) John Rankin CMG,
Governor.
20th March, 2023

VIRGIN ISLANDS

No. 7 of 2023

AN ACT TO AMEND THE DRUG TRAFFICKING OFFENCES ACT, REVISED EDITION 2020, AND FOR OTHER MATTERS CONNECTED THEREWITH.

[Gazetted 21st March, 2023]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and commencement

1. (1) This Act may be cited as the Drug Trafficking Offences (Amendment) Act, 2023.

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

Section 33 amended

2. Section 33 of the Drug Trafficking Offences Act, Revised Edition 2020, (hereinafter referred to as the “principal Act”) is amended by repealing subsection (9) and substituting the following subsection:

- “(9) A person who commits an offence under this section is liable
- (a) on summary conviction, to imprisonment for a term of not less than 3 years but not exceeding 7 years and a fine not exceeding \$300,000 or where there is evidence of the street value of the controlled drug, three times the value of the controlled drug, whichever is the greater; or
 - (b) on conviction on indictment, to imprisonment for a term of not less than 5 years but not exceeding 15 years and a fine not exceeding \$600,000 or where there is evidence of the street value of the controlled drug, three times the value of the controlled drug, whichever is the greater.”.

Section 34 amended

3. Section 34 of the principal Act is amended

- (a) by repealing subsections (2), (3) and (4); and
- (b) by repealing subsection (11) and substituting the following subsection:

“(11) A person who commits an offence under this section is liable

- (a) on summary conviction, to imprisonment for a term of not less than 5 years but not exceeding 10 years and a fine not exceeding \$500,000 or where there is evidence of the street value of the controlled drug, three times the value of the controlled drug, whichever is the greater; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding 15 years and a fine not exceeding \$1,000,000 or both or where there is evidence of the street value of the controlled drug, three times the value of the controlled drug, whichever is the greater.”.

Section 35 amended

4. Section 35 of the principal Act is amended by repealing subsection (6) and substituting the following subsection:

- “(6) A person who commits an offence under this section is liable
- (a) on summary conviction, to imprisonment for a term of not less than 3 years but not exceeding 7 years or a fine not exceeding \$300,000 or where there is evidence of the street value of the controlled drug, three times the value of the controlled drug, whichever is the greater; or
 - (b) on conviction on indictment, to imprisonment for a term of not less than 5 years but not exceeding 15 years and a fine not exceeding \$600,000 or where there is evidence of the street value of the controlled drug, three times the value of the controlled drug, whichever is the greater.”.

Section 36 amended

5. Section 36 of the principal Act is amended by repealing subsection (10) and substituting the following subsection:

- “(10) A person who commits an offence under this section is liable
- (a) on summary conviction, to a fine not exceeding \$150,000 or imprisonment for a term not exceeding 3 years, or both; or
 - (b) on conviction on indictment, to a fine not exceeding \$500,000 or imprisonment for a term not exceeding 5 years, or both.”.

Section 37 amended

6. Section 37 of the principal Act is amended

(a) by inserting after subsection (6), the following new subsection:

“(6A) A person does not commit an offence under subsection (1), (2) or (3) if the disclosure of information was made in accordance with information sharing obligations under a financial group’s group-wide programmes against money laundering (including drug money laundering) and terrorist financing as prescribed in section 53A of the Anti-money Laundering and Terrorist Financing Code of Practice, Revised Edition 2020.”; and

(b) by repealing subsection (8) and substituting the following subsection:

“(8) A person who commits an offence under this section is liable

(a) on summary conviction, to a fine not exceeding \$250,000 or imprisonment for a term not exceeding 5 years, or both; or

(b) on conviction on indictment, to a fine not exceeding \$500,000 or imprisonment for a term not exceeding 15 years, or both.”

New section 39A inserted

7. The principal Act is amended by inserting immediately after section 39, the following new section:

“Account monitoring orders

39A. (1) For the purposes of this section

(a) “financial institution” means a relevant person carrying on relevant business as defined in regulation 2(1) of the Anti-money Laundering Regulations, Revised Edition 2020; and

(b) “an account monitoring order” is an order of a court that a financial institution specified in an application for the order shall provide information of the description specified in the application to the Agency or a police officer.

(2) The Minister may, by an Order published in the *Gazette*, provide for a class of persons to cease to be a financial institution for the purposes of this section.

(3) An institution which ceases to be a financial institution for the purposes of this section (whether by virtue of subsection (2) or otherwise) shall continue to be treated as a financial institution for the purposes of any requirement under this section to provide information which relates to a time when the institution was a financial institution.

(4) A court may, on application made to it by the Agency or a police officer, make an account monitoring order if satisfied that

- (a) the order is sought for the purposes of a drug trafficking or drug money laundering investigation;
- (b) the tracing of drug trafficking or drug money laundering property is desirable for the purposes of the investigation; and
- (c) the order will enhance the effectiveness of the investigation.

(5) The application for an account monitoring order shall state that the order is sought against the financial institution specified in the application with respect to information which

- (a) relates to an account or accounts held at the financial institution by the person specified in the application (whether solely or jointly with another person); and
- (b) is of the description so specified.

(6) The application for an account monitoring order may specify information relating to

- (a) all accounts held by the person specified in the application for the order at the financial institution so specified;
- (b) a particular description, or particular descriptions, of accounts so held; or
- (c) a particular account, or particular accounts, so held.

(7) The period specified in an account monitoring order shall not exceed 90 days beginning with the day on which the order is made.

(8) An application for an account monitoring order may be made *ex parte* to a judge in Chambers.

(9) The description of information specified in an application for an account monitoring order may be varied by the Agency or the police officer who made the application or any other police officer.

(10) An application to discharge or vary an account monitoring order may be made to the court by

- (a) the Agency;
- (b) the police officer who made the application for the order or any other police officer; or
- (c) any person affected by the order

and the court may, if it deems it fit, discharge or vary the order.

(11) An account monitoring order has effect notwithstanding any restriction on the disclosure of information (however imposed).

(12) A statement made by a financial institution in response to an account monitoring order may not be used in evidence against it in criminal proceedings, save

- (a) in the case of proceedings for contempt of court;
- (b) in the case of proceedings where the financial institution has been convicted of an offence; or
- (c) on a prosecution for an offence where, in giving evidence, the financial institution makes a statement that is inconsistent with its statement relating to the account monitoring order.

(13) A statement by a financial institution as it relates to subsection (12)(c) may not be used against it unless

- (a) evidence relating to the statement is adduced; or
- (b) a question relating to the statement is asked,

by or on behalf of the financial institution in the proceedings arising out of the prosecution.”.

Section 47 amended

8. Section 47 of the principal Act is amended in subsection (5)

- (a) in paragraph (a), by deleting the figure “\$10,000” and substituting the figure “\$50,000”; and
- (b) in paragraph (b), by deleting the figure “\$25,000” and substituting the figure “\$100,000”.

Passed by the House of Assembly this 9th day of March, 2023.

(Sgd.) Corine N. George-Massicote,
Speaker.

(Sgd.) Phyllis Evans,
Clerk of the House of Assembly.