

No. 25 of 2021

VIRGIN ISLANDS

PROCEEDS OF CRIMINAL CONDUCT (AMENDMENT) ACT, 2021

ARRANGEMENT OF SECTIONS

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No. 25 of 2021

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

**Virgin
Islands**

**I Assent
(Sgd.) John J. Rankin CMG
Governor.
14th June, 2021**

VIRGIN ISLANDS

No. 25 of 2021

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

[Gazetted 22nd June, 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) (l) 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” after section 26, 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; and
- (h) a member of the Council of Competent Authorities established under section 10A of the Criminal Justice (International Cooperation) Act, 1993.

(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 27A
amended.

7. Section 27A of the principal Act is amended in subsection (2), by deleting the words “not more than 14 members” and substituting the words “not more than 16 members”.

Section 28
amended.

8. 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.

- 9.** 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.

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

Section 30A
amended.

11. 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.
- 12.** 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.
- 13.** 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.
- 14.** 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 11th day of May, 2021.

(Sgd.) Julian Willock,
Speaker.

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