



ANGUILLA

A BILL FOR
PROCEEDS OF CRIME (AMENDMENT) ACT, 2022

DRAFT

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PROCEEDS OF CRIME (AMENDMENT) ACT, 2022

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I Assent

Dileeni Daniel-Selvaratnam
Governor

Date

ANGUILLA

NO. /2022

A BILL FOR

PROCEEDS OF CRIME (AMENDMENT) ACT, 2022

[Gazette Dated: _____, 2022] [Commencement: Assent under section 57 of the Constitution]

An Act to validate all acts done under and pursuant to the Proceeds of crime Act, R.S.A c. P98 prior to the publication of the Commencement Notices to bring the Acts into operation.

ENACTED by the Legislature of Anguilla

Interpretation

1. In this “Act” the principal Act means the Proceeds of Crime Act.

Amendment of section 1

2. The principal Act is amended in section 1 by—

(a) deleting the definition of “criminal recovery investigation” and substituting the following—

““criminal recovery investigation” means an investigation into—

- (a) whether a person has benefited from his criminal conduct;
- (b) the extent or whereabouts of his benefit from his criminal conduct; or
- (c) the available amount for satisfying a confiscation order made in respect of the person; and
- (d) the extent or whereabouts of realisable property available for satisfying a confiscation order made in respect of the person;”;

(b) deleting the definitions of “financial intelligence unit” and “offence”.

Insertion of section 18A

3. The principal Act is amended by inserting the following new section after section 18—

“Determination of extent of defendant's interest in property

18A. (1) Where the Court considers it appropriate to do so, it may determine the extent, at the time a confiscation order is made, of the defendant's interest in property held by the defendant if it appears to the Court that—

- (a) the property is likely to be realised or otherwise used to satisfy the confiscation order, and
- (b) a person other than the defendant holds, or may hold, an interest in the property,

(2) The Court shall not exercise the power conferred by subsection (1) unless it gives to anyone who the court thinks is or may be a person holding an interest in the property a reasonable opportunity to make representations to it.

(3) A determination under this section is conclusive in relation to any question as to the extent of the defendant's interest in the property that arises in connection with—

- (a) the realisation of the property, or the transfer of an interest in the property, with a view to satisfying the confiscation order; or
- (b) any action or proceedings taken for the purposes of any such realisation or transfer.

(4) Subsection (3) does not apply in relation to a question that arises in proceedings before the Court of Appeal.

(5) In this Part, the “extent” of the defendant's interest in property means the proportion that the value of the defendant's interest in it bears to the value of the property itself.”.

Amendment of section 42

4. The principal Act is amended in section 42—

- (a) in subsection (2), by deleting the phrase “subsection (3) and substituting the phrase “subsections (2a) and (3); and
- (b) by inserting the following new subsection after subsection (2)—

“(2a) Provision shall not be made under subsection (2)(a) for any legal expenses which—

- (a) are incurred by the defendant or a recipient of a tainted gift; and
- (b) relate to an offence referred to in section 41(a) or (b) and the conditions specified in section 41(1)(a) or (b) are satisfied.”.

Amendment of section 108

5. The principal Act is amended in section 108—

- (a) by designating the existing provisions as subsection (1); and
- (b) by inserting the following new subsection after the existing provisions—

“(2) After a seizure is made by a police officer under subsection (1), the police officer shall promptly and, in any event within 24 hours of the seizure, report the seizure to the Unit.”.

Amendment of section 109

6. The principal Act is amended in section 109, by inserting “, excluding public holidays and weekends” after the words “a period of 72 hours”.

Amendment of section 123

7. The principal Act is amended in the marginal note to section 123, by inserting “and “pecuniary advantage”” after the words “criminal property”.

Amendment of section 124

8. The principal Act is amended in section 124—

- (a) in subsection (2), by inserting the following new paragraph after paragraph (d)—

“(da) for the purposes of a disclosure to a relevant Money Laundering Reporting Officer—

- (i) references to a person’s employer include any body, association or organisation (including a voluntary organisation) in connection with whose activities the person exercises a function (whether or not for gain or reward), and

- (ii) references to employment shall be construed accordingly.”; and

- (b) in subsection (3), by deleting paragraph (a) and substituting the following—

“(a) it is a disclosure that property is criminal property that is made to—

- (i) the Unit, or
- (ii) the relevant Money Laundering Reporting Officer, in accordance with the procedures established by the person’s employer for the purpose; and”.

Amendment of section 128

9. The principal Act is amended in section 128 by deleting subsection (1) and replacing with the following—

“(1) Where—

- (a) a person knows or suspects, or has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering, terrorist financing or criminal activity; or
- (b) a person knows or suspects, or has reasonable grounds for knowing or suspecting that a particular non-profit organisation—
 - (i) is involved in terrorist financing abuse or is a front for fundraising by a terrorist organisation,
 - (ii) is being exploited as a conduit for terrorist financing, including for the purpose of escaping asset freezing measures, or other forms of terrorist support, or
 - (iii) is concealing or obscuring the clandestine diversion of funds intended for legitimate purposes, but redirected for the benefit of terrorists or terrorist organisations; and
- (c) the information or other matter on which that person’s knowledge or suspicion is based, or which gives reasonable grounds for such knowledge or suspicion, came to him in the course of a relevant business;

he shall promptly disclose the information or other matter after it comes to him to the relevant Money Laundering Reporting Officer, to the Unit or to the NPO Supervisor, in order to take preventative or investigative actions.”.

Amendment of section 129

10. The principal Act is amended in section 129—

- (a) in subsections (1) and (3) by inserting the word “promptly” before the word “disclose”; and
- (b) in subsection (4) by inserting the word “promptly” before the word “disclosing”.

Amendment of section 130

11. The principal Act is amended in section 130—

- (a) in subsections (1) and (3) by inserting the word “promptly” before the word “disclose”; and
- (b) in subsection (4) by inserting the word “promptly” before the word “disclosing”.

Amendment of section 134

12. The principal Act is amended in section 134(1)(b), by inserting the phrase “, terrorist financing or criminal activity” after the phrase “engaged in money laundering”.

Amendment of section 159

13. The principal Act is amended in section 159—

(a) in subsection (1), by deleting paragraph (c) and substituting the following paragraph

“(c) the imposition by relevant supervisory authorities of administrative penalties—

(i) in an amount not exceeding \$100,000 against externally regulated and non-regulated service providers for any contravention of their AML/CFT obligations; and

(ii) in an amount not exceeding \$50,000 against the directors or senior of an externally regulated and non-regulated service provider where the externally regulated and non-regulated service provider contravenes its AML/CFT obligations and where and the contravention was committed with the consent or connivance of the director or senior manager;”;

(b) by inserting the following new subsection after subsection (1)—

“(1a) For the purposes of subsection (1), a person is deemed to be a director of a company if the person occupies in relation to that company, the position of a director by whatever name called, or is a person in accordance with whose directions or instructions (not being directions or instructions in a professional capacity only) the directors and the company, or any of them, act.”.

Insertion of section 167A

14. The principal Act is amended by inserting the following new section after section 167—

“Liability of directors and senior managers for offences by company

167A. (1) Where an offence under this Act or Regulations made under this Act, is committed by a company and it is proved to have been committed with the consent or connivance of—

(a) a person who is a director or senior manager of the company; or

(b) any person purporting to act in any such capacity;

the person shall also be guilty of the offence and liable in the same manner as the company to the penalty provided for that offence.

(2) Where the affairs of a company are managed by its members, subsection (1) shall apply in relation to acts and defaults of a member in connection with the functions of management as if the member were a director of the company.

(3) For the purposes of this section, a person is deemed to be a director of a company if the person occupies in relation to that company, the position of a director by whatever name called, or is a person in accordance with whose directions or instructions (not being directions or instructions in a professional capacity only) the directors and the company, or any of them, act.”.

Citation

15. This Act may be cited as the Proceeds of Crime (Amendment) Act, 2022.

Barbara Webster-Bourne
Speaker

Passed by the House of Assembly this day of , 2022.

Lenox J. Proctor
Clerk of the House of Assembly

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