

AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

PROCEEDS OF CRIME AMENDMENT ACT 2017

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WHEREAS it is expedient to amend the Proceeds of Crime Act 1997, the Anti-Terrorism (Financial and Other Measures) Act 2004, the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008, and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008, to further enhance Bermuda's AML/ATF regulatory framework;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act may be cited as the Proceeds of Crime Amendment Act 2017.

Amends the Proceeds of Crime Act 1997

2 The Proceeds of Crime Act 1997 is amended—

(a) in section 36.1X(1)(a)(i) and (b)(i), by repealing and substituting the words "or suspects" with the words ", suspects or has reasonable grounds to suspect";

(b) in section 42—

(i) in subsection (1), by inserting after the word "suspecting" the words "or having reasonable grounds to suspect";

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- (ii) in subsection (2)(a), by inserting after the word “suspect” the words “or have reasonable grounds to suspect”;
- (c) in section 42A—
 - (i) in subsection (1)(d), by repealing and substituting the words “in so far as he acts as a manager or” with the words “,but in relation to an insurance broker, only in so far as he acts as a”;
 - (ii) in subsection (1), by inserting after paragraph (f) of the definition of “AML/ATF regulated financial institution” the following—
 - “(fa) carries on corporate service provider business within the meaning of section 2(2) of the Corporate Service Provider Business Act 2012;”;
- (d) in section 46—
 - (i) in subsection (A1), by repealing and substituting the words “or suspect” with the words “, suspect or have reasonable grounds to suspect”;
 - (ii) in subsection (2)(a), by repealing and substituting the words “or suspects” with the words “, suspects or has reasonable grounds to suspect”;
- (e) in section 47—
 - (i) in subsections (1)(a) and (2)(a), by inserting after the word “suspects” the words “or has reasonable grounds to suspect”;
 - (ii) in subsection (4), by inserting after the words “or suspect” the words “or have reasonable grounds to suspect”; and

Amends the Anti-Terrorism (Financial and Other Measures) Act 2004

3 The Anti-Terrorism (Financial and Other Measures) Act 2004 is amended—

- (a) in section 2—
 - (i) in paragraph (d), by repealing and substituting the words “in so far as he acts as a manager or” with the words “,but in relation to an insurance broker, only in so far as he acts as a”;
 - (ii) in paragraph (i), repealing and substituting section reference “8” with the section reference “2(2)”;
- (b) in section 9(1)(a), by repealing and substituting the words “or suspects” with the words “, suspects or has reasonable grounds to suspect”;
- (c) in section 9(3)(a), by repealing and substituting the words “or suspicion” with the words “, suspicion or reasonable grounds for suspicion”;
- (d) in section 10A—

- (i) in subsections (1)(a) and (2)(a), by repealing and substituting the words “or suspects” with the words “, suspects or has reasonable grounds to suspect”;
- (ii) in subsection (4), by inserting after the word “suspect” the words “or have reasonable grounds to suspect”;
- (iii) by inserting after subsection (4) the following—

“(5) No police officer or other person shall be guilty of an offence under this section in respect of anything done by him in the course of acting in accordance with the enforcement, or intended enforcement, of any provision of this Act or of any other statutory provision relating to terrorism, terrorist property or the financing of terrorist organisations, individuals or activities.

(6) No person shall be guilty of an offence under this section where he discloses information to a supervisory authority in the course of it carrying out its statutory duties.

(7) For the purposes of this section, supervisory authority, shall have the same meaning as under section 2 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008.”; and

- (e) in schedule 1, in part 1, in paragraph 1(2), by repealing and substituting the words “or suspects” with the words “, suspects or has reasonable grounds to suspect”.

Amends the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008

4 The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 is amended—

- (a) in section 2(1), by inserting in the appropriate alphabetical order the following—
 - “ “terrorist financing” means an offence under section 5, 6, 7 or 8 of the Anti-Terrorism (Financial and Other Measures) Act 2004;”;
- (b) in section 2(1) by repealing and substituting, in paragraph (d) of the definition of “AML/ATF regulated financial institution”, the words “in so far as he acts as a manager or” with the words “, but in relation to an insurance broker, only in so far as he acts as a”;
- (c) in section 2(1)(i), by repealing and substituting section reference “8” with the section reference “2(2)”;
- (d) in section 5(4), by repealing and substituting the words “or suspects” with the words “, suspects or has reasonable grounds to suspect”.

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Amends the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008

5 The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 are amended—

- (a) in regulation 2(2) by deleting and substituting, in paragraph (d) of the definition of “AML/ATF regulated financial institution”, the words “in so far as he acts as a manager or” with the words “, but in relation to an insurance broker, only in so far as he acts as a”;
- (b) in regulation 2(2)(i), by deleting and substituting section reference “4” with the section reference “2(2)”; and
- (c) in regulation 24, by deleting and substituting paragraph (2) with the following—

“(2) But if the payee’s PSP or a competent authority so requests, the payer’s PSP shall make available to the payee’s PSP, or the competent authority, complete information on the payer, within three working days of receiving that request from—

- (a) the payee’s PSP; or
- (b) the competent authority.

(3) Where a police officer is investigating criminal conduct or the proceeds of criminal conduct, the police officer may compel the payer’s PSP to immediately produce the information referred to in paragraph (2) by way of search warrant or production order.

(4) For the purposes of this regulation—

- (a) “competent authority”, shall have the same meaning as under section 2 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008; and
- (b) “criminal conduct”, shall have the same meaning as under section 3 of the Proceeds of Crime Act 1997.”; and

(d) in regulations 16(2)(d)(i) and 17(1)(d), by inserting after the word “suspects” the words “or has reasonable ground to suspect”.

Commencement

6 (1) The provisions of this Act shall come into operation on such day as the Minister may appoint by notice in the Gazette.

(2) The Minister may appoint different days for the provisions of this Act to come into operation.

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EXPLANATORY MEMORANDUM

This Bill seeks to amend the Proceeds of Crime Act 1997, the Anti-Terrorism (Financial and Other Measures) Act 2004, the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorism Financing Supervision and Enforcement) Act 2008, the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Regulations 2008, and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008, to further enhance Bermuda's AML/ATF regulatory framework.

Clause 1 is the citation.

Clause 2 amends the Proceeds of Crime Act 1997: (i) in sections 36.1X(1)(a)(i) and (b) (i), 42(1), (2)(a), 42A(1), (1)(d), 46(A1), (2)(a), 47(1)(a) and (2)(a), and (4), by adding the variable of "reasonableness" as a prerequisite for determining a persons culpability under the respective sections of the Act; (ii) in section 42A(1)(d) by repealing and substituting the words "in so far as he acts as a manager or" with the words ",but in relation to an insurance broker, only in so far as he acts as a", thereby removing the anomalies existing in this Act, in relation to their interplay between this Act and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008, and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008- in reference to corporate service providers. This amendment does not affect the scope of the broker as described in paragraph (d); and (iii) in section 42A(1) by adding paragraph (fa), thereby broadening the definition of "AML/ATF regulated financial institution" to include institutions that carry on corporate service provider business within the meaning of section 2(2) of the Corporate Service Provider Business Act 2012.

Clause 3 amends the Anti-Terrorism (Financial and Other Measures) Act 2004: (i) in section 2(1)(d) by repealing and substituting the words "in so far as he acts as a manager or" with the words ",but in relation to an insurance broker, only in so far as he acts as a", thereby removing the anomalies existing in this Act, in relation to their interplay between this Act and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008, and the Proceeds of Crime Act 1997- in reference to corporate service providers. This amendment does not affect the scope of the broker as described in paragraph (d); (ii) in section 2(i), by repealing and substituting section reference "8" with the section reference "2(2)"; (iii) in sections 9(1)(a), 9(3)(a), 10A(1)(a), (2)(a) and (4), by adding the variable of "reasonableness" as a prerequisite for determining a person's culpability under the respective sections of the Act; and (iv) in section 10A, by adding subsections (5) to (7), thereby allowing section 10A to mirror the tipping-off provisions found within section 47(5), (6), and (7) of the Proceeds of Crime Act 1997; and (v) in schedule 1, in part 1, in paragraph 1(2) by repealing and substituting the words "or suspects" with the words ", suspects or has reasonable grounds to suspect".

Clause 4 amends the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008: (i) in section 2(1) by adding a new definition for "terrorist financing"; (ii) in section 2(1)(d), by repealing and substituting the words "in so far as he acts as a manager or" with the words ",but in relation to an insurance

broker, only in so far as he acts as a”, thereby removing the anomalies existing in this Act, in relation to their interplay between this Act and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008, and the Proceeds of Crime Act 1997- in reference to corporate service providers. This amendment does not affect the scope of the broker as described in paragraph (d); (iii) in section 2(1)(i), by repealing and substituting section reference “8” with the section reference “2(2)”; and (iv) by amending section 5(4), adding the variable of “reasonableness” as a prerequisite for determining a persons culpability under section 5(4) of the Proceeds of Crime Act 1997.

Clause 5 amends the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008: (i) in regulation 2(2)(d) by deleting and substituting the words “in so far as he acts as a manager or” with the words “,but in relation to an insurance broker, only in so far as he acts as a”, thereby removing the anomalies existing in this Act, in relation to their interplay between this Act and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008, and the Proceeds of Crime Act 1997- in reference to corporate service providers. This amendment does not affect the scope of the broker as described in paragraph (d); (ii) in regulation 2(2)(i) by deleting and substituting section reference “4” with the section reference “2(2)”; (iii) amends regulation 24, by deleting and substituting paragraph (2) with new paragraphs (2) to (4), thereby allowing information accompanying a wire transfer made in Bermuda to be made available to a regulated financial institution and to appropriate authorities, by other means- provided the number or identifier will permit the transfer to be traced back to the originator or payee’s PSP; and (iv) in regulations 16(2)(d)(i) and 17(1)(d), adding after the word “suspects” the words “or has reasonable ground to suspect”, thereby adding the variable of “reasonableness” as a prerequisite for determining a persons culpability under the respective regulations of the Regulations.

Clause 6 is the commencement provision.