

AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

PROCEEDS OF CRIME AMENDMENT (NO. 3) ACT 2017

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WHEREAS it is expedient to amend the Proceeds of Crime Act 1997, the Trustee Act 1975, the Financial Intelligence Agency Act 2007, the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008, the Casino Gaming Act 2014, the Charities Act 2014, the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008, the Charities Regulations 2014 and the Charities (Anti-Money Laundering, Anti-Terrorist Financing and Reporting) Regulations 2014:

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, which amends the Proceeds of Crime Act 1997 (the "principal Act"), the Trustee Act 1975, the Financial Intelligence Agency Act 2007, the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008, the Casino Gaming Act 2014, the Charities Act 2014, Proceeds of Crime (Anti-Money

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Laundering and Anti-Terrorist Financing) Regulations 2008, the Charities Regulations 2014 and the Charities (Anti-Money Laundering, Anti-Terrorist Financing and Reporting) Regulations 2014, may be cited as the Proceeds of Crime Amendment (No. 3) Act 2017.

Amends the principal Act

2 The principal Act is amended—

- (a) in section 25(1) by repealing and replacing the words “61 of the Criminal Code Act 1907 (limits on periods of imprisonment in default of fines etc)” with the words “63 of the Criminal Jurisdiction and Procedure Act 2015 (period of imprisonment in default of payment of fine or costs)”; and
- (b) in section 49(2) by—
 - (i) repealing the word “or” at the end of paragraph “(ef)”; and
 - (ii) inserting after paragraph “(ef)” the following—

“(eg) the Executive Director of the Bermuda Casino Gaming Commission; or”.

Amends the Trustee Act 1975

3 The Trustee Act 1975 is amended—

- (a) in section 1 by inserting in the appropriate alphabetical order, the following—

“non-professional trustee” means natural person acting without reward in the context of a family situation or a friendship situation;

“professional trustee” means a natural person or a body corporate engaged as a business, trade, profession or vocation in the provision of services of a trustee;
- (b) by inserting after section 13A the following—

“Accounts and records — non-professional trustees

13AA (1) A non-professional trustee shall keep or cause to be kept accurate records (including underlying documentation) with respect to his knowledge of proof of the identity, residential address and relevant information about—

- (a) the settlor;
- (b) the protector; and
- (c) the beneficiaries,

of the trust of which he is a trustee.

(2) All records required to be kept under subsection (1) shall be retained throughout the trust relationship.

(3) A non-professional trustee shall keep records of all transactions carried out by or under the trust of which he is a trustee and such records shall be retained for a minimum of five years beginning on the date on which each transaction is completed.

Exemption — non-professional trustee

13AB A non-professional trustee shall be exempt from the requirements of section 13AA (1) and (3) in circumstances where he—

- (a) is co-trustee of a trust and at least one other co-trustee is a licensed trustee under the Trusts (Regulation of Trust Business) Act 2001; or
- (b) appoints a person who is a licensed trustee under the Trusts (Regulation of Trust Business) Act 2001 to maintain the trust records of the trust of which he is a trustee.”.

(c) by inserting after section 54 the following—

“Civil penalty

54A (1) Where a non-professional trustee knowingly and wilfully contravenes section 13AA, the court may impose a civil penalty in the amount of seven thousand five hundred dollars.

(2) A civil penalty levied pursuant to section 13AA shall be enforced as a civil debt.

(3) For the avoidance of doubt—

“court” shall have the same meaning as in section 1 of this Act.

(4) A non-professional trustee, being a recipient of a civil penalty under subsection (1), may appeal the imposition of the penalty within seven days of the order being issued by the court.

(5) Any appeal under subsection (4) shall be commenced by notice of motion filed within seven days of the notification of the decision of the court; and the Attorney-General shall be served with a copy of the notice.

Civil penalty - Chief Justice may make rules

54B (1) For the purposes of section 54A, the Chief Justice may make rules generally for regulating civil penalty proceedings under this Act and, without prejudice to the generality of the foregoing, may make rules in respect of any matter which he considers necessary for the purposes of any proceedings under this Act.

(2) Section 6 of the Statutory Instruments Act 1977 shall not apply to rules made under this section.

Civil penalty - service of notices

54C (1) Any notice, order or other document which is required to be served under this Act on any person may be served—

- (a) by delivering it to the person on whom it is to be served;
- (b) by leaving it at the usual or last known place of abode of that person;
- (c) by sending it by prepaid post addressed to that person at his usual or last known place of abode;
- (d) in the case of a body corporate, by delivering it or sending it by prepaid post to the secretary or clerk of that body at its registered office or other place of business;
- (e) if it is not practicable after reasonable enquiry to ascertain the name or address of the owner of any land on whom it should be served, by addressing it to him by the description of “owner” or as the case may be “occupier” of the land to which it relates and by delivering it to some person occupying any premises on the land; or if there is no such person to whom it can be delivered, by affixing it or a copy thereof to some conspicuous part of the premises.

(2) Service effected by delivery pursuant to subsection (1)(a) or (d) shall have effect from the time of delivery.

(3) Service effected otherwise than by delivery shall be deemed to have been effected three days after the steps taken pursuant to any provisions of subsection (1) have been taken, unless and to the extent that the contrary is proved.”.

Amends the Financial Intelligence Agency Act 2007

4 The Financial Intelligence Agency Act 2007 is amended—

- (a) in section 14(1) by—
 - (i) inserting above the current paragraph (aa) the following—

“(aa) of receiving, gathering, storing, analysing and disseminating information relating to currency transaction reports filed with them pursuant to section 9 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 and section 132A of the Casino Gaming Act 2014.”; and
 - (ii) renumbering the current paragraph “(aa)” as “(aaa)”;
- (b) in section 18(1) by—
 - (i) repealing the word “or” after subsection (1)(e);

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- (ii) replacing the full-stop after subsection (1)(f) with “; or”; and inserting thereafter the following—

“(g) the Bermuda Casino Gaming Commission to discharge its functions under any statutory provision.”.

Repeals and replaces section 18A of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008

5 Section 18A of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 is repealed and replaced with the following—

“Part 3 Powers

18A The powers provided in Part 3, Chapter 3 may be exercised by the competent authority to enable it to establish whether regulated a non-financial business or profession, specified in Schedule 2, is carrying on business contrary to section 9.”.

Inserts section 132A into the Casino Gaming Act 2014

6 The Casino Gaming Act 2014 is amended by inserting after section 132 the following—

“Currency Transaction Reports

132A (1) A casino operator shall maintain a record of all single transactions in which a patron either provides to or removes from the casino an amount of \$10,000 or more, irrespective of whether such amount is made up of cash, wire transfers, cheque or other negotiable instrument or a combination of these.

(2) A record maintained in accordance with subsection (1) shall be verified by the casino operator and shall include the following information—

- (a) the name of the patron;
- (b) the residential address of the patron, or in the case of a patron not resident in Bermuda—
 - (i) his temporary Bermuda address; and
 - (ii) his overseas residential address; and
- (c) the date of birth of the patron.

(3) A series of related transactions in any 24-hour period or the aggregate of transactions for any one patron in any 24-hour period shall be a single transaction for the purpose of subsection (1) and the casino operator shall set out in his casino’s internal controls the 24-hour period that shall be applicable to his casino.

(4) For the purpose of recording transactions over a 24-hour period in accordance with subsection (3), a casino operator shall begin monitoring and

recording the transactions of any patron who has received from or provided to the casino operator \$3,000, and shall continue such monitoring and recording until the end of the 24-hour period.

(5) A record generated in accordance with subsection (1) may be disclosed to the Financial Intelligence Agency and any casino operator who does not disclose in accordance with this section may be liable to disciplinary action.

(6) The Minister, in consultation with the Minister responsible for justice, may make regulations governing currency transaction reports.”.

Amends the Charities Act 2014

7 The Charities Act 2014 is amended—

(a) in section 11(1), by repealing and replacing the word “and” at the end of paragraph (d), and inserting next after paragraph (d) the following—

“(da) implementing an AML/ATF risk-based supervisory or monitoring programme for charities;

(db) establishing, in consultation with the NAMLC, the criteria to be used for determining the AML/ATF risk profiles of charities, in order to facilitate risk-based supervision;

(dc) informing the charities sector of the criteria established pursuant to paragraph (db); and”;

(b) by amending section 23 by inserting after subsection (1) the following—

“(1A) The Registrar shall not be required to give notice to a charity as required in subsection (1), if he is reasonably of the opinion that giving notice to the charity would prejudice—

(a) a proposed investigation;

(b) an investigation; or

(c) the interests of the beneficiaries of the charity.

(1B) The Registrar may only exercise the power to freeze payments to and from a charity, pursuant to section 23(2)(c), without giving notice, if he has reasonable grounds to suspect that the charity’s assets are being used for—

(a) money laundering;

(b) terrorist financing; or

(c) fraud,

and any charity which is subject to such a freezing order without notice may appeal the Registrar’s decision within seven days of the order being issued to the Supreme Court.

(1C) Any appeal under subsection (1B) shall be commenced by notice of motion filed within seven days of the notification of the decision of the Registrar; and the Registrar shall be made respondent to every such appeal and the Attorney-General shall be served with a copy of the notice.

(1D) The rules of court governing the conduct of appeals from administrative tribunals generally, made under the Supreme Court Act 1905, shall apply to appeals under subsection (1B).”;

(c) by amending section 23 by inserting after subsection (7) the following—

“(8) Where a charity's registration has been cancelled in accordance with subsection (7) and he is reasonably of the opinion that the circumstances warrant it, the Registrar may—

- (a) order the charity to wind-up its affairs; and
- (b) order the transfer of any of the charity's remaining net assets to an existing registered charity having similar aims and purposes.

(9) Where the charity determines, and the Registrar is satisfied, that there is no existing registered charity having similar aims and purposes, in accordance with subsection (8), then the net assets remaining shall be rendered as bona vacantia.”;

(d) by inserting after section 23 the following—

“Bona Vacantia

23A The Registrar may make rules for the provision of how the passing of a charity's remaining net assets as bona vacantia is to be dealt with for the purposes of this Act.”;

(e) by inserting after section 25 the following—

“General power to institute on-site inspections

25A (1) The Registrar may from time to time institute on-site inspections, with regard to registered charities or a particular registered charity or class of registered charities, to enable him to monitor how well the charities are in compliance with the—

- (a) Charities Act 2014;
- (b) Charities Regulations 2014; or
- (c) Charities (Anti-Money Laundering, Anti-Terrorist Financing and Reporting) Regulations 2014.

(2) The Registrar, or an officer duly authorised by the Registrar, may at any reasonable time, on producing evidence of his authority—

- (a) enter the premises of the charity;

- (b) inspect the premises of the charity ;
 - (c) observe the carrying on of business of the charity;
 - (d) inspect any recorded information found on the premises of the charity and take copies of, or make extracts from, any such information; or
 - (e) require any person on the premises of the charity, being affiliated with the charity, to provide an explanation of any recorded information or to state where it may be found.”;
- (f) by inserting after section 47 the following—

“Penalty for failure to comply with the Regulations — civil penalty

47A (1) Where a charity has failed to submit annual reports and accounts or to notify the Registrar of changes to particulars in the register, in accordance with this Act or the Regulations, the Registrar may impose a civil penalty in the amount of—

- (a) \$200 for failure to submit annual reports and accounts within the specified time-line; or
- (b) \$100 for failure to notify the Registrar of changes to particulars in the register, in accordance with section 17(10) of this Act.

(2) In determining whether to impose a civil penalty and its amount, the Registrar shall take into account—

- (a) the nature, circumstances, and extent of the contravention and degree of culpability of the charity;
- (b) the ability of the charity to pay and any effect the penalty may have on its ability to continue to conduct charitable works; and
- (c) the good faith efforts of the charity to comply in a timely manner and the length of any delay in undertaking efforts to comply.

(3) In this section—

“Regulations” means the Charities (Anti-Money Laundering, Anti-Terrorist Financing and Reporting) Regulations 2014.

Civil penalty — filing of notice of appeal

47B Any person wishing to appeal to the Supreme Court against a decision of the Registrar, made by him in accordance with section 47A, shall lodge with the Registrar of the Supreme Court and the Registrar a notice of appeal.

Civil penalty — service of notice of appeal

47C The appellant shall serve a copies of the notice of appeal under this section on all other parties to the proceedings.

Civil penalty — procedure after filing notice of appeal

47D Upon receipt of the notice of appeal, lodged in accordance with section 47, the Registrar shall forward to the Registrar of the Supreme Court all documents received by him, and the Registrar of the Supreme Court shall cause to be made copies of all documents received by him pursuant to this section, and copies of all such documents shall be forwarded to the appellant and to all parties on whom a copy of the notice of appeal under this section has been served.

Civil penalty — procedure at the hearing of an appeal

47E (1) An appeal to the Supreme Court shall be by way of argument on the record, without prejudice to the power of the Court to admit further evidence, either orally or by affidavit, as the Court shall direct.

(2) The parties to the proceedings on appeal shall be heard in such order as the Court may direct.

Charities exemption

47F A charity that has an annual gross income of \$50,000 or less shall be exempted from the requirement to—

- (a) appoint a compliance officer who has received approved AML/ATF training;
 - (b) establish and implement AML/ATF systems and controls; and
 - (c) retain specified records for the specified period.”;
- (g) by repealing and replacing section 50(1) with the following—

“50 (1) Parts 3 and 5 shall not apply to any entity established under any other Act, other than a company established under the Companies Act 1981, nor to any school for the time being established in Bermuda, unless the Registrar is of the opinion, after application in writing by such an entity or school, that it would be in the public interest for the entity or school to be registered under the Act and subject to its requirements.”.

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

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

- (a) in regulation 2(1)—
 - (i) by inserting in the appropriate alphabetical order, the following—
 - “betting” has the same meaning as in section 2(1) of the Casino Gaming Act 2014;
 - “eGaming” has the same meaning as in section 2(1) of the Casino Gaming Act 2014;

“patron account” has the same meaning as in section 2(1) of the Casino Gaming Act 2014;” and

(ii) in the definition of “occasional transaction” by: (a) deleting the word “or” at the end of sub-paragraph (a); (b) deleting and substituting the full-stop at the end of sub-paragraph (b) with “; or”; and (c) by inserting after paragraph (b) the following—

“(c) in the case of a casino operator, a transaction or series of linked transactions where a total cash payment is received from or distributed by the operator of a casino to a patron of a casino (in any currency) that is equivalent to—

(i) in the case of gaming, BMD\$3,000; or

(ii) in the case of betting, BMD\$1,000;”;

(b) in regulation 5 by deleting the word “and” at the end paragraph (d) and placing the same at the end of paragraph (e), and inserting after paragraph (e) the following—

“(f) in the case of a person purporting to act on behalf of a customer, verifying that the person is in fact so authorised and identifying and verifying the identity of that person.”;

(c) in regulation 6 by—

(i) inserting after paragraph (1A) the following—

“(1B) The customer due diligence legal requirements for legal persons or legal arrangements shall include—

(a) full name and trade name;

(b) date and place of incorporation, registration or establishment;

(c) registered office address and, if different, mailing address;

(d) address of the principal place of business;

(e) whether and where listed on a stockexchange;

(f) official identification number (where applicable);

(g) name of regulator (where applicable);

(h) legal form, nature and purpose (e.g. discretionary, testamentary, bare); and

(i) control and ownership.”;

(ii) revoking and substituting regulation 6(5) with the following—

“(5) Where a relevant person suspects that a transaction relates to money laundering or terrorist financing and he believes that performing customer due diligence measures may tip-off the customer or potential customer to that suspicion, he shall not perform the customer due diligence measures.”;

(d) in regulation 8A(2)—

- (i) in sub-paragraph (a) by deleting and substituting the words “gaming available before entry to any casino premises where such facilities or games are provided” with the words “, eGaming is available”; and
- (ii) in sub-paragraph (b) by deleting the words “if the specified conditions are met,” and by deleting and substituting “2,000” with “3,000”, where it appears;

(e) by revoking regulation 8A(3);

(f) in regulation 8B—

- (i) by inserting after paragraph (1) the following—

“(1A) A patron account may only be opened by and in the name of a natural person.”;

- (ii) in paragraph (2) by inserting after the word “establish” the words “and verify using reliable and independent sources”; and
- (iii) by revoking and substituting paragraphs (5) and (6) with the following paragraph (5)—

“(5) A casino operator shall not permit any person other than the patron to deposit funds into his patron account and shall verify the identity of any person making such a deposit to ensure compliance with this paragraph.”;

(g) in regulation 8C—

- (i) in paragraph (1)(a) by deleting the word “and” at the end of sub-paragraph (ii) and inserting after sub-paragraph (iii) the following—

“(iv) the offer of foreign currency exchange services; and

(v) the exchange of small denomination notes for larger denominations including, to the greatest extent possible, preventing self-service kiosks being used for such a purpose.”;

- (ii) in paragraph (1) by revoking sub-paragraph (b) and by substituting the same with the following—

“(b) any receipt or payment by a casino operator of funds from or to an account otherwise than in the name of the patron;

- (ba) any issuance of a receipt of a cheque or other negotiable instrument other than in the name of the patron;”
- (iii) in paragraph (1) by deleting the full-stop at the end of sub-paragraph (c) and inserting a semi-colon, and by inserting after sub-paragraph (c) the following—
 - “(d) the placing of a bet, whether by way of gaming, eGaming or betting, on behalf of a third party;
 - (e) the placing of a bet, whether by way of gaming, eGaming or betting, by a patron where that patron has failed within a reasonable time to provide proof of identity;
 - (f) the placing of a bet or a series of bets with the bookmaker in cash in a sum greater than \$1,000;
 - (g) the structuring of transactions in order to avoid any of the requirements or prohibitions set out in these Regulations;
 - (h) the use of cash in any game in which the operator does not have a stake in the outcome of the game;
 - (i) the use of safety deposit facilities or credit facilities by any patron who does not have a valid patron account;
 - (j) the acceptance by a slot machine or kiosk of more than one currency in any single transaction;
 - (k) the payment by a slot machine or kiosk in a currency other than the single currency used during the transaction;
 - (l) the exchange of casino chips for currency other than Bermuda dollars, unless the patron provides a valid passport and proof of residential address satisfactory to the casino operator to establish that the patron is resident in a jurisdiction other than Bermuda.”;
- (iv) by inserting after paragraph (2) the following—

“(3) Paragraphs (1)(b) and (1)(ba) shall not apply where the Commission has provided a written waiver of the prohibition in accordance with approved casino marketing agent agreements.”;

- (h) in regulation 9(1) by inserting after sub-paragraph (c) the following—

“(ca) in the case of a patron in a casino, shall not permit that patron to place any bet, or to undertake any further transactions of any nature, until such time as he has been able to apply the customer due diligence measures;”;

- (i) in regulation 11 —

(i) by revoking and substituting paragraph (1) with the following—

“(1) A relevant person must apply on a risk-sensitive basis enhanced customer due diligence measures to business relationships with customers—

- (a) in accordance with paragraphs (2) to (4);
- (aa) in instances where a person or a transaction is from or in a country that has been identified as having a higher risk by the Financial Action Task Force;
- (ab) in instances where a person or a transaction is from or in a country which represents a higher risk of money laundering, corruption, terrorist financing or being subject to international sanctions;
- (b) in any other situation which by its nature may present a higher risk of money laundering or terrorist financing.”;

(ii) by inserting after paragraph (3) the following—

“(3A) Where a casino operator knows or has reason to suspect that the patron—

- (a) has fiduciary obligations that may create a risk of the misappropriation of funds;
- (b) is associated with individuals or entities known to be connected to the illicit generation of funds or the laundering of such funds;
- (c) has sources of wealth or income incommensurate with his gaming activity;
- (d) has been bankrupt; or
- (e) has a prior history of criminal or dishonest conduct,

the casino operator must apply on a risk-sensitive basis enhanced customer due diligence measures as set out in paragraph (3B).

(3B) Enhanced customer due diligence required under paragraph (3A) must compensate for the higher risk posed on a case by case basis, and such measures may include, but not be limited to, one or more of the following—

- (a) assessing whether the patron is the beneficial owner of all funds proposed for use in gaming;
- (b) establishing the source of funds proposed for use in gaming;
- (c) ensuring that the patron has no prior history associated with AML/ATF offences;
- (d) increasing the frequency of the monitoring of the patron’s gaming activity.”;

(iii) in paragraph (6A)—

- (A) in sub-paragraph (b) by revoking and substituting the reference number “2(1)(a)” with “2(3)(a)”;
 - (B) in sub-paragraph (c) by revoking and substituting the reference number “2(1)(d)”, with “2(3)(d)”;
 - (C) in sub-paragraph (d) by revoking and substituting the reference number “2(1)(e)”, with “2(3)(e)”;
- (j) in regulation 12—
- (i) in paragraph (1) by revoking and substituting the words “An AML/ATF regulated financial institution” with the words “A relevant person”; and
 - (ii) in paragraph (2) by revoking and substituting the words “AML/ATF regulated financial institution” with the words “relevant person”;
 - (iii) by inserting after paragraph (3) the following—

“(4) For the avoidance of doubt, the provisions of this regulation apply to branches and subsidiaries located inside and outside of Bermuda.”;
- (k) in regulation 14 by revoking and substituting paragraph (2)(b)(ii) with the following—
- “(ii) supervised for the purposes of these Regulations by a designated professional body in accordance with section 4 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008;”;
- (l) in regulation 16—
- (i) in paragraph (3) by revoking and substituting the words “An AML/ATF regulated financial institution” with the words “A relevant person”; and
 - (ii) in paragraph (4) by revoking and substituting the words “An AML/ATF regulated financial institution” with the words “A relevant person”.

Amends the Charities Regulations 2014

9 The Charities Regulations 2014 are amended—

- (a) in regulation 9(2)(a) by revoking and substituting “35,000” with “50,000”;
- (b) in regulation 9(2)(b) by revoking and substituting “35,000” with “50,000”;
- and
- (c) by inserting after regulation 9(9) the following—

“(10) In accordance with section 36 of the Act, the Registrar may exempt a charity, under this regulation that is above the audit threshold established under regulation 9(2)(c) from having to file audited financial statements, provided he—

- (a) is satisfied that submitting audited financial statements would cause severe financial hardship for the charity might undermine its viability as a going concern;
- (b) is of the opinion that receiving unaudited financial statements would not impede his ability to assess whether the charity is fit and proper to be registered under the Charities Act 2014, and whether it is in compliance with all statutory requirements; and
- (c) deems the charity to be at low risk for being used—
 - (i) for money laundering; or
 - (ii) for terrorist financing.”.

Amends the Charities (Anti-Money Laundering, Anti-Terrorist Financing and Reporting) Regulations 2014

10 The Charities (Anti-Money Laundering, Anti-Terrorist Financing and Reporting) Regulations 2014 are amended in regulation 9(1) by—

- (a) revoking “; and” at the end of sub-paragraph (b);
- (b) revoking and substituting the comma at the end of sub-paragraph (c) with “; and”; and
- (c) inserting next after sub-paragraph (c) the following—
 - “(d) in the case of a charity identified by the Registrar as having a higher AML/ATF risk, include such other information, and be in such form, as the Registrar may reasonably require in order to facilitate enhanced monitoring by the Registrar of the charity’s risk,”.

Commencement

11 (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 different provisions of this Act to come into operation.

PROCEEDS OF CRIME AMENDMENT (NO. 3) BILL 2017

EXPLANATORY MEMORANDUM

This Bill seeks to amend the Proceeds of Crime Act 1997, the Trustee Act 1975, the Financial Intelligence Agency Act 2007, the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008, the Casino Gaming Act 2014, the Charities Act 2014, the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008, the Charities Regulations 2014 and the Charities (Anti-Money Laundering, Anti-Terrorist Financing and Reporting) Regulations 2014:

Clause 1 is the citation.

Clause 2 amends the Proceeds of Crime Act 1997 (the “principal Act”): (a) in section 25(1) by repealing and replacing the words “61 of the Criminal Code Act 1907 (limits on periods of imprisonment in default of payment of fines etc)” with the words “63 of the Criminal Jurisdiction and Procedure Act 2015 (period of imprisonment in default of fine or costs)”, thereby correcting a cross-reference within this section; (b) in section 49(2) by adding the Executive Director of the Bermuda Casino Gaming to the list of members that constitute the National Anti-Money Laundering Committee.

Clause 3 amends the Trustee Act 1975: (a) in section 1 by adding the definitions for “non-professional trustee” and “professional trustee”; (b) by inserting section 13AA, thereby obligating non-professional trustees to keep or cause to be kept accurate records with respect to their knowledge of proof of identity, residential address and relevant information about a: (i) settlor; (ii) protector; and (iii) beneficiaries of the trust of which he is a trustee. The new section 13AA also sets out the time duration that the subject records are to be kept by the trustee; and (c) by inserting section 13AB, thereby exempting non-professional trustees from the requirements of section 13AA(1) and (3). Clause three also inserts section 54A, thereby establishing a civil penalty regime by which a court can impose a civil penalty, where a non-professional trustee acts in contravention of section 13AA. The amendments being made by way of clause 3 also: (i) establish an appeals mechanism by which appeals against the imposition of civil penalties can be made; and (ii) empower the Chief Justice to make rules for appeals against the imposition of civil penalties.

Clause 4 amends the Financial Intelligence Agency Act 2007: (a) in section 14(1) by a new paragraph (aa), thereby broadening the functions of the FIA to include the receiving, gathering, storing, analysing and disseminating information relating to currency transaction reports filed with them pursuant to section 9 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 and section 132A of the Casino Gaming Act 2014; and (b) in section 18(1), adding paragraph (g), to allow the FIA to disclose information to the Bermuda Casino Gaming Commission, thereby allowing the Commission to carry out its functions under any statutory provision.

Clause 5 repeals and replaces section 18A of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008, thereby allowing a competent authority to exercise the powers contained in Part 3 of Chapter 3 of

the Act, in order to determine if a non-financial business or profession, specified in Schedule 2 of that Act, is carrying on business contrary to section 9 of that Act.

Clause 6 amends the Casino Gaming Act 2014, inserting section 132A, thereby requiring a casino operator to maintain a record of all single transactions in which a patron either provides to or removes from the casino an amount of \$10,000 or more, in accordance with the criteria set out in section 132A.

Clause 7 amends the Charities Act 2014: (a) in section 11(1), by adding paragraph's (da), (db), and (dc), thereby expanding the Registrar's functions to include: (a) an ability to implement AML/ATF risk-based supervisory or monitoring programmes; the establishment criteria to be used in determining AML/ATF risk profiles for charities in order to facilitate risk-based supervision; (b) by amending section 23, adding subsection (1A), thereby clarifying that the Registrar shall not be required to give notice of action to a charity if he is reasonably of the opinion that giving such notice would prejudice: (i) a proposed investigation; (ii) an investigation; or (iii) the interest of a charity's beneficiaries; (c) adding subsection (1B), thereby clarifying when and on what grounds can the Registrar freeze payments to and from a charity; (d) adding subsection (1C) and (1D), thereby setting out the manner in which an appeal is to be made in relation to a freezing decision made by the Registrar; (e) in section 23: (i) by inserting subsection (8), thereby broadening the powers of the Registrar, in instances where a charity's registration has been cancelled in accordance with the provisions of section 23(7), order a charity to wind-up its affairs and order the transfer of any of the charity's remaining net assets to an existing registered charity having similar aims and purposes; (ii) by inserting subsection (9), thereby allowing an affected charity, where the Registrar is satisfied that there is no existing registered charity having similar aims and purposes in accordance with the new subsection (8), to render any net assets remaining as bona vacantia; (f) by inserting after section 23 section 23A, thereby allowing the Registrar to make rules for the provision of how the passing of a charity's remaining assets as bona vacantia shall be dealt with under the Charities Act 2014; (g) by inserting section 25A, thereby setting out the Registrar's general power to institute on-site inspections of a charity; (h) by inserting: (i) section 47A, thereby setting out: the civil penalties for failure to comply with regulations, made in accordance with this Act, in respect to charities for the purposes of detecting and preventing money laundering and the financing of terrorism; (ii) sections 47B to 47D thereby setting out the means by which a person, on behalf of a charity, can appeal a decision, made by the Registrar, under section 47A; (iii) section 47F, thereby establishing the threshold amount of \$50,000, for the purposes of exempting a charity from having to appoint a compliance officer who has received approved AML/ATF training; from establishing and implementing AML/ATF systems and controls; and from having to retain specified records for specified periods; and (i) by repealing and replacing section 50(1), thereby indicating that Parts 3 and 5 shall not apply to: (i) any entity established under any other Act other than a company established under the Companies Act 1981; (ii) any school for the time being established in Bermuda unless the Registrar is of the opinion, after application in writing by that entity or school, that it would be in the public interest for them to be registered under the Act and subject to its requirements.

Clause 8 amends the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008: (a) in regulation 2(1) by adding the definitions for i. betting; ii. eGaming; iii. patron account; and (iv) by broadening the definition for "occasional

transaction” to include casino operator transactions; (b) in regulation 5 by adding paragraph (f), thereby broadening the meaning of customer due diligence to include, in the case of a person purporting to act on behalf of a customer, the obligation to verify that the person is in fact authorised and identifying and verifying the identity of that person; (c) in regulation 6 by: (i) adding paragraph (1B), thereby setting out the customer due diligence legal requirements for legal persons or legal arrangements; (ii) revoking and substituting regulation 6(5), thereby mandating that where a relevant person forms a suspicion that a transaction relates to money laundering or terrorist financing and believes that performing such customer due diligence measures may tip-off the customer or potential customer of that suspicion, he shall not perform the customer due diligence measures; (d) in regulation 8A(2): (i) in paragraph (a) by revoking and replacing the words “gaming available before entry to any casino premises where such facilities or games are provided” with the words “eGaming available”, thereby requiring a casino operator to establish and verify the identity of all patrons to whom the casino operator makes facilities available for eGaming; (ii) in paragraph (b) by revoking the words “if the specified conditions are met” and by revoking and substituting “2,000”, where it appears, with “3,000”; (e) by revoking regulation 8A(3); (f) in regulation 8B: (i) by inserting paragraph (1A), thereby mandating that a patron account can only be opened by and in the name of a natural person; (ii) in paragraph (2) by inserting after the word “establish” the words “and verify using reliable and independent sources”, thereby mandating that casino operators, in relation to casinos and patron accounts verify the identity of casino patrons using reliable and independent sources; (iii) by revoking paragraphs (5) and (6) and by only substituting paragraph (5), thereby mandating that a casino operator: (i) shall not permit any person other than a patron to deposit funds into a patron account; (ii) shall verify the identity of any person making a deposit into a patron account in order to ensure compliance with paragraph (5); (g) in regulation 8C: (i) in paragraph (1)(a) by adding paragraphs (iv) and (v) thereby adding, respectively, the offer of foreign currency exchange services and the exchange of small denomination notes for larger denominations including, to the greatest extent possible, preventing self-service kiosks being used for such purposes, to the list of prohibited transactions under regulation 8C(1) (a); (ii) in paragraph (1)(b) by revoking and substituting paragraph (b) with paragraphs (b) and (ba), thereby adding: any receipt or payment from or to a casino operator of funds to an account otherwise than in the name of the patron; and any issuance of a receipt of a cheque or other negotiable instrument other than in the name of the patron, respectively, to the list of prohibited transactions under section 8C(1) by way of paragraphs (b) and (ba); (iii) in paragraph (1) by adding: (i) paragraph (d), thereby adding the placing of a bet, whether by way of gaming, eGaming or betting, on behalf of a third party; (ii) paragraph (e), thereby adding the placing of a bet, whether by way of gaming, eGaming or betting, by a patron where that patron has failed within a reasonable time to provide proof of identity; (iii) paragraph (f), thereby adding the placing of a bet or a series of bets with the bookmaker in cash in a sum greater than \$1,000; (iv) paragraph (g), thereby adding the structuring of transactions in order to avoid any of the requirements or prohibitions set out in these Regulations; (v) paragraph (h), thereby adding the use of cash in any game in which the operator does not have a stake in the outcome of the game; (vi) paragraph (i), thereby adding the use of safety deposit facilities or credit facilities by any patron who does not have a valid patron account; (vii) paragraph (j), thereby adding the acceptance by a slot machine or kiosk of more than one currency in any single transaction; (viii) paragraph (k), thereby adding the payment by a slot machine or kiosk in a currency other than the single currency used

during the transaction; and (ix) paragraph (l), thereby adding the exchange of casino chips for currency other than Bermuda dollars unless the patron provides a valid passport and proof of residential address satisfactory to the operator to establish that the patron is resident in a jurisdiction other than Bermuda, to the list of prohibited transactions under regulation 8C(1); (iv) by inserting after paragraph (2), paragraph (3), thereby clarifying that paragraphs (1)(b) and (1)(ba) shall not apply where the Commission has provided a written waiver of the prohibition in accordance with approved casino marketing agent agreements; (h) in regulation 9(1) by inserting paragraph (ca), thereby adding the criteria that, in the case of a patron in a casino, he shall not permit that patron to place any bet, or to undertake any further transactions of any nature, until such time as he has been able to apply the customer due diligence measures, to the criteria of when a relevant person shall cease operations in accordance with regulation 9(1); (i) in regulation 11: (i) by revoking and substituting paragraph (1), thereby broadening the requirements for enhanced due diligence; (ii) by inserting paragraph (3A), thereby mandating that where a casino operator knows or has reason to suspect that a patron: (a) has fiduciary obligations that may create a risk of the misappropriation of funds; (b) is associated with individuals or entities known to be connected to the illicit generation of funds or the laundering of such funds; (c) has sources of wealth or income incommensurate with his gaming activity; (d) has been bankrupt; or (e) has a prior history of criminal or dishonest conduct, that he must apply on a risk-sensitive basis enhanced customer due diligence measures; in paragraph (6A)(b), (c) and (d) by correcting the respective cross-referencing; (j) in regulation 12: in paragraph (1) by (i) revoking and replacing the words “An AML/ATF regulated financial institution” with the words “A relevant person”, thereby making the word usage consistent with that being made by way of this Amendment Act; (ii) in paragraph (2) by revoking and replacing the words “AML/ATF regulated financial institution” with the words “relevant person”, thereby making the word usage consistent with that being made by way of this Amendment Act; and (ii) inserting after paragraph (3) paragraph (4), thereby clarifying that, for the avoidance of doubt, the provisions of this regulation apply to branches and subsidiaries located inside and outside of Bermuda; (k) in regulation 14 by revoking and replacing paragraph (2)(b)(ii), thereby mandating that a relevant person may rely on a person who falls within paragraph (2) of regulation 14, provided, inter alia, he is supervised for the purposes of the Regulations by a designated professional body in accordance with section 4 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008; and (l) in regulation 16 by: (i) revoking and replacing the words “An AML/ATF regulated financial institution” with the words “A relevant person”, thereby making the word usage consistent with that being made by way of this amendment Act; (iii) revoking and replacing the words “An AML/ATF regulated financial institution” with the words “A relevant person”, thereby making the word usage consistent with that being made by way of this amendment Act.

Clause 9 amends the Charities Regulations 2014: (a) in regulation 9(2)(a) and 9(2)(b) by deleting and substituting “35,000” with “50,000”, thereby raising these threshold amounts to be on par with those being made in the Charities Act 2014 by way of this Bill; and (b) by inserting regulation 9(10), thereby giving the Registrar the authority to exempt a charity from the filing of audited statements, provided it satisfies the criteria as set out in regulation 9(10).

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Clause 10 amends the Charities (Anti-Money Laundering, Anti-Terrorist Financing and Reporting) Regulations 2014: in regulation 9(1), adding paragraph (d), thereby requiring charity trustees of a registered charity to prepare for each financial year an annual report in accordance with section 38(1) of the Charities Act 2014 and, in the case of a charity identified by the Registrar as having a higher AML/ATF risk, to include such other information, and be in such form, as the Registrar may reasonably require in order to facilitate enhanced monitoring by the Registrar of the charity's risk.

Clause 11 is the commencement provision.