

WK: draft: 1May 2008

**A BILL
entitled**

"PROCEEDS OF CRIME AMENDMENT ACT 2008"

WHEREAS it is expedient to make provision for the forfeiture of the instrumentalities of a money laundering offence; for criminalizing the possession of proceeds of crime, for the protection of certain disclosures, for the appointment of a chairman of the National Anti-Money Laundering Committee; and for connected matters:

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:—

Short title and commencement

1. This Act may be cited as the Proceeds of Crime Amendment Act 2008 and shall come into operation on such day as the Minister of Justice may appoint by notice published in the Gazette; and the Minister may appoint different days for different provisions.

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Interpretation

2. In this Act, "principal Act" means the Proceeds of Crime Act 1997.

Section 7 of principal Act amended

3. Section 7 (1) of the principal Act is amended by inserting in their alphabetical order the following definitions –

“financial institution” means a person who —

- (a) carries on deposit-taking business within the meaning of section 4 of the Banks and Deposit Companies Act 1999;
- (b) carries on investment business within the meaning of section 3 of the Investment Business Act 2003;
- (c) is an insurer (and not a reinsurer) registered under section 4 of the Insurance Act 1978 who carries on long term business falling within paragraphs (a) or (c) of the definition of “long-term business” in section 1(1) of the Insurance Act 1978;
- (d) is an insurance manager or broker registered under section 10 of the Insurance Act 1978 in so far as he acts as a manager or broker in connection with long term business (other than reinsurance business) falling within paragraphs (a) or (c) of the definition of “long-term business” in section 1(1) of the Insurance Act 1978;
- (e) carries on the business of a fund administrator within the meaning of section 2(2) of the Investment Funds Act 2006;
- (f) carries on money service business within the meaning of section 20AA of the Bermuda Monetary Authority Act 1969;
- (g) carries on trust business within the meaning of section 9(3) of the Trusts (Regulation of Trust Business) Act 2001; and
- (h) operates an investment fund within the meaning of section 3 of the Investment Funds Act 2006;
- (i) carries on the business of a credit union within the meaning of the Credit Unions Act 1982;

“professional accountant” means a person who is a member of the Institute of Chartered Accountants of Bermuda;

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“professional legal adviser” means a barrister and attorney who is a member of the Bermuda Bar Association;

”regulations” means regulations made under section 49(3);

“relevant person” means a person to whom, in accordance with section 49(3) and (4), regulations apply.

Section 44 of principal Act amended

4. Section 44 (3) of the principal Act is amended by repealing paragraph (a) and substituting the following paragraph –

“(a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information however imposed; and”.

Section 45 of principal Act amended

5. Section 45 of the principal Act is amended –

(a) in subsection (1) by deleting “another person’s proceeds” and substituting “the proceeds”;

(b) in subsection (5) –

(i) by deleting “, another persons” and substituting “the proceeds”;

(ii) by repealing paragraph (a) and substituting the following paragraph –

“(a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information however imposed; and”.

Section 46 of principal Act amended

6. Section 46(1) of the principal Act is amended by repealing the tailpiece and substituting the following –

“the disclosure shall not be treated as a breach of any restriction upon the disclosure of information however imposed.”

Section 49 of principal Act amended

7. Section 49 of the principal Act is amended –

(a) in subsection (1) –

(i) by repealing paragraph (b);

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- (ii) in paragraph c), by deleting “Minister of Finance” and substituting “Minister”;
- (b) in subsection (2) –
 - (i) by deleting paragraph (a) and substituting the following –
 - “(a) the Chairman,”;
 - (ii) by inserting the following paragraph after paragraph (a) –
 - “(aa) the Solicitor General,”
 - (iii) by deleting paragraph (da) and substituting the following –
 - “(da) the Director of the FIA,”;
 - (iv) by inserting the following paragraphs after paragraph (e) –
 - “(ea) the Director Public Prosecutions;
 - (eb) the Permanent Secretary Ministry of Justice;
 - (ec) the Collector of Customs;”
 - (v) by deleting the tailpiece.
- (c) by inserting the following subsections after subsection (2) –
 - “(2A) The Minister shall appoint a person with relevant experience to be the Chairman of the Committee for a term not exceeding three years, which may be renewed.
 - (2B) A person is disqualified for appointment as chairman if he is a member of either House of the Legislature.
 - (2C) A person holding office as chairman may at any time resign by giving notice in writing to the Minister.
 - (2D) The chairman shall forthwith vacate his office if he becomes disqualified for appointment.
 - (2E) The Minister may by notice in writing remove the chairman from office if satisfied that —

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- (a) he has without reasonable excuse been absent from three consecutive meetings of the Committee;
 - (b) he has been convicted (whether before or after his appointment) of a criminal offence;
 - (c) he is an undischarged bankrupt or his estate has been sequestrated and he has not been discharged;
 - (d) he has made a composition or arrangement with, or granted a trust deed for, his creditors; or
 - (e) he is otherwise unable or unfit to carry out his functions as chairman.”.
- (d) paragraphs (a) and (aa) of subsection (4) are repealed and the following substituted—
- “(a) require –
- (i) financial institutions;
 - (ii) professional legal advisers and accountants in independent practice, who by way of business provide legal, accountancy or notarial services to other persons when participating in financial or real property transactions concerning a class of activity specified in subsection (5); and for this purpose, a person participates in a transaction by assisting in the planning or execution of the transaction or otherwise acting for or on behalf of a client in the transaction; and
 - (iii) such other persons as the Minister may prescribe;
- to establish and maintain procedures relating to the identification of clients, the keeping of records, the making of reports, the vetting of employees, the verification of the effective design and operation of anti-money laundering systems and the training of employees;”
- (e) by repealing paragraph (c);

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- (f) in subsection (5), by deleting “(aa)” and substituting “(a)”;
- (g) by repealing subsection (6).

Section 49A of principal Act is repealed and replaced

8. Section 49A of the principal Act is repealed and the following is substituted –

“Use of guidance

49A In determining whether a person has committed an offence under sections 43, 44, 45, 46 and 47, a court shall consider whether a defendant has followed any relevant guidance which was at the time—

- (a) issued by a supervisory authority;
- (b) approved by the Minister; and
- (c) published in the Gazette.”.

Section 52B added

9. The principal Act is amended by adding the following section after section 52A –

“FORFEITURE ORDERS

Forfeitures

52B (1) The court by or before which a person is convicted of a money laundering offence may make a forfeiture order in accordance with the provisions of this section.

(2) Where a person is convicted of a money laundering offence, the court may order the forfeiture of any property which, at the time of the offence, he had in his possession or under his control and which he used or intended to use for the purposes of the offence.

(3) Where a person is convicted of a money laundering offence, the court may order the forfeiture of any property which wholly or partly, and directly or indirectly, is received by any person as a payment or other reward in connection with the commission of the offence.

(4) Where a person other than the convicted person claims to be the owner of or otherwise interested in anything which can be forfeited by an order under this section, the court shall give him an opportunity to be heard before making an order.”.

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Section 55A of principal Act amended

10. Section 55A (3) of the principal Act is amended by deleting “Minister may after consulting the National Anti-Money Laundering Committee” and substituting “Minister of Finance and the Minister of Justice after consulting the National Anti-Money Laundering Committee, may”.

Section 55B of principal Act amended

11. Section 55B(3) of the principal Act is amended by deleting “Minister” and substituting “Minister of Finance”.

Section 56 of principal Act repealed and replaced

12. Section 56 of the principal Act is repealed and replaced by the following –

“Offences by bodies corporate etc.

56. (1) If an offence under this Act committed by a body corporate is shown—

- (a) to have been committed with the consent or the connivance of an officer of the body corporate; or
- (b) to be attributable to any neglect on his part,

the officer as well as the body corporate is guilty of an offence and liable to be proceeded against and punished accordingly.

(2) If an offence under this Act committed by a partnership is shown—

- (a) to have been committed with the consent or the connivance of a partner; or
- (b) to be attributable to any neglect on his part,

the partner as well as the partnership is guilty of an offence and liable to be proceeded against and punished accordingly.

(3) If an offence under this Act committed by an unincorporated association (other than a partnership) is shown—

- (a) to have been committed with the consent or the connivance of an officer of the association; or
- (b) to be attributable to any neglect on his part,

that officer as well as the association is guilty of an offence and liable to be proceeded against and punished accordingly.

(4) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body.

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(5) Proceedings for an offence alleged to have been committed by a partnership or an unincorporated association shall be brought in the name of the partnership or association (and not in that of its members).

(6) A fine imposed on the partnership or association on its conviction of an offence is to be paid out of the funds of the partnership or association.

(7) In this section—

“officer”—

(a) in relation to a body corporate, means a director, manager, secretary, chief executive, member of the committee of management, or a person purporting to act in such a capacity; and

(b) in relation to an unincorporated association, means any officer of the association or any member of its governing body, or a person purporting to act in such capacity; and

“partner” includes a person purporting to act as a partner.”.