

A BILL

entitled

PROCEEDS OF CRIME (MISCELLANEOUS) (NO 3) ACT 2018

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WHEREAS it is expedient to amend the Proceeds of Crime Act 1997, the Financial Intelligence Agency Act 2007, the Anti-Terrorism (Financial and Other Measures) Act 2004 and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008;

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:

PROCEEDS OF CRIME (MISCELLANEOUS) (NO 3) ACT 2018

Citation

1 This Act may be cited as the Proceeds of Crime (Miscellaneous) (No 3) Act 2018.

Amendment of the Proceeds of Crime Act 1997

Amends section 49A

2 The Proceeds of Crime Act 1997 is amended in section 49A as follows—

- (a) by deleting the words—
 - (i) “an AML/ATF regulated financial institution” wherever they appear, and substituting the words “a relevant person”;
 - (ii) “AML/ATF regulated financial institution” wherever they appear, and substituting the words “relevant person”; and
 - (iii) “AML/ATF regulated financial institutions” wherever they appear, and substituting the words “relevant persons”;
- (b) in subsection (1)(a), by inserting after the words “Financial Action Task Force” the words “or the Caribbean Financial Action Task Force”.

Amends sections 49D to 49I

3 The Proceeds of Crime Act 1997 is amended in sections 49D to 49I as follows—

- (a) by deleting the words “an AML/ATF regulated financial institution” wherever they appear, and substituting the words “a relevant person”;
- (b) by deleting the words “AML/ATF regulated financial institution” wherever they appear, and substituting the words “relevant person”; and
- (c) by deleting the words “AML/ATF regulated financial institutions” wherever they appear, and substituting the words “relevant persons”.

Amends section 50

4 The Proceeds of Crime Act 1997 is amended in section 50(3) by deleting the words “three months” wherever they appear and substituting the words “six months”.

Amendment of the Financial Intelligence Agency Act 2007

Amends section 14

5 The Financial Intelligence Agency Act 2007 is amended in section 14(2) by deleting the words “subsection (1)(a)” and substituting the words “subsection (1)”.

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

Amends section 2

6 The Anti-Terrorism (Financial and Other Measures) Act 2004 is amended in section 2 by inserting in the appropriate alphabetical order the following—

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“relevant person” means a person to whom, in accordance with section 12A, regulations apply;”.

Amends section 12B

7 The Anti-Terrorism (Financial and Other Measures) Act 2004 is amended in section 12B as follows—

- (a) in subsection (1), by deleting the words—
 - (i) “an AML/ATF regulated financial institution” wherever they appear and substituting the words “a relevant person”;
 - (ii) “AML/ATF regulated financial institution” wherever they appear and substituting the words “relevant person”; and
 - (iii) “AML/ATF regulated financial institutions” wherever they appear and substituting the words “relevant persons”;
- (b) in subsection (1)(a), by inserting after the words “Financial Action Task Force” the words “or the Caribbean Financial Action Task Force,”.

Amends sections 12D and 12F to 12I

8 The Anti-Terrorism (Financial and Other Measures) Act 2004 is amended in section 12D, and sections 12F to 12I as follows—

- (a) by deleting the words “an AML/ATF regulated financial institution” wherever they appear and substituting the words “a relevant person”;
- (b) by deleting the words “AML/ATF regulated financial institution” wherever they appear and substituting the words “relevant person”; and
- (c) by deleting the words “AML/ATF regulated financial institutions” wherever they appear and substituting the words “relevant persons”.

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

Amends regulation 5

9 The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 are amended in regulation 5 by revoking paragraph (e) and substituting the following—

- “(e) obtaining information on and taking steps to understand the purpose and intended nature of the business relationship, and the nature of the customer’s business; and”.

Amends regulation 8

10 The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 are amended in regulation 8 as follows—

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- (a) in paragraph (3), by inserting after the words “business relationship” (where they first appear) the words “or after the establishment of a business relationship or an account has been opened as provided under paragraphs (4) and (5)”;
- (b) in paragraph (4), by inserting after the word “may” the words “, subject to paragraph (3),”; and
- (c) in paragraph (5)—
 - (i) by inserting after the word “may” the words “, subject to paragraph (3),”;
 - (ii) by deleting the word “bank” wherever it appears.

Amends regulation 14

11 The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 are amended in regulation 14 by inserting after paragraph (1) the following—

“(1A) A real estate broker licensed under the Real Estate Brokers’ Licensing Act 2017 may rely on the customer due diligence measures undertaken by another real estate broker licensed in Bermuda under that Act, if the relevant conditions set forth in paragraph (1)(a) and (b) are complied with.”.

Amends regulation 16

12 The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 are amended in regulation 16(4), by deleting the words “as soon as reasonably practicable” and substituting the words “without delay”.

Amends regulation 18A

13 The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 are amended in regulation 18A, by deleting the words “AML/ATF regulated financial institution” and substituting the words “relevant person”.

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EXPLANATORY MEMORANDUM

This Bill seeks to amend the Proceeds of Crime Act 1997, the Financial Intelligence Agency Act 2007, the Anti-Terrorism (Financial and Other Measures) Act 2004 and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 to further enhance Bermuda's AML/ATF framework as set forth in those Acts and Regulations.

Clause 1 provides a title for the Bill.

Clause 2 amends section 49A of the Proceeds of Crime Act 1997 to include the Caribbean Financial Action Task Force ("CFATF"). This clause also amends sections 49A to include regulated non-financial businesses and professions within the scope of persons to whom the Minister may issue directions under, and in accordance with, that provision.

Clause 3 amends sections 49D, and 49F to 49I of the Proceeds of Crime Act 1997 so as to include RNFBCPs within the scope of persons to whom the Minister may issue directions under, and in accordance with, those provisions.

Clause 4 amends 50 of the Proceeds of Crime Act 1997 to extend from three months to six months, the period for which seized property may be authorized for continued detention by the courts. The total maximum period for which any property can be detained under section 50 of the Act will remain two years.

Clause 5 amends section 14 of the Financial Intelligence Agency Act 2007 to clarify the information that the FIA is authorised to disseminate.

Clause 6 amends section 2 of the Anti-Terrorism (Financial and Other Measures) Act 2004 with respect to relevant persons.

Clause 7 amends section 12B of the Anti-Terrorism (Financial and Other Measures) Act 2004 to include CFATF. This clause also amends sections 12B to include regulated non-financial businesses and professions within the scope of persons to whom the Minister may issue directions under, and in accordance with, that provision.

Clause 8 amends sections 12D, and 12F to 12I of the Anti-Terrorism (Financial and Other Measures) Act 2004 to include RNFBCPs within the scope of persons to whom the Minister may issue directions under, and in accordance with, those provisions.

Clause 9 amends regulation 5 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 to specify 'nature of the business' among the due diligence requirements for all customers, whether or not they are legal persons.

Clause 10 amends regulation of 8 the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 to remove references to "bank" to ensure that the references to "account" will apply to a wide range of accounts that can be opened for a customer by a relevant person.

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Clause 11 amends regulation 14 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 to authorise real estate brokers licensed under the Real Estate Brokers' Licensing Act 2017 to rely on the customer due diligence measures undertaken by other real estate brokers so licensed in Bermuda, provided that the relevant conditions outlined in that regulation are complied with.

Clause 12 amends regulation 16 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 to ensure that the requirements in that regulation impute a certain degree of speed.

Clause 13 amends regulation 18A of the Proceeds of Crime Regulations 2008 to make it clear that the provision applies to all regulated entities (relevant persons) and not just to AML/ATF regulated financial institutions.