

VIRGIN ISLANDS

PROCEEDS OF CRIMINAL CONDUCT (AMENDMENT) ACT, 2008

ARRANGEMENT OF SECTIONS

Section

1. Short title.
2. Section 2 amended.
3. Section 4 amended.
4. Section 6 amended.
5. Section 8 amended.
6. Section 9 amended.
7. Sections 11A and 11B inserted.
8. Section 19 amended.
9. Section 20 amended.
10. Section 22 amended.
11. Section 23 amended.
12. Section 26 amended.
13. Section 27 repealed and replaced.
14. Section 27A inserted.
15. Section 28 amended.
16. Section 29 amended.
17. Section 30 amended.
18. Section 30A repealed and replaced.
19. Section 31 amended.
20. Section 32 amended.
21. Section 34B inserted.
22. Section 36 amended.
23. Section 37 amended.
24. Section 37A, 37B and 37C inserted
25. Section 38 amended.
26. Section 39 repealed.
27. Section 40 amended.
28. Section 41 repealed and replaced.

No. 3 of 2008

**Proceeds of Criminal Conduct
(Amendment) Act, 2008**

**Virgin
Islands**

I Assent

**(Sgd.) DAVID PEAREY,
Governor.
7th February, 2008**

VIRGIN ISLANDS

No. 3 of 2008

An Act to amend the Proceeds of Criminal Conduct Act, 1997 (No. 5 of 1997).

[Gazetted 8th February, 2008]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title.

1. This Act may be cited as the Proceeds of Criminal Conduct (Amendment) Act, 2008.

Section 2
amended.
No. 5 of 1997

2. Section 2 of the Proceeds of Criminal Conduct Act, 1997 (hereinafter referred to as “the principal Act”) is amended

- (a) in subsection (1),
 - (i) by deleting the semi-colon at the end of the definition of “criminal conduct” and adding the words “and, for the purposes of a confiscation order, includes an offence under the Drugs (Prevention of Misuse) Act;”;
 - (ii) by inserting in the appropriate alphabetical order, the following definitions:

“Agency” means the Financial Investigation Agency established under section 3 (1) of the Financial Investigation Agency Act, 2003;

“Commission” means the Financial Services Commission established under the Financial Services Commission Act, 2001;

“country” includes territory;

“court” means the High Court or the Magistrate’s Court;

“Steering Committee” means the Steering Committee established under section 3 (3) of the Financial Investigation Agency Act;”;

(iii) by deleting the semi-colon at the end of the definition of “defendant” and adding the words “and, for the purposes of a confiscation order, includes a person against whom proceedings have been instituted for an offence under the Drugs (Prevention of Misuse) Act;”;

(iv) by deleting “police officer” and its definition thereto and substituting the following:

““police officer” means the Director and an investigating officer of the Agency;”;

(b) by inserting after subsection (1), the following:

“(1A) Where in this Act provision is made

(a) for a report or a disclosure to be made to a police officer or the Steering Committee or a disclosure to be made by the Steering Committee, the requirement shall be considered to be complied with if it is made to or by the Agency; or

(b) conferring power on a police officer, that power may be exercised by or on the authority of the Agency;”;

(c) in subsection (5),

- (i) by inserting between the words “holds” and “an interest” in paragraph (a), the words “or obtains”;
 - (ii) by deleting the semi-colon at the end of paragraph (d) and adding the words “save for the purposes of the making of a confiscation order;”
 - (iii) by inserting between the words “offence are” and “concluded” in the opening paragraph of paragraph (g), the words “, subject to subsection (5A),”;
 - (iv) by inserting between the words “or 14 is” and “concluded” in the opening paragraph of paragraph (h), the words “, subject to subsection (5A),”; and
- (d) by inserting after subsection (5), the following subsection:
- “(5A) A proceeding or an application referred to in subsection (2) (g) and (h) respectively shall not be treated as concluded, until there is no further possibility of an appeal in respect of the proceeding or application.”.

Section 4 amended.

3. Section 3 of the principal Act is amended

- (a) by deleting subsection (2) and substituting it with the following:
 - “(2) Property is not realizable property if an order
 - (a) under section 29 of the Drugs (Prevention of Misuse) Act,
 - (b) under section 35 of the Drug Trafficking Offences Act, 1992,
 - (c) under article 15 of the Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002, or
 - (d) made pursuant to any other enactment,
 is in force in respect of the property.”;
- (b) by deleting subsection (4) and substituting it with the following:
 - “(4) For the purposes of subsection (3), an obligation has priority at any time if it is an obligation of the defendant to

- (a) pay an amount due in respect of a fine, or other order of a court, imposed or made on conviction of an offence, where the fine was imposed or order made before the confiscation order; or
- (b) pay a sum which, if the defendant had been adjudged bankrupt or was being wound up, would be among the preferential debts.”; and
- (c) in subsection (5) (a) (ii) by deleting the words “(other than a charging order)” and substituting them with the words “(other than a charging order under this Act, the Drug Trafficking Offences Act, 1992 or any other enactment)”.

4. Section 6 of the principal Act is amended

Section 6 amended.

- (a) by re-designating subsection (1) as subsection “(1C)” and providing the following subsections in their numerical order:

“(1) For the purposes of this section and sections 7 to 11B, a confiscation order may be made by a Magistrate or a judge of the High Court.

(1A) Where a confiscation order is made pursuant to subsection (1) by a Magistrate, it shall relate in monetary terms to a sum not exceeding hundred thousand dollars.

(1B) Where on the evidence before a Magistrate, the Magistrate concludes that a confiscation order to be made by him will or is likely to exceed the sum allowable under subsection (1A), he shall, notwithstanding anything to the contrary contained in any enactment,

- (a) sentence the defendant, if the defendant is not already sentenced; and
- (b) commit the defendant to a judge of the High Court for a confiscation order to be made in respect of the defendant.”;
- (b) in subsection (1C) as re-designated, by deleting the words “Where an offender is convicted of an offence” and substituting them with “Subject to subsection (1B), where an offender is convicted of an offence”;

(c) in subsection (3), by deleting the word “and” at the end of paragraph (a), re-paragraphing paragraph (b) as paragraph (c) and inserting a new paragraph (b) as follows:

“(b) exclude in the determination any property that is subject to a cash forfeiture order or a forfeiture order under the Drugs (Prevention of Misuse) Act, Drug Trafficking Offences Act, 1992, the Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002 or any other enactment; and”;

(d) in subsection (5) (a) by adding after the words “in the same proceedings”, the words “or in other proceedings under the Drugs (Prevention of Misuse) Act or the Drug Trafficking Offences Act, 1992”;

(e) in subsection (7) by deleting the words “pecuniary advantage” in the two places they occur and substituting them with “pecuniary or other quantifiable advantage”; and

(f) by deleting subsection (9) and substituting it with the following subsection:

“(9) In determining any question arising under this Act as to whether a person has benefitted from any offence or the amount to be recovered in the person’s case, proof shall be established on a balance of probabilities.”.

Section 8 amended.

5. Section 8 of the principal Act is amended in subsection (3) by deleting the words “six months” and substituting them with “eighteen months”.

Section 9 amended.

6. Section 9 of the principal Act is amended in subsection (3) by deleting the word “may” and substituting it with “shall”.

Section 11A and 11B inserted.

7. The principal Act is amended by inserting after section 11, the following sections:

“Powers to be exercised Where defendant has died or absconded. 11A. (1) Subsection (2) applies where a person has been convicted of an offence.

(2) If the prosecutor asks a court to proceed under this section, the court may make a confiscation order against the defendant if satisfied that the defendant has died or absconded.

(3) Subsection 4 applies where proceedings for an offence have been instituted against a person but have not been concluded.

(4) If the prosecutor asks a court to proceed under this section, the court may make a confiscation order against the defendant if satisfied that the defendant has absconded.

(5) The power conferred by subsection (4) may not be exercised at any time before the end of the period of two years beginning with the date which is, in the opinion of the court, the date on which the defendant absconded.

(6) In any proceedings on an application under this section,

(a) sections 9 (3) and 10 (4), (5), (6) and (7) shall not apply;

(b) the court shall not make a confiscation order against a person who has absconded unless it is satisfied that the prosecutor has taken reasonable steps to contact the person; and

(c) a person appearing to the court to be likely to be affected by the making of a confiscation order by the court shall be entitled to appear before the court and make representations.

Effect of conviction where the court has acted under section 11A.

11B. (1) Where the court has made a confiscation order by virtue of section 11A, it shall, in respect to the offence or any of the offences concerned,

(a) take account of the order before

(i) imposing any fine on the person;

(ii) making any order involving any payment by the person; or

(iii) making any order under section 29 of the Drugs (Prevention of Misuse) Act; and

(b) subject to paragraph (a), leave the order out of account in determining the appropriate sentence or other manner of dealing with the defendant.

(2) Where the court has made a confiscation order by virtue of section 11A and the defendant subsequently appears before the court to be sentenced in respect of the offence concerned, section 6 shall not apply so far as the defendant's appearance is in respect of that offence.”.

Section 19 amended.

8. Section 19 of the principal Act is amended by re-designating subsection (1) as subsection “(1A)” and providing the following subsection:

“(1) Where the exercise of the power of a court relates to a confiscation order made by a Magistrate pursuant to proceedings instituted for an offence to which this Act applies, the powers conferred by this section and sections 20 to 25 may as far as relevant be exercised by the Magistrate and the references in this section and sections 20 to 22 to “High Court” and “Court” shall be construed as if they were references to “court”.

Section 20 amended.

9. Section 20 of the principal Act is amended by adding after subsection (8), the following subsection:

“(9) The receipt, payment, reimbursement or deduction by the Registrar of any sums or expenses under this section shall, in relation to the Magistrate's Court, be construed to refer to the Magistrate or to such other person of his staff as may be appointed in that regard to assist the Magistrate.”.

Section 22 amended.

10. Section 22 of the principal Act is amended in subsections (1), (2) and (3) by deleting references to “High Court” and “Court” and substituting them with “court”.

Section 23 amended.

11. Section 23 of the principal Act is amended in subsections (1), (2), (3), (5) and (6) by deleting references to “Bankruptcy Act” and substituting them with “Insolvency Act, 2003”.

Section 26 amended.

12. Section 26 of the principal Act is amended

(a) in subsections (1), (2) and (3) by deleting references to “High Court” and “Court” and substituting them with “court”; and

(b) by deleting subsection (4) and substituting it with the following:

“(4) The amount of compensation to be paid under this section shall be such as the court

(a) has jurisdiction to award; and

(b) considers just in all the circumstances of the case.”.

13. Section 27 of the principal Act is repealed and substituted with the following section:

Section 27
repealed and
replaced.

“Issuing of Code
of Practice.

27. (1) Without prejudice to anything that may be contained in the Terrorism (United Nations Measures) (Overseas Territories) Order, 2001 and the Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002, the Commission may, after consultation with the Anti-money Laundering and Terrorist Financing Advisory Committee established under section 27A, issue a Code of Practice for the purpose of

(a) giving practical guidance on issues relating generally to money laundering and the financing of terrorism;

(b) providing guidance regarding adherence to the requirements of this Act and any other enactment relating to money laundering and the financing of terrorism;

(c) preventing, detecting and dealing with money laundering and terrorist financing activities;

(d) implementing, consistent with the provisions of this Act and any other enactment relating to money laundering and terrorist financing, internationally established standards for the prevention and detection of money laundering and terrorist financing activities; and

(e) providing such other things as are necessary, relevant or incidental to the matters outlined in paragraphs (a) to (d).

(2) A Code of Practice issued pursuant to subsection (1) shall apply to

- (a) entities that are regulated by the Commission;
- (b) entities not regulated by the Commission but are identified by the Caribbean Financial Action Task Force and the Financial Action Task Force as forming a link in the fight against money laundering and the financing of terrorism;
- (c) entities (whether public or private), not falling under paragraph (b), that are not regulated by the Commission but which the Commission designate, by a Notice published in the *Gazette*, as vulnerable to activities of money laundering and terrorist financing; and
- (d) professionals who may be engaged in preparing or carrying out transactions for their clients concerning
 - (i) the buying and selling of real estate;
 - (ii) managing client monies, securities or other assets;
 - (iii) the management of bank, savings or securities accounts;
 - (iv) the organisation of contributions for the creation, operation or management of companies;
 - (v) the creation, operation or management of legal persons or arrangements;
 - (vi) the buying and selling of business entities; and
 - (vii) any other activity relating or incidental to any of the matters

outlined in sub-paragraphs (i) to (vi).

(3) A Code of Practice issued pursuant to subsection (1) shall

(a) be published in the *Gazette*; and

(b) be subject to a negative resolution of the House of Assembly.

(4) Where a person fails to comply with or contravenes a provision of a Code of Practice, he commits an offence and is liable on summary conviction to a fine not exceeding seven thousand dollars or to a term of imprisonment not exceeding two years or both.

(5) Where a body corporate commits an offence under subsection (4), every director, partner or other senior officer of the body corporate shall, subject to subsection (6), be proceeded against as if the director, partner or other senior officer committed the offence and is liable on conviction to the penalty prescribed in subsection (4).

(6) A director, partner or other senior officer of a body corporate does not commit an offence under subsection (5) if the director, partner or other senior officer can show that he neither knew nor connived in the commission of the offence.

(7) Notwithstanding subsection (4), a Code of Practice may in specific cases of non-compliance with or contravention of the provisions of the Code create offences and impose penalties to be enforced by the Commission as administrative penalties, but no penalty imposed shall exceed four thousand dollars.

(8) An administrative penalty collected by the Commission by virtue of subsection (7) shall be paid into a bank account to be retained for use by the Commission.

(9) A reference in this section and section 27A to “money laundering” includes drug money laundering within the meaning of the Drug Trafficking Offences Act, 1992.

Section 27A
inserted.

14. The principal Act is amended by inserting after section 27, the following section:

“Joint Anti-
Money
Laundering and
Terrorist
Financing
Committee.

27A. (1) There is established a committee to be known as the Joint Anti-money Laundering and Terrorist Financing Advisory Committee (“the Committee”) which shall consist of members drawn from the public and private sectors with knowledge and experience in anti-money laundering and countering the financing of terrorism issues.

(2) Subject to subsection (4), the Committee shall comprise not less than seven and not more than fourteen members who shall be appointed by the Minister, on the advice of the Attorney General and the Managing Director of the Commission.

(3) The members of the Committee shall be appointed for such period and on such terms and conditions as the Minister may determine, but the appointments shall be staggered in such a way as to ensure that the terms of office of all the members do not expire at the same time.

(4) The Managing Director of the Commission shall serve as a member and Chairman of the Committee.

(5) The Committee shall have the responsibility of advising the Commission on initiatives for the prevention and detection of money laundering and terrorist financing activities in order to

- (a) ensure the stability of the financial sector of the Territory;
- (b) assist the Commission in formulating an appropriate approach in developing a Code of Practice under section 27;
- (c) keep entities, whether or not regulated by the Commission but considered essential to the Territory’s fight against money laundering and terrorist financing activities, compliant with anti-money laundering and countering the financing of terrorism measures established locally, regionally and internationally; and

(d) keep the Territory attuned to developments on international cooperation as they relate or are incidental to anti-money laundering and terrorist financing activities.

(6) The Committee may on its own motion provide such other advice as it considers essential to the Territory's efforts to effectively combat money laundering and terrorist financing activities.

(7) The Committee may make its own rules of procedure.”.

15. Section 28 of the principal Act is amended

Section 28 amended.

(a) by deleting subsection (1) and substituting it with the following subsection:

“(1) Subject to subsections (2) and (3), a person commits an offence if he enters into or is otherwise concerned in an arrangement which he knows or suspects facilitates, whether by concealment, removal from the Territory, transfer to nominees or other means, the acquisition, retention, use or control of proceeds of criminal conduct by or of himself or by or on behalf of another person.”;

(b) in subsection (2)

(i) by deleting in the opening paragraph the words “any funds or investments are derived from” and substituting them with the words “any funds, investments or other property are derived from”;

(ii) by adding at the end of paragraph (b) (i) before the semi-colon, the words “,being an act done with the consent of a police officer in aid of a law enforcement function”; and

(iii) by deleting the full-stop at the end of paragraph (b) (ii) and substituting it with a semi-colon and the word “and” and adding thereafter the following subparagraph:

“(iii) he had good reason for his failure to make the disclosure before he did the act concerned.”;

(c) by deleting paragraph (b) of subsection (3) and substituting it with the following paragraph:

“(b) that he did not know or suspect that by the arrangement the acquisition, retention, use or control by or on behalf of the other person mentioned in subsection (1) (b) of any property was facilitated as mentioned in that subsection; or”;

(d) by repealing subsection (5) and substituting it with the following subsection:

“(5) Where information is disclosed to or received by the Steering Committee under this section, the Steering Committee may disclose the information

(a) to any law enforcement agency in the Territory;

(b) to any law enforcement agency in any other country, in order

(i) to report the possible commission of an offence;

(ii) to initiate a criminal investigation respecting the matter disclosed;

(iii) to assist with any criminal investigations or criminal proceedings respecting the matter disclosed; or

(iv) to generally give effect to the purposes of this Act.;

(e) by inserting after subsection (5), the following subsection:

“(5A) Before making a disclosure under subsection (5), the Steering Committee shall, in exercising that discretion, consider the interests of third parties.”; and

(f) by repealing subsections (6) and (7); and

(g) by inserting after subsection (8), the following subsection:

“(8A) No member of the Steering Committee or the Agency or other person concerned in law enforcement

commits an offence under this section in respect of anything done by him in the due discharge of the enforcement, or intended enforcement, of any provision of this Act or of any other enactment relating to criminal conduct or the proceeds of criminal conduct.”.

16. Section 29 of the principal Act is amended

Section 29
amended.

- (a) by repealing subsection (1) and substituting it with the following subsection:

“(1) A person commits an offence if

- (a) he acquires, transfers or uses any property or has possession of it which, in whole or in part, directly or indirectly represents his proceeds of criminal conduct; or
- (b) knowing or suspecting that any property is, or in whole or in part directly or indirectly represents, another person’s proceeds of criminal conduct, he acquires, transfers or uses that property or has possession of it.”;

- (b) by repealing subsection (2) and substituting it with the following subsection:

“(2) It is a defence to a charge of committing an offence under this section, save under subsection (1) (a), that the person charged acquired, transferred or used the property or had possession of it for adequate consideration.”;

- (c) in subsection (5)

- (i) by deleting “subsection (1)” in the opening paragraph of paragraph (b) and substituting it with “subsection (1) (b)”;
- (ii) by deleting the semi-colon at the end of paragraph (b) (i) and adding thereafter the words “, being an act done with the consent of a police officer in aid of a law enforcement function; or”; and
- (iii) by deleting the full-stop at the end of paragraph (b) (ii) and substituting it with a semi-colon and the word “and” and adding thereafter the following:

“(iii) he had good reason for his failure to make the disclosure before he did the act concerned.”;

- (d) by repealing subsection (6) and substituting it with the following subsection:

“(6) Where information is disclosed to or received by the Steering Committee under this section, the Steering Committee may disclose the information

(a) to any law enforcement agency in the Territory;

(b) to any law enforcement agency in any other country, in order

(i) to report the possible commission of an offence;

(ii) to initiate a criminal investigation respecting the matter disclosed;

(iii) to assist with any criminal investigations or criminal proceedings respecting the matter disclosed; or

(iv) to generally give effect to the purposes of this Act.;

- (e) by inserting after subsection (5), the following subsection:

“(6A) Before making a disclosure under subsection (6), the Steering Committee shall, in exercising that discretion, consider the interests of third parties.” ;

- (f) by repealing subsections (7) and (8);

- (g) in subsection (9) by inserting after “under this section,” the words “save under subsection (1) (b),”; and

- (h) in subsection (12) by inserting between “other person” and “commits an offence”, the words “concerned in law enforcement”.

- (a) by repealing subsection (1) and substituting it with the following subsection:

“(1) A person commits an offence if he

- (a) conceals or disguises any property which is, or in whole or in part directly or indirectly represents, the proceeds of criminal conduct; or
- (b) converts or transfers that property or removes that property from the Territory.”;

- (b) by repealing subsection (2) and substituting it with the following subsection:

“(2) A person commits an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person’s proceeds of criminal conduct, he

- (a) conceals or disguises that property; or
- (b) converts or transfers that property or removes it from the Territory.”;

- (c) by inserting after subsection (3), the following subsections:

“(3A) If a person does any act in relation to property which belongs to another person in contravention of subsection (2), he does not commit an offence under that subsection if he discloses that act and

- (a) the disclosure is made before he does the act concerned, being an act done with the consent of a police officer in aid of a law enforcement function; or
- (b) the disclosure is made after he does the act, but on his initiative and as soon as it is reasonable for him to make it; and
- (c) he had a good reason for his failure to make the disclosure before he did the act concerned.

(3B) No member of the Steering Committee or the Agency or other person concerned in law enforcement commits an offence under this section in respect of anything done by him in the due discharge of the enforcement, or intended enforcement, of any provision of this Act or of any other enactment relating to criminal conduct or the proceeds of such conduct.”

Section 30A
repealed and
replaced.

18. Section 30A of the principal Act is repealed and substituted with the following section:

- “Mandatory reporting of suspicious transactions.
- 30A. (1) A person commits an offence if
- (a) he knows or suspects, or has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering;
 - (b) the information or other matter on which his knowledge or suspicion is based, or which gives reasonable grounds for such knowledge or suspicion, came to his attention in the course of his trade, profession, business or employment; and
 - (c) he does not disclose the information or other matter to the Steering Committee as soon as is reasonably practicable after it comes to his attention.
- (2) A person does not commit an offence under subsection (1), if
- (a) he has a reasonable excuse for not disclosing the information or matter;
 - (b) he is a professional legal adviser and the information or other matter came to his attention in privileged circumstances; or
 - (c) he does not know or suspect and has no reasonable grounds for knowing or suspecting that another person is engaged in money laundering.

(3) In deciding whether a person has committed an offence under subsection (1), the court shall consider whether the person complied with the provisions of any Code of Practice issued under section 27 and any Regulations made pursuant to section 41 at the time of the commission of the offence.

(4) Where a person discloses to the Steering Committee

- (a) his suspicion or belief that another person is engaged in money laundering, or
- (b) any information or other matter on which that suspicion or belief is based,

that disclosure shall not be treated as a breach of any restriction imposed by statute or otherwise.

(5) Without prejudice to subsection (2) or (3), in the case of a person who was in employment at the relevant time, it is a defence to a charge of committing an offence under this section that he disclosed the information or matter in question to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures.

(6) A disclosure to which subsection (5) applies shall not be treated as a breach of any restriction imposed by statute or otherwise.

(7) Where a disclosure made in compliance with subsection (1) relates to a specific transaction in respect of which investigative action has been taken or is contemplated, the Agency shall notify the person who made the disclosure or the institution he represents that such action has been taken or is contemplated and direct that all future transactions by or relating to the person to whom the disclosure relates shall be treated in such manner as the Agency thinks fit.

(8) For the purposes of subsection (2) (b), information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him

- (a) by a client of his or a representative of a client of his, in connection with the giving of legal advice to the client;
- (b) by, or by a representative of, a person seeking legal advice from the adviser; or
- (c) by any person
 - (i) in contemplation of, or in connection with, legal proceedings; and
 - (ii) for the purpose of those proceedings.

(9) No information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.

(10) A person who commits an offence under subsection (1) is liable

- (a) on summary conviction, to a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding three years, or both; or
- (b) on conviction on indictment, to a fine not exceeding twenty-five thousand dollars or imprisonment for a term not exceeding five years, or both.

(11) A person who fails to comply with a direction given pursuant to subsection (7), commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars or imprisonment for a term not exceeding three years, or both.”.

Section 31 amended.

19. Section 31 of the principal Act is amended

- (a) in subsection (1) by adding at the end of paragraph (a) before the semi-colon, the words “or any action in relation to or arising from money laundering”;
- (b) in subsection (2) by deleting paragraph (a) and substituting the following paragraph:

“(a) he knows or suspects that a disclosure (“the disclosure”) has been made to the Steering Committee under section 28, 29 or 30A; and”;

(c) in subsection (4)

(i) by deleting “or” at the end of paragraph (a); and

(ii) by changing paragraph (b) to paragraph “(c)” and inserting the following as paragraph (b):

“(b) by, or by a representative of, a person seeking legal advice from the adviser; or”;

(d) in subsection (7) by deleting the words “subsection 28, 29 or 30” and substituting them with “subsection 28, 29, 30 or 30A”.

20. Section 32 of the principal Act is amended

Section 32 amended.

(a) in the opening paragraph of subsection (1) and in the closing paragraph of subsection (1) (b) by deleting the words “Governor in Council” and substituting them with “Cabinet”; and

(b) in subsection (4) by deleting the words “Legislative Council” and substituting them with “House of Assembly”.

21. The principal Act is amended by inserting after section 34, the following:

Section 34B inserted.

“Prejudicing an investigation. 34B. (1)

For the purposes of this section,

(a) “confiscation investigation” is an investigation into whether a person has benefitted from his criminal conduct, or the extent or whereabouts of his benefit from his criminal conduct; and

(b) “money laundering investigation” is an investigation into whether a person has committed a money laundering offence.

(2) Where a person knows or suspects that a police officer, the Steering Committee or the Agency is acting or proposing to act in connection with a confiscation

investigation or a money laundering investigation which is being or is about to be conducted, he commits an offence if

- (a) he makes a disclosure which is likely to prejudice the investigation; or
- (b) he falsifies, conceals, mutilates, destroys or otherwise disposes of, or causes or permits the falsification, concealment, mutilation, destruction or disposal, of documents which are relevant to the investigation.

(3) A person does not commit an offence under subsection (2) (a) if

- (a) he does not know or suspect that the disclosure is likely to prejudice the investigation;
- (b) the disclosure is made in the exercise of a function under this Act or any other enactment relating to criminal conduct or benefit from criminal conduct or in compliance with a requirement imposed under or by virtue of this Act; or
- (c) he is a professional legal adviser and the disclosure is made
 - (i) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client; or
 - (ii) to any person in contemplation of, or in connection with, legal proceedings and for the purpose of those proceedings.

(4) A person does not commit an offence under subsection (2) (b) if

- (a) he does not know or suspect that the documents are relevant to the investigation; or
- (b) he does not intend to conceal any facts disclosed by the documents from a police officer, the Steering Committee or the Agency carrying out the investigation.

(5) A person who commits an offence under subsection (2) is liable

- (a) on summary conviction to a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding three years, or both; or
- (b) on conviction on indictment to a fine not exceeding twenty-five thousand dollars or imprisonment to a term not exceeding five years, or both.”.

22. Section 36 of the principal Act is amended

Section 36 amended.

- (a) in subsections (1), (2), (3) and (5) by deleting references to “High Court” and “Court” and substituting the word “court” in each case;
- (b) in subsection (1) by inserting between the words “investigation into” and “whether any person”, the words “money laundering as defined in section 31 (7) or”;
- (c) in subsection (4) by inserting between the words “specified person” and “has benefitted” in paragraph (a), the words “is involved in or may be related to an act of money laundering or”;
- (d) in subsection (6) by inserting between the words “a judge” and “in chambers”, the words “or magistrate”; and
- (e) by inserting after subsection (9), the following:

“(9A) Where material is produced pursuant to an order under this section,

- (a) a police officer or the Agency may make a copy of the material; and
- (b) the material may
 - (i) be retained for as long as it is necessary for the purposes of completing an investigation; and
 - (ii) where it is required for legal proceedings, be retained until those proceedings are concluded.”.

Section 37
amended.

23. Section 37 of the principal Act is amended

- (a) in subsections (1) and (2) by deleting references to “High Court” and “Court” and substituting the word “court”;
- (b) in subsection (1) by inserting between the words “investigation into” and “whether any person”, the words “money laundering as defined in section 31 (7) or”;
- (c) in subsection (4)
 - (i) by inserting between the words “specified person” and “has benefitted” in paragraph (a), the words “is involved in or may be related to an act of money laundering or”; and
 - (ii) by inserting between the words “that person” and “has benefitted” in paragraph (b) (ii), the words “is involved in or may be related to an act of money laundering or”; and
- (d) by adding after subsection (5), the following:
 - “(6) Where any material is seized pursuant to subsection (5),
 - (a) a police officer or the Agency may make a copy of the material; and
 - (b) the material may,
 - (i) be retained for as long as it is necessary for the purposes of completing an investigation; and

- (ii) where it is required for legal proceedings, be retained until those proceedings are concluded.”.

24. The principal Act is amended by inserting after section 37, the following sections:

Sections 37A, 37B and 37C inserted.

“Seizure and detention of cash.

37A. (1)

For the purposes of

- (a) this section and sections 37B and 37C, “cash” includes coins, notes in any currency, cheques and any other monetary or type of bearer negotiable instrument;
- (b) this section and section 37B, “customs officer” means an officer appointed under section 6 of the Customs Ordinance; and
- (c) this section, “exported”, in relation to cash, includes its being brought to any place in the Territory for the purpose of being exported.

(2) A police officer or a customs officer may seize and detain any cash which is found in the Territory or is being imported into or exported from the Territory if its amount is not less than ten thousand dollars and he has reasonable grounds for suspecting that the cash

- (a) is intended by any person for use in criminal conduct; or
- (b) directly or indirectly represents any person’s proceeds of criminal conduct.

(3) Cash within the threshold provided in subsection (2) that is being imported into or exported from the Territory shall not be seized and detained if it is declared to the Comptroller of Customs or a representative of the Comptroller at the port of entry or exit, unless there are reasonable grounds for suspecting that the cash

- (a) is intended by any person for use in criminal conduct; or

- (b) directly or indirectly represents any person's proceeds of criminal conduct.

(4) Cash seized by virtue of subsection (2) or (3) shall not be detained for more than seventy-two hours, unless its continued detention is authorized by order of a Magistrate upon an application made by a police officer or the Comptroller of Customs.

(5) A Magistrate shall not make an order under subsection (4), unless he is satisfied

- (a) that there are reasonable grounds for the suspicion mentioned in subsection (2) or, as the case may be, subsection (3); and
- (b) that continued detention of the cash is justified while its origin or derivation is further investigated or consideration is given to the institution (whether in the Territory or elsewhere) of criminal proceedings against any person for an offence with which the cash is connected; or
- (c) that proceedings against any person for an offence with which the cash is connected have been started but have not been concluded.

(6) Where an order is made under subsection (4), the Magistrate

- (a) shall provide for notice to be given to persons affected by it and the notice shall be in such form as the Magistrate shall determine, unless otherwise provided in rules made under the Magistrate's Code of Procedure Act;
- (b) shall authorize the continued detention of the cash to which the

order relates for a period, not exceeding three months beginning with the date of the order, as may be specified in the order; and

- (c) may thereafter, if satisfied as to the matters mentioned in that subsection, from time to time by order authorize the further detention of the cash, but so that
 - (i) no period of detention specified in such an order shall exceed three months beginning with the date of the order; and
 - (ii) the total period of detention shall not exceed two years from the date of the order.

(7) At any time while cash is detained by virtue of this section,

- (a) the Magistrate may direct its release if satisfied, on an application made
 - (i) by the person from whom it was seized or a person by or on whose behalf it was being imported or exported, that there are no, or are no longer any, such grounds as are mentioned in subsection (5) to warrant its continued detention; or
 - (ii) by any other person, that the continued detention of the cash is not for that or any other reason justified; and
- (b) a police officer or the Comptroller of Customs may, subject to subsections (8) and (9), release the cash if

satisfied that its continued detention is no longer justified.

(8) A police officer or the Comptroller of Customs shall not release cash pursuant to subsection (7) (b), unless he first notifies

- (a) the Magistrate under whose order the cash is being detained; or
- (b) another Magistrate in the absence of the one under whose order the cash is being detained.

(9) Where on an application under subsection (7) for the release of cash that is being detained the Magistrate finds that only a part of the cash, if it relates to liquid currency, is intended for use by a person in criminal conduct or directly or indirectly represents any person's proceeds of criminal conduct, the Magistrate may order the release of that part of the cash as does not relate to the intended criminal conduct or directly or indirectly represent the proceeds of criminal conduct.

(10) Subsection (9) does not apply to cash that is in the form of bearer negotiable or other monetary instrument.

(11) If at any time when any cash is being detained by virtue of this section,

- (a) an application for its forfeiture is made under section 37B, or
- (b) proceedings are instituted (whether in the Territory or elsewhere) against any person for an offence with which the cash is connected,

the cash shall not be released until any proceedings pursuant to the application or, as the case may be, the proceedings for that offence have been concluded.

Forfeiture. 37B. (1) A Magistrate may order the forfeiture to the Crown of the whole or any part of cash which has been seized pursuant to section 37A if he is satisfied, on an application

made by a police officer or the Comptroller of Customs, that the cash

- (a) is intended by any person for use in criminal conduct; or
- (b) directly or indirectly represents any person's proceeds of criminal conduct.

(2) The standard of proof in proceedings on an application under subsection (1) shall be on a balance of probability;

(3) An order may be made under subsection (1) irrespective of whether proceedings are brought against a person for an offence with which the cash in question is connected.

(4) Where an application for the forfeiture of any cash is made under subsection (1), the cash is to be detained (and may not be released under any power conferred by this section or section 37A) until any proceedings in pursuance of the application, including any proceedings on appeal, are concluded.

(5) Any party to proceedings under this section who is aggrieved by an order of the Magistrate may, within thirty days from the date on which the order is made, appeal to the Court of Appeal which may make such order as it thinks appropriate.

Interest. 37C. Cash seized pursuant to section 37A and detained for more than seventy-two hours shall, unless required as evidence of an offence, be held in an interest-bearing account and the interest accruing on any such cash shall be added to that cash on its forfeiture or release.”

25. Section 38 of the principal Act is amended by deleting the words “for anything done by him” and substituting them with “or the Agency or any of its officers for anything done,”.

Section 38 amended.

26. Section 39 of the principal Act is repealed.

Section 38 repealed.

27. Section 40 of the principal Act is amended by deleting the reference to “Governor in Council” and substituting “Cabinet”.

Section 40 amended.

Section 41
repealed and
replaced.

28. Section 41 of the principal Act is repealed and replaced with the following:

“Regulations. 41. (1) The Cabinet may make regulations for the effective carrying out of the provisions of this Act.

(2) Without prejudice to subsection (1), the Cabinet may, for the purposes of ensuring compliance with established standards of regulation and cooperation in relation to anti-money laundering activities and with the advice of the Commission, make regulations specifically

- (a) providing for the identification procedures and processes to be established and administered in relation to business entities that are regulated by the Financial Services Commission ;
- (b) providing for the maintenance, format, retention and retrieval of records;
- (c) requiring the maintenance of a register of inquiries and the adoption of due diligence measures;
- (d) requiring the establishment of procedures for the recognition and reporting of suspicious transactions;
- (e) requiring the establishment of training programmes, including refresher training programmes, to educate persons on the provisions of this Act, any other enactment and any regional and international initiatives relating to money laundering and terrorist financing; and
- (f) providing for anything relating to or incidental to the matters specified in paragraphs (a) to (e).

(3) Regulations made under subsection (2) shall

- (a) apply to any entity to which section 27 may be applicable, but without prejudice to any obligations and liabilities that may apply to

the entity pursuant to any Code of Practice made and applicable to or in relation to that entity; and

- (b) provide for the offences and penalties to be applicable to any contravention or non-compliance with the provisions of the Regulations.
- (4) Any penalty prescribed under sub-regulation (3) (b) shall not exceed a fine of fifteen thousand dollars.”.

Passed by the House of Assembly this 4th day of February, 2008.

(Sgd.) ROY HARRIGAN
Speaker.

(Sgd.) ALVA MCCALL
Clerk of the House of Assembly.

