

**A BILL
ENTITLED**

AN ACT to Amend the Proceeds of Crime Act.

BE IT ENACTED by The Queen’s Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:-

**Short title
and con-
struction.**

1. This Act may be cited as the Proceeds of Crime (Amendment) Act, 2019, and shall be read and construed as one with the Proceeds of Crime Act (hereinafter referred to as the principal Act) and all amendments thereto.

**Amendment
of section 2
of principal
Act.**

2. Section 2(1) of the principal Act is amended –

- (a) in paragraph (a) of the definition of “enforcing authority” by deleting the words “ or takes proceedings under section 57” and substituting therefor the words “, and in any other case not covered by paragraph (b)”;
- (b) in paragraph (b) of the definition of “enforcing authority” by deleting the words “such an application” and substituting therefor the words “an application under section 5(1)”;
- (c) by deleting paragraph (e) of the definition of “financial institution” and substituting therefor the following –
 - “(e) a person who –
 - (i) carries on life insurance business within the meaning of the Insurance Act; or
 - (ii) performs services as an insurance intermediary, in respect of life insurance business, within the meaning of the Insurance Act,

but does not include an insurance consultant or an

adjuster;”.

**Amendment
of section
91A of
principal
Act.**

3. Section 91A of the principal Act is amended –
 - (a) by deleting the full stop at the end of paragraph (2)(e) and substituting therefor a semi-colon, and inserting the following as paragraph (f) –

“(f) shall, in exercising its functions, continually assess the risks of money laundering and terrorist financing, relating to the businesses in the regulated sector which that competent authority is responsible for monitoring, and tailor its activities (including any directions or requirements that may be issued, or measures or procedures that may be established) under this Act accordingly.”;
 - (b) in subsection (5)(a), by deleting the words “summary conviction before a Resident Magistrate, to a fine not exceeding two hundred and fifty thousand” and substituting therefor the words “conviction before a Judge of a Parish Court, to a fine not exceeding three million”; and
 - (c) in subsection (5)(b), by deleting the words “not exceeding one million dollars”.

**Amendment
of section 94
of principal
Act.**

4. Section 94 of the principal Act is amended by deleting subsection (4) and substituting therefor the following –

“(4) For the purposes of this section, a business in the regulated sector shall, in relation to each customer, make and retain for a period of not less than seven years or such other period as the supervisory authority shall in writing direct, a record of all –

 - (a) complex, unusual or large business transactions carried out by that customer with the business; and

- (b) unusual patterns of transactions, whether completed or not, which appear to be inconsistent with the normal transactions carried out by that customer with the business.”.

Insertion of new section 94A in principal Act.

5. The principal Act is amended by inserting next after section 94 the following section –

“Enhanced measures in respect of transactions with customers domiciled, resident or incorporated in specified territories.

94A. – (1) A business in the regulated sector shall, in respect of all its business relationships and transactions with any customer resident or domiciled or, in the case of a body corporate, incorporated, in a specified territory –

- (a) apply the enhanced due diligence procedures;
- (b) ensure that the background and purpose of all such relationships and transactions are examined;
- (c) ensure that the findings under paragraphs (a) and (b) are set out in writing and made available, upon request, to the designated authority, the supervisory authority or the competent authority concerned, as the case may require; and
- (d) limit those business relationships or one-off transactions,

in accordance with enhanced money laundering counter-measures set out in regulations made under this Part.

- (2) For the purposes of this section –

“enhanced due diligence procedures” means such enhanced due diligence procedures as are prescribed pursuant to section 102;

“specified territory” means a territory specified in a list, published by notice in the *Gazette*, by a supervisory authority, as being a territory in respect of which there is a greater associated risk of money laundering or terrorist financing.

(3) A business in the regulated sector that fails to comply with subsection (1) commits an offence and shall be liable on conviction before –

- (a) a Parish Court, to a fine not exceeding three million dollars; or
- (b) a Circuit Court, to a fine.”.

Amendment of section 97 of principal Act.

6. Section 97 of the principal Act is amended –
- (a) by deleting subsection (1)(a) and substituting therefor the following –
 - “(a) knowing or having reasonable grounds to believe that a disclosure falling within section 100 has been made, or is to be made, the person discloses to another person any information, or any other matter, relating to the first mentioned disclosure;”;
 - (b) in subsection (1)(b) by deleting the words “enforcing authority” and substituting therefor the words “Agency, the Director of Public Prosecutions, or an authorized officer as defined by section 103”;
 - (c) in subsection (2) by deleting paragraph (a) and renumbering

paragraphs (b) to (e) as paragraphs (a) to (d).

**Amendment
of section
101A of
principal
Act.**

7. Section 101A of the principal Act is amended –
- (a) in subsection (1)(a) by deleting the word “goods” and substituting therefor the word “property”;
 - (b) by deleting subsection (3) and substituting therefor the following –
 - “ (3) The Minister may, by order subject to affirmative resolution, exempt a person or particular type of transaction from the requirements of this section –
 - (a) after written consultation with the designated authority and the competent authority concerned, and that competent authority shall for that purpose submit to the Minister a written assessment of the risks of money laundering and terrorist financing relating to the person or transaction concerned; and
 - (b) if the Minister is satisfied that it is in the public interest to do so.”.

**Amendment
of section 102
of principal
Act.**

8. Section 102 of the principal Act is amended in subsection (1)(b) by inserting next after the words “the regulated sector” the words “, including the enhanced monitoring procedures to be applied in respect of specified territories, for the purposes of section 94A”.

**Amendment
of section 137
of principal
Act.**

9. Section 137 of the principal Act is amended –
- (a) in subsection (1) by deleting the words “under this Act or submits reports to the enforcing authority” and substituting therefor the words –
 - “, or the competent authority concerned, under this Act or submits reports to the enforcing authority or competent authority concerned”;

(b) in subsection (2) –

- (i) in paragraph (a), by inserting next after the word “Agency” the words “or of a competent authority”;
- (ii) by moving the words “in respect of any act done or omission made in good faith, in the course of carrying out the provisions of this Act.” from paragraph (b) and back to the margin of subsection (2).

**Insertion of
new section
137A in
principal Act.**

10. The principal Act is amended by inserting next after section 137 the following section –

**“Statistical
information.**

137A. – (1) An entity designated as a supervisory authority, competent authority, or designated authority, under this Act shall keep such statistical records as it considers appropriate for the purpose of measuring the overall effectiveness of measures taken under this Act with respect to the prevention of money laundering and terrorist financing.

(2) The Minister may by order published in the Gazette specify –

- (a) entities, other than those specified in subsection (1), that are required to keep statistics for the purposes of this section; and
- (b) the statistics to be kept by the entities to which paragraph (a) applies, for the purpose of measuring the overall effectiveness of measures taken under this Act with respect to the prevention of money laundering and

terrorist financing.

(3) Statistical information kept under subsection (1) or (2) may be disclosed to any entity referred to in subsection (4) if the information does not include any information from which the identity of any person, or any personal details in respect of any person, is ascertainable either on the face of the disclosure or by reasonable inference.

(4) The entities are –

- (a) the Director of Public Prosecutions;
- (b) the Commissioner of Police;
- (c) the Commissioner of Customs;
- (d) the Attorney-General;
- (e) the Director-General of the Major Organized Crime and Anti-Corruption Agency;
- (f) the Chief Technical Director of the Financial Investigations Division;
- (g) any other entity designated by the Minister by order for the purposes of this section.”.

**Amendment
of section 138
of principal
Act.**

11. Section 138 of the principal Act is amended by renumbering the section as section 138(1) and inserting the following as subsections (2) to (10) of that section –

- “ (2) Regulations made under this section may provide –
- (a) in respect of offences for breach of those Regulations, for monetary penalties in excess of the amount stated in section 29 of the Interpretation Act; and
 - (b) specify the applicable offences under the Regulations, in respect

of which the competent authority concerned may issue a fixed penalty notice in accordance with this section to any entity which the competent authority has reason to believe has committed any such offence.

(3) A fixed penalty notice under this section is a notice in writing in prescribed form, offering the entity to whom it is issued the opportunity to discharge any liability to conviction of an applicable offence by payment of a fixed penalty under this section, and the notice shall –

- (a) give such particulars of the offence alleged as are necessary for giving reasonable information of the allegation;
- (b) state –
 - (i) the period (whether fifteen days or a longer period) during which, by virtue of subsection (4) proceedings will not be taken for the offence; and
 - (ii) the amount of the fixed penalty payable by the entity; and
- (c) require the entity, in the event that the fixed penalty is not paid within the period specified in the notice under subsection (4), to attend before the court having jurisdiction to try the offence to answer the charge on such date as may be specified, being a date not earlier than ten days after the expiration of the period specified pursuant to subsection (4), and that requirement shall constitute a summons for the entity to attend court to answer the charge if the fixed penalty is not paid within the period specified in the notice under subsection (4).

(4) Where an entity is issued a fixed penalty notice under this

section, proceedings shall not be taken against any entity in respect of the applicable offence concerned until the end of fifteen days following the date of the notice or such longer period as may be specified in the notice.

(5) An entity to whom a fixed penalty notice is issued under this section shall not be liable to be convicted of the applicable offence concerned –

(a) if the entity pays the fixed penalty with respect thereto in accordance with this section; and

(b) if the offence is a continuing offence, the entity has taken steps such that the offence no longer continues,

before the expiration of the fifteen days following the date of the fixed penalty notice referred to in subsection (4) or such longer period as may be specified in the notice, or the date on which proceedings are begun in respect of the offence.

(6) In subsections (4) and (5), “proceedings” means criminal proceedings in respect of the act or omission constituting the offence concerned, and “convicted” shall be construed accordingly.

(7) Payment of a fixed penalty under this section shall be made to the Collector of Taxes, and in any proceedings a certificate that payment of the fixed penalty was or was not made to the Collector of Taxes by a date specified in the certificate shall, if the certificate purports to be signed by the Collector of Taxes, be admissible as evidence of the facts stated therein.

(8) In any proceedings for an applicable offence, no reference shall be made to the giving of any notice under this section or to the payment or non-payment of a fixed penalty under this section, unless

in the course of the proceedings or in some document which is before the court in connection with the proceedings, reference is made by or on behalf of the accused to the giving of such a notice, or, as the case may be, to such payment or non-payment.

(9) Regulations referred to in subsection (2) may also provide for any matter necessary for, or incidental to, the operation of subsections (2) to (8) and, in particular, such regulations may prescribe –

- (a) the form of notice to be issued under subsection (2);
- (b) the nature of any information to be furnished to the competent authority in relation to the payment of a fixed penalty;
- (c) provisions for the cancellation or variation of notices issued under subsection (2).

(10) In this regulation, “competent authority” has the meaning assigned to it by section 91(1)(g).”

**Insertion of
new section
139 in
principal
Act.**

12. The principal Act is amended by inserting next after section 138 the following section –

**“Penalties re
offences by
bodies
corporate.**

139. In determining the amount of any fine to be imposed on a body corporate under this Act, the court may have regard to –

- (a) the nature of the business carried on by the body corporate;
- (b) the size of the business concerned, including the level of profit or total revenue generated therefrom by the body corporate; and
- (c) any other factor that the court considers relevant.”

MEMORANDUM OF OBJECTS AND REASONS

A decision has been taken to amend the Proceeds of Crime Act in order to improve Jamaica's compliance with its international obligations and to improve investigative efficiency.

This Bill seeks to give effect to that decision.

Horace Chang
Minister of National Security