

TURKS AND CAICOS ISLANDS
PROCEEDS OF CRIME (AMENDMENT) ORDINANCE
2018

(Ordinance 22 of 2018)

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Interpretation
3. Section 2 amended
4. Section 15 amended
5. Section 42 amended
6. Section 106 substituted
7. Section 107 amended
8. Section 116 amended
9. Section 127 amended
10. Section 128 amended
11. Section 129 amended
12. Section 132 amended
13. Section 174 amended
14. Sections 176A to 176C inserted
15. Schedule 1 substituted



TURKS AND CAICOS ISLANDS

PROCEEDS OF CRIME (AMENDMENT) ORDINANCE 2018

(Ordinance 22 of 2018)

Assent.....2nd August 2018
Publication in Gazette.....3rd August 2018
Commencement..... in accordance with section 1

AN **ORDINANCE** TO AMEND THE PROCEEDS OF CRIME ORDINANCE.

ENACTED by the Legislature of the Turks and Caicos Islands.

Short title and commencement

1. This Ordinance may be cited as the Proceeds of Crime (Amendment) Ordinance 2018 and shall come into operation on such day as the Governor may appoint by Notice published in the *Gazette*.

Interpretation

2. In this Ordinance “principal Ordinance” means the Proceeds of Crime Ordinance.

Section 2 amended

3. The principal Ordinance is amended in section 2(1)—

(a) by repealing the definition of “non-profit organisation” and substituting the following—

““non-profit organisation” means an organisation that—

(a) is established solely or primarily for charitable, religious, cultural, educational, social or fraternal purposes or for the purpose of benefiting the public or a section of the public or for any other purpose except profit, no part of the income of which was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof; and

(b) which solicits contributions from the public or a section of the public within the Islands or elsewhere;”;

(b) by inserting in the appropriate alphabetical position the following definition—

““specified offence” means—

(a) an offence in any of the categories set out in Schedule 1 for which the constituent elements are provided for in any written law or under the common law; or

(b) any act committed outside of the Islands, which would constitute an offence referred to in paragraph (a) if committed in the Islands;”.

Section 15 amended

4. The principal Ordinance is amended in section 15(1) by repealing paragraph (a) and substituting the following—

“(a) a specified offence listed in Schedule 1;”.

Section 42 amended

5. The principal Ordinance is amended in section 42 by inserting after subsection (2) the following—

“(2A) A restrain order shall not make provision for any legal expenses which—

(a) relate to an offence mentioned in section 41(1)(a) or (b) if any of the condition mentioned in that subsection is satisfied; and

(b) are incurred by the defendant or by a recipient of a tainted gift.”.

Section 106 substituted

6. The principal Ordinance is amended by repealing section 106 and substituting the following—

“Seizure of cash

106. (1) A police officer shall seize cash if he has reasonable grounds for suspecting that—

(a) it is recoverable cash; or

(b) part of the cash is recoverable cash and it is not reasonably practicable to seize only that part.

(2) After a seizure is made by a police officer under this section, the police or in the case of a customs officer, the Collector of Customs, shall promptly, in any event within 24 hours of the seizure, report that seizure to the Financial Crime Unit.”.

Section 107 amended

7. The principal Ordinance is amended in section 107(1)—
- (a) by repealing the word “section” where it occurs for the first time and substituting “section 106(1)”;
 - (b) by repealing the word “section 106” and substituting “section”;
 - (c) by repealing the word “48 hours” and substituting “72 hours, excluding public holidays and weekends”.

Section 116 amended

8. The principal Ordinance is amended in section 116—
- (a) by repealing the “and” at the end of paragraph (e); and
 - (b) by inserting after paragraph (e) the following—
 - “(ea) to take action to coordinate the assessment of money laundering and terrorist financing risks;
 - (eb) to prepare and maintain a national risk assessment on money laundering and terrorist financing risks;
 - (ec) to advise financial business, directly or indirectly, of concerns about weaknesses in the AML/CFT systems, including systems to prevent the financing of proliferation, of other countries and natural or legal persons (including financial institutions) who are the subject of FATF, UN or EU sanctions and countermeasures; and”.

Section 127 amended

9. The principal Ordinance is amended in section 127—
- (a) in subsection (1)—
 - (i) in paragraph (a) by inserting after the words “money laundering” the words “terrorist financing or criminal activity”;
 - (ii) by inserting after the word “shall” the word “promptly”; and
 - (iii) by repealing the words “as soon as is practicable”; and
 - (b) in subsection (5)(a) by inserting after the words “money laundering” the words “terrorist financing or criminal activity”.

Section 128 amended

10. The principal Ordinance is amended in section 128(1)(b) by repealing the words “the Anti-Money Laundering Committee” and substituting “the Financial Intelligence Agency”.

Section 129 amended

11. The principal Ordinance is amended in section 129 by repealing subsection (2) and substituting the following—

“(2) Subject to section 130, a person is guilty of an offence if he knows or suspects that a suspicious transaction report or related information is being filed or has been filed or that an authorised or protected disclosure has been made and he discloses that fact or other information.”.

Section 132 amended

12. The principal Ordinance is amended in section 131(1)(b) by inserting after the words “money laundering” the words “terrorist financing or criminal activity”.

Section 174 amended

13. The principal Ordinance is amended in section 174(2) by repealing the words “the Anti-Money Laundering Committee” and substituting “the Financial Intelligence Agency”.

Sections 176A to 176C inserted

14. The principal Ordinance is amended in Part IX by inserting after the heading “Miscellaneous” the following—

“Offences by body corporate

176A. (1) Where an offence under this Ordinance is committed by a limited liability partnership or body corporate and it is proved to have been committed with the consent or connivance of—

- (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or
- (b) any person purporting to act in any such capacity,

the person shall also be guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.

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

(3) For the purposes of this section, a person shall be deemed to be a director of a body corporate if he occupies in relation to that body corporate, the position of a manager, by whatever name called, or is a person in accordance with whose directions or instructions (not being directions or instructions in a professional capacity only) the directors and the body corporate or any of them, act.

Secrecy obligations overridden

176B. The provisions of this Ordinance shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any law or otherwise.

(2) It shall be lawful for any person to make any disclosure in compliance with this Ordinance.

No criminal or civil liability information

176C. No proceedings for breach of confidentiality may be instituted against any person or against any director, officer or employee of a financial institution who in good faith transmits or submits suspicious transactions reports or other reports to the Financial, Intelligence Agency in accordance with this Ordinance.

(2) No civil or criminal liability action may be brought nor may any professional sanction be taking against any person or agent of any financial institution for breach of any restriction on disclosure who in good faith transmits information or submits reports to the Financial Intelligence Agency.”.

Schedule 1 substituted

15. The principal Ordinance is amended by repealing Schedule 1 and substituting the following—

“SCHEDULE 1

(Section 15)

OFFENCES

The following offences are specified offences:

1. A drug trafficking offence
2. A money laundering offence
3. A terrorist finance offence
4. Trafficking in persons
5. An arms trafficking offence
6. Sexual exploitation, including sexual exploitation of children
7. Prostitution
8. Illicit trafficking in stolen and other goods
9. Corruption and bribery
10. Fraud
11. Blackmail
11. Counterfeiting currency
12. Environmental crimes
13. Murder, grievous bodily injury
14. Kidnapping, abduction, false imprisonment and hostage-taking

15. Robbery or theft
16. Smuggling
17. Extortion
18. Forgery
19. Piracy
20. Fraudulent evasion of customs duties payable on goods
21. Defrauding the public revenue
22. Cheating the public revenue
23. Inchoate offences—
 - (a) an offence of attempting, conspiring or inciting the commission of an offence specified in this Schedule;
 - (b) an offence of adding, abetting, counselling or procuring the commission of such an offence.”.
