

**TURKS AND CAICOS ISLANDS**  
**PROCEEDS OF CRIME (AMENDMENT) ORDINANCE 2021**

**(Ordinance 20 of 2021)**

**ARRANGEMENT OF SECTIONS**

SECTION

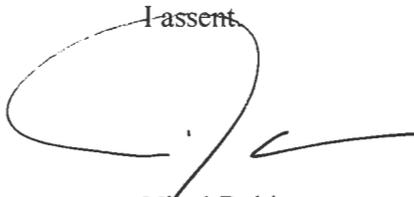
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**(Ordinance 20 of 2021)**

I assent.  
  
Nigel Dakin  
Governor



Dated this 13 day of October 2021.

**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 2021 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. Section 2(1) of the principal Ordinance is amended by inserting in their appropriate alphabetical positions the following definitions—

““competent authority” means a public body in the Islands charged with the responsibility for combating money laundering and terrorist financing, including—

- (a) the Financial Intelligence Agency and any authority charged with the responsibility of investigating and/or prosecuting money laundering, associated predicate

offences and terrorist financing, and seizing or freezing and confiscating criminal assets;

(b) any authority receiving reports on cross-border transportation of currency and bearer negotiable instruments; and

(c) any authority having anti-money laundering or counter terrorist financing supervisory or monitoring responsibility aimed at ensuring compliance by a financial business or designated non-financial business and profession with anti-money laundering or counter terrorist financing requirements;

“controlled delivery” means the technique of allowing illicit or suspect consignments and funds related to any offence under this Ordinance, to pass out of, through or into the Islands under the complete supervision of a law enforcement agency, for the purpose of the investigation of money laundering or financing of terrorism and the identification of persons involved in the commission of these offences;

“undercover operations” means actions by a law enforcement officer in engaging in ongoing relationships, under fictitious identity, with one or more persons as to whom there are serious indications that they are committing or will commit offences;”.

#### **Section 13 amended**

4. Section 13(3)(c) of the principal Ordinance is amended by inserting after the word “subject” the words “to the rights and interests, if any, of *bona fide* third parties in the property or”.

#### **Section 116 amended**

5. Section 116 of the principal Ordinance is amended by inserting after paragraph (h) the following paragraph—

“(ha) take action to identify and assess the money laundering and terrorist financing that may arise in relation to the development of new products and new business practices, including new delivery mechanisms, and the use of new or developing technologies for both new and pre-existing products.”.

#### **Section 121A inserted**

6. The principal Ordinance is amended by inserting after section 121 the following section—

#### **“Application of counter-measures**

121A. (1) The Governor may, by Order, designate a jurisdiction as one which has serious deficiencies in its compliance with recognised international standards for combating money laundering and the

financing of terrorism and, as a result of that, require the application of counter-measures proportionate to the risk posed by that jurisdiction.

(2) The counter-measures under subsection (1) may include that dealings shall not be conducted with that jurisdiction or that enhanced due diligence be applied to—

- (a) transactions involving certain entities or class of entities; or
- (b) certain transactions or class of transactions.

(3) An Order under subsection (1) may also be made by the Governor on the recommendation of either the Anti-Money Laundering Committee or the Financial Action Task Force.

(4) In making the recommendation under subsection (3) the matters to be considered by the Anti-Money Laundering Committee, the form, duration and effect of the Order shall be prescribed by the Governor.

(5) For the purposes of this Part, “Financial Action Task Force” means the task force established by the Group of Seven to develop and promote national and international policies to combat money laundering and terrorist financing.”.

#### **Section 127 amended**

7. Section 127 of the principal Ordinance is amended by repealing subsection (1) and substituting the following subsection—

“(1) Where a person—

- (a) knows or suspects, or has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering, terrorist financing proliferation financing, or criminal activity; or
- (b) knows or suspects, or has reasonable grounds for knowing or suspecting that a particular non-profit organisation—
  - (i) is involved in terrorist financing abuse and/or is a front for fundraising by a terrorist organisation;
  - (ii) is being exploited as a conduit for terrorist financing, including for the purpose of escaping asset freezing measures, or other forms of terrorist support; or
  - (iii) is concealing or obscuring the clandestine diversion of funds intended for legitimate purposes, but redirected for the benefit of terrorists or terrorist organisations; and
- (c) 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 him in the course of a relevant business,

he shall promptly disclose the information or other matter after it comes to him to the relevant Money Laundering Reporting Officer, to the Financial Intelligence Agency or to the NPO Supervisor, in order to take preventative or investigative actions.”.

### **Sections 133A and 133B inserted**

**8.** The principal Ordinance is amended by inserting after section 133 the following sections—

#### **“Investigative techniques**

**133A.** (1) For the purpose of obtaining evidence of money laundering, terrorist financing and tracing proceeds of crime—

(a) a competent court of law may order, for a specific period of time—

(i) the monitoring of bank accounts and other similar accounts;

(ii) access to computer systems, networks and servers;

(iii) the placing under surveillance or tapping of telephone lines, facsimile machines or electronic transmission or communication facilities;

(iv) the audio or video recording of acts and behaviour or conversations;

(v) the interception or seizure of correspondence;

(b) law enforcement officers may utilise investigative techniques such as—

(i) controlled delivery;

(ii) undercover operation.

(2) The techniques stipulated in subsection (1)(a) shall be subject to their respective laws, and shall only be used when there are indications that such accounts, telephone lines, computer systems and networks or documents are or may be used by persons suspected of participating in an activity of money laundering or financing of terrorism.

#### **Undercover operations and controlled delivery**

**133B.** (1) No punishment may be imposed on officials competent to investigate money laundering and financing of terrorism who, for the purpose of obtaining evidence relating to these offences or the tracing of proceeds of crime, perform acts which might be construed as acts of money laundering and financing of terrorism in connection with carrying out an undercover operation or a controlled delivery.

(2) The designated investigative officials shall not induce the suspect to commit any offences.

(3) The authorisation of the Commissioner of Police shall be obtained prior to initiating any operation as described in subsection (1).”.

**Section 151A inserted**

9. The principal Ordinance is amended by inserting after section 151 the following section—

**“International cooperation**

151A. (1) Competent authorities shall rapidly provide the widest possible range of cooperation to the competent authorities of other countries for purposes of extradition and mutual legal assistance in connection with criminal investigations and judicial proceedings related to money laundering and financing of terrorism.

(2) For the purposes of subsection (1), exchange of information to competent authorities of other countries may be done, spontaneously or upon request, directly or indirectly.

(3) Provisions of this section shall not affect the obligations under any laws of the Islands, treaties, multilateral or bilateral, that govern or will govern, in whole or in part, mutual legal assistance, tax information exchange, and extradition matters.

(4) A competent authority shall provide feedback in a timely manner to a competent authority of other country from which it has received assistance, on the use and usefulness of any information obtained.

(5) A competent authority shall not refuse a request for assistance on the grounds that—

- (a) the request is also considered to involve fiscal matters;
- (b) laws require financial businesses to maintain secrecy or confidentiality (except where the relevant information that is sought is held in circumstances where legal professional privilege or legal professional secrecy applies);
- (c) there is an inquiry, investigation or proceeding underway in the Islands, unless the assistance would impede that inquiry, investigation or proceeding; or
- (d) the nature or status (civil, administrative, law enforcement, etc.) of the requesting competent authority is different from competent authority in the Islands.

(6) A competent authority may refuse to provide information to the competent authority of another country if the requesting competent authority cannot protect the information effectively.

**Section 152 amended**

10. Section 152(3) of the principal Ordinance is amended in paragraph (a)(i) by inserting after the word “financing,” the word “corruption”.

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**PASSED** by the House of Assembly this 12<sup>th</sup> day of October 2021.



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**Tracey Parker**  
**Clerk of the House of Assembly**



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**Gordon Burton**  
**Speaker**