

**TURKS AND CAICOS ISLANDS
PROCEEDS OF CRIME (AMENDMENT) BILL 2018**

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TURKS AND CAICOS ISLANDS

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PROPOSAL

FOR

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BILL

FOR

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 106 substituted

5. 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 Commissioner of Police or the Collector of Customs, as the case may be, shall within promptly, but in any event within 24 hours of the seizure, report that seizure to the Financial Crime Unit.”. **[Note s.2 of POCO defines “police officer” to include a customs officer]**

Section 107 amended

6. 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

7. 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; **C. 1.2**

- (eb) to prepare and maintain a national risk assessment on money laundering and terrorist financing risks;"; **C. 1.3**
- (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 countries and natural or legal persons (including financial institutions) persons who are the subject of FATF, UN or EU sanctions and countermeasures; and". **C. 19.2 and 19.3**

Section 127 amended

- 8.** 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 “associated predicate offences or terrorist financing”;
 - (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 “associated predicate offences or terrorist financing”. **C. 20.1**

Section 128 amended

- 9.** 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

- 10.** 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.”. **C. 21.1**

Section 132 amended

- 11.** The principal Ordinance is amended in section 131(2)(b) by inserting after the words “money laundering” the words “terrorist financing or associated predicate offences”. **C. 21.2**

Section 174 amended

12. 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

13. 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, or to be attributable to any neglect on the part 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. **C. 35.2**

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. **C 9.1**

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.” **C. 21.1**

Schedule 1 substituted

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

“SCHEDULE 1

(Section 15)

OFFENCES

The following offences are specified offences:

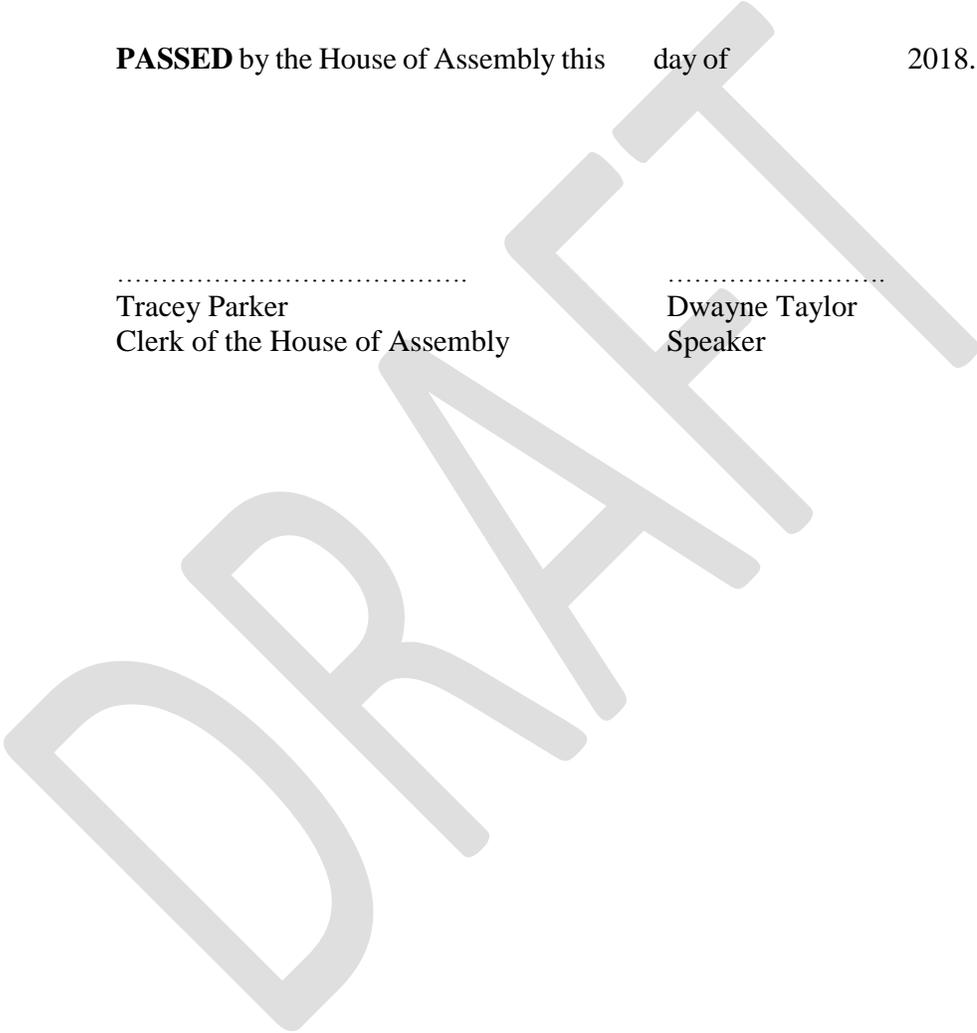
1. A drug trafficking offence
2. A money laundering offence
3. A terrorist finance offence
4. Trafficking in persons
5. An arms trafficking offence
6. Sexual exploitation, including sexual exploitation of children (OAP Ordinance, Trafficking in Persons Ordinance and Children (Care and Protection Ordinance)
7. Prostitution (Summary Offences Ordinance)
8. Illicit trafficking in stolen and other goods (Customs and Theft Ordinances)
9. Corruption and bribery (Integrity Commission and Bribery Ordinances)
10. Fraud (section 24 - 32 of Theft Ordinance)
11. Blackmail (section 33 Theft Ordinance)
11. **Counterfeiting currency** (Currency Ordinance)[??]
12. Environmental crimes (Marine Pollution Ordinance)
13. Murder, grievous bodily injury (Offences Against the Person Ordinance)
14. Kidnapping, abduction, illegal restraint and hostage-taking (OAP Ordinance)
15. Robbery or theft (Theft Ordinance)
16. Smuggling (Customs Ordinance/Immigration Ordinance)
17. **Extortion** (Theft Ordinance)[??]
18. Forgery
19. Piracy
20. Fraudulent evasion of customs duties (taxes) payable on goods (Customs Ordinance)
21. Defrauding the public revenue (**new provision in Theft Ordinance**)[**tax crimes**]

- 22 Cheating the public revenue **(at common law)[tax crimes]**
- 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.”.

PASSED by the House of Assembly this day of 2018.

.....
 Tracey Parker
 Clerk of the House of Assembly

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 Dwayne Taylor
 Speaker



EXPLANATORY MEMORANDUM

This Bill seeks to amend the Proceeds of Crime Ordinance (“the Ordinance”) to ensure compliance with FATF AML/CFT recommendations.

THE BILL

Clauses 1 and 2 of the Bill make provision for the short title, commencement and interpretation of the Bill.

Clauses 3 of the Bill seek to amend the Ordinance to insert a definition in section 2(1) of the Ordinance for the term “specified offence”.

Clause 4 of the Bill seeks to repeal and replace section 15(1) of the Ordinance.

Clause 5 of the Bill seeks to repeal and replace section 106 of the Ordinance to provide for seizure of cash and to require that where a customs officer seize cash under the section that the Collector of Customs shall report the seizure to the FIA.

Clause 9 of the Bill seeks to amend section 128 (1)(b) to correct an incorrect reference.

Clause 10 of the Bill seeks to repeal and replace section 129(2) of the Ordinance which makes it an offence to tip-off someone that a STR has been filed or about to be filed.

Clause 13 of the Bill seeks to insert sections 176A to 176C to provide for where offence is committed by body corporate.

Clause 14 of the Bill seeks to repeal and replace Schedule 1 to list the predicate offences.