

CAYMAN ISLANDS



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PROLIFERATION FINANCING (PROHIBITION) LAW

(2017 Revision)

Law 23 of 2010 consolidated with Law 19 of 2012.

Revised under the authority of the Law Revision Law (1999 Revision).

Originally enacted-

Law 23 of 2010-28th June, 2010
Law 19 of 2012-31st August, 2012
Law 34 of 2016-24th October, 2016.

Proliferation Financing (Prohibition) Law (2017 Revision)

Consolidated and revised this 1st day of May, 2017.

Note (not forming part of the Law): This revision replaces the 2014 Revision which should now be discarded.

PROLIFERATION FINANCING (PROHIBITION) LAW

(2017 Revision)

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PROLIFERATION FINANCING (PROHIBITION) LAW

(2017 Revision)

Part I - Preliminary

1. This Law may be cited as the Proliferation Financing (Prohibition) Law (2017 Revision). Short title

2. (1) In this Law-

Definitions and
interpretation

“biological weapon” means any biological agent or toxin as defined and referred to in section 1(2) of the Biological Weapons Act 1974 (Overseas Territories) Order 1975;

“business relationship” means a business, professional or commercial relationship between a relevant person and a customer, which is expected by the relevant person, at the time when contact is established, to have an element of duration;

“chemical weapon” has the definition referred to in section 1(1) of Schedule 1 of the Chemical Weapons (Overseas Territories) Order 2005, and the exceptions outlined in that section apply accordingly;

“conduct” includes an act or an omission;

“country” includes territory;

“designated person” means a person, including any subsidiary or other entity owned or controlled by that person, to whom Security Council anti-proliferation financing measures relate;

“direction” means a direction issued pursuant to section 3;

“document” means information that is recorded in any form;

“economic resources” means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services;

“enforcement officer” means an officer of the Financial Reporting Authority, or any officer of Customs or officer of the Royal Cayman Islands Police Service who is specifically or generally authorised by the Cabinet;

“Financial Reporting Authority” means the Authority established under section 3 of the Proceeds of Crime Law (2017 Revision);

2017 Revision

“freeze” means to prohibit the transfer, conversion, disposition, movement or use of any funds or economic resources of a designated person that are specified in section 2B;

“funds” means financial assets and benefits of every kind, including –

- (a) cash, cheques, claims on money, drafts, money orders and other payment instruments;
- (b) deposits and relevant institutions or other persons, balances on accounts, debts and debt obligations;
- (c) publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivative products;
- (d) interest, dividends and other income on or value accruing from or generated by assets;
- (e) credit, rights of set-off, guarantees, performance bonds and other financial commitments;
- (f) letters of credit, bills of lading and bills of sale;
- (g) documents providing evidence of an interest in funds or financial resources; and
- (h) any other instrument of export financing;

“listed person” in relation to a direction, means a person, including any subsidiary or other entity owned or controlled by that person, in relation to whom a direction is given;

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“Monetary Authority” means the Cayman Islands Monetary Authority established under section 5(1) of the Monetary Authority Law (2016 Revision) and includes any employee of the Monetary Authority acting under the Monetary Authority’s authorisation;

“money laundering” means conduct that constitutes an offence under section 23A;

“notice” means a notice in writing;

“nuclear weapon” includes any nuclear explosive device that is not intended for use as a weapon;

“proliferation” means the development or production, or the facilitation of the development or production, of nuclear, radiological, biological or chemical weapons or systems for their delivery;

“radiological weapon” means a device designed to cause destruction, damage or injury by means of the radiation produced by the decay of radioactive material;

“relevant person” means a person to whom a direction is given;

“Security Council” means the Security Council of the United Nations;

(2) A reference in this Law to a person operating in the financial sector refers to a person whose business is subject to any one or more of the following Laws-

- (a) Banks and Trust Companies Law (2013 Revision); 2013 Revision
- (b) Building Societies Law (2014 Revision); 2014 Revision
- (c) Companies Management Law (2003 Revision); 2003 Revision
- (d) Cooperative Societies Law (2001 Revision); 2001 Revision
- (e) Insurance Law, 2010; Law 32 of 2010
- (f) Money Services Law (2010 Revision); 2010 Revision
- (g) Mutual Funds Law (2015 Revision); 2015 Revision
- (h) Securities Investment Business Law (2015 Revision); 2015 Revision
- (ha) Directors Registration and Licensing Law, 2014; or Law 10 of 2014
- (i) any other laws that may be prescribed by the Cabinet by regulations made under section 46 of the Monetary Authority Law (2016 Revision), 2016 Revision

and “financial sector” shall be construed accordingly.

Part 1A – Security Council measures and freezing of funds and economic resources

2A. (1) Where the Security Council has published a list of designated persons to whom, or a list of funds or economic resources or a class of funds and economic resources to which, measures against proliferation financing shall apply, the Financial Reporting Authority shall, as soon as reasonably practical, disseminate the list in such media as it considers appropriate.

Lists of designated persons

(2) In addition to publishing a list in accordance with subsection (1), the Financial Reporting Authority shall provide the list to the Monetary Authority and the department in Government charged with the responsibility for monitoring compliance with anti-money laundering and combating the financing of terrorism measures for designated non-financial businesses and professions.

2B. (1) Subject to any regulations, a person that has in that person’s possession, custody or control in the Islands, any funds or economic resources or is otherwise dealing with all funds or economic resources that are –

Freezing of funds and economic resources without direction from the Financial Reporting Authority

- (a) wholly or jointly owned or controlled, directly or indirectly, by a designated person; or
 - (b) derived or generated from funds or economic resources owned or controlled, directly or indirectly, by a designated person,
- shall-

- (i) immediately freeze all such funds or economic resources; and
- (ii) ensure that such funds or economic resources are not made available, whether directly or indirectly, to or for the benefit of the designated person.

(2) For the purposes of subsection (1), any funds or economic resources that are held by –

- (a) any entity owned or controlled, directly or indirectly, by a designated person; and
- (b) any individual or entity who acts on behalf of or under the direction of any designated person,

are treated as funds or economic resources owned or controlled by the designated person.

Reporting action taken under section 2B

2C. A person who has taken action under section 2B(1) shall, as soon as reasonably practicable, disclose to the Financial Reporting Authority details of any frozen funds or economic resources or actions taken in compliance with the prohibition requirements of the relevant Security Council measures, including attempted transactions.

Power to impose civil penalties under this Part

2D. (1) The Financial Reporting Authority may impose a penalty of such amount as it considers appropriate on a person who fails to comply with section 2B(1) or 2C and for this purpose, “appropriate” means effective, proportionate and dissuasive.

(2) In imposing and otherwise dealing with a civil penalty under this Part, the provisions of Part VI shall apply, with such necessary changes.

(3) A person on whom a penalty is imposed under this section is not liable to be processed against for an offence under section 2E in respect of the same failure.

Criminal penalties

2E. (1) Subject to subsection (2), a person who fails to comply with section 2B(1) or 2C commits an offence.

(2) A person has not committed an offence under subsection (1) if that person took all reasonable steps and exercised all due diligence to ensure compliance with the requirement.

(3) In deciding whether a person has committed an offence under this section, the court shall consider whether the person followed any relevant guidance that was at the time –

- (a) issued by the Financial Reporting Authority or by a professional body whose members, whether wholly or partly, operate in the financial sector; and
 - (b) published in a manner approved by the Financial Reporting Authority or other supervisory body or by the professional body as suitable in its opinion to bring the guidance to the attention of persons likely to be affected by it.
- (4) A person who fails to comply with section 2B(1) is liable –
- (a) on summary conviction, to a fine of fifty thousand dollars; or
 - (b) on conviction on indictment, to a fine of seventy thousand dollars or imprisonment for a term of three years, or to both.
- (5) A person who fails to comply with section 2C is liable on summary conviction to a fine of ten thousand dollars.
- (6) A person who is convicted of an offence under this section is not liable to a penalty under section 2D in respect of the same offence.

2F. (1) The Financial Reporting Authority may, in accordance with any regulations, submit to the United Kingdom, requests for de-listing of designated persons if the Financial Reporting Authority is satisfied that subsection (3) applies and –

De-listing of designated persons

- (a) if the designated persons are individuals, they reside in the Islands; or
 - (b) if the designated persons are not individuals, they are incorporated or otherwise established in the Islands.
- (2) The Financial Reporting Authority may submit a request for de-listing either at the Financial Reporting Authority's own instigation or on application by a designated person.
- (3) In so far as a listing by the Security Council gives effect to a particular decision of the Security Council, the listing is revoked when Article 25 of the Charter of the United Nations ceases to require the United Kingdom to carry out that decision.

Part II - Directions

3. (1) The Financial Reporting Authority may, in relation to any country, give a direction to a relevant person mentioned in section 4 if any of the conditions specified in section 5 are satisfied.

Power to give a direction

(2) A direction given by the Financial Reporting Authority may make different provisions in relation to different descriptions or classes of relevant persons.

Persons to whom a direction may be given

4. A direction under this Law may be given to any of the following relevant persons-

- (a) a particular person operating in the financial sector;
- (b) any description or class of persons operating in the financial sector; or
- (c) all persons operating in the financial sector.

Conditions for giving a direction

5. (1) The conditions referred to in section 3(1) with respect to a country are that-

- (a) the Financial Action Task Force, or such other international or inter-governmental organisation has advised that measures should be taken in relation to the country because of the risks of proliferation activities being carried on -
 - (i) in the country;
 - (ii) by the government of the country; or
 - (iii) by persons resident or incorporated in the country;
- (b) the Financial Reporting Authority reasonably believes that there is a risk that proliferation activities are being carried on-
 - (i) in the country;
 - (ii) by the government of the country; or
 - (iii) by persons resident or incorporated in the country, and that this poses a significant risk to the interests of the Islands or the United Kingdom; or
- (c) the Financial Reporting Authority reasonably believes that-
 - (i) the development or production of nuclear, radiological, biological or chemical weapons in the country or systems for their delivery; or
 - (ii) the doing in the country of anything that facilitates the development or production of any of the weapons referred to in subparagraph (i), poses a significant risk to the interests of the Islands or the United Kingdom.

(2) For the purposes of subsection (1)(b) and (c), the question as to whether or not an activity mentioned in that subsection constitutes a significant risk to the Islands or the United Kingdom is a matter to be determined by the Financial Reporting Authority acting on the directions of the Governor.

(3) The Financial Reporting Authority shall, in accordance with subsection (4), publish a list of any persons or countries to whom directions shall apply and shall disseminate such list in such media as it considers appropriate.

(4) The Cabinet may make regulations prescribing the matters of which the Financial Reporting Authority must be satisfied before listing a person under subsection (3).

(5) In addition to publishing a list under subsection (3), the Financial Reporting Authority shall provide such list to the Monetary Authority and the department in Government charged with the responsibility for monitoring compliance with anti-money laundering and combating the financing of terrorism measures for designated non-financial businesses and professions.

(6) The Financial Reporting Authority may, in accordance with regulations, revoke a listing if the Financial Reporting Authority is satisfied that the conditions in subsection (1) no longer apply.

Part III- Requirements in Relation to Directions

6. (1) Where the Financial Reporting Authority gives a direction pursuant to section 3, it may impose any of the requirements specified in sections 7, 8, 9 and 10 in relation to transactions or business relationships with- Requirements imposed by the Financial Reporting Authority

- (a) a person carrying on business in the country concerned;
- (b) the government of the country; or
- (c) a person resident or incorporated in the country.

(2) A direction may further impose requirements in relation to-

- (a) a particular person under subsection (1);
- (b) a description or class of persons under subsection (1); or
- (c) all persons under subsection (1).

(3) A direction may make different provision in relation to-

- (a) different descriptions or classes of listed persons; and
- (b) different descriptions of transaction or business relationship.

(4) The requirements imposed by a direction must be proportionate, having regard to the conditions mentioned in section 5(1)(a) or the risk mentioned in section 5(1)(b) or (c), to the interests of the Islands or the United Kingdom.

7. (1) A direction given by the Financial Reporting Authority may require a relevant person to undertake enhanced customer due diligence measures- Customer due diligence

- (a) before entering into a transaction or business relationship with a listed person; and
- (b) during a business relationship with that listed person.

(2) The direction may do either or both of the following-

- (a) impose a general obligation to undertake enhanced customer due diligence measures;
- (b) require a relevant person to undertake specific measures identified or described in the direction.

(3) A direction requiring a relevant person to undertake enhanced customer due diligence measures pursuant to subsection (1) or perform any requirement or undertaking under subsection (2) is without prejudice to the relevant person's obligations or liabilities in relation to the same matters, where applicable, under the Proceeds of Crime Law (2017 Revision), the Money Laundering Regulations (2015 Revision), the Terrorism Law (2017 Revision) or the Terrorism (United Nations Measures) (Overseas Territories) Order, 2001.

2017 Revision
2015 Revision
2017 Revision

(4) For the purposes of this section "enhanced customer due diligence measures" means measures to-

- (a) establish the identity of the listed person;
- (b) obtain information about the listed person, his business and source of his funds and economic resources; and
- (c) assess the risk of the listed person being involve in proliferation.

Ongoing monitoring

8. (1) A direction given by the Financial Reporting Authority may require a relevant person to undertake enhanced ongoing monitoring of any business relationship with a listed person.

(2) The direction may do either or both of the following-

- (a) impose a general obligation to undertake enhanced ongoing monitoring;
- (b) require a relevant person to undertake specific measures identified or described in the direction.

(3) For the purposes of this section, "enhanced ongoing monitoring" of a business relationship means-

- (a) keeping up-to-date information and documents obtained for the purposes of enhanced customer due diligence measures; and
- (b) scrutinising transactions undertaken during the course of the business relationship and, where appropriate, the source of funds and economic resources for those transactions, to ascertain

whether the transactions are consistent with the relevant person's knowledge of the listed person and the business of that listed person.

9. (1) A direction given by the Financial Reporting Authority may require a relevant person to provide such information and documents relating to transactions and business relationships with listed persons as may be specified in the direction. Systematic reporting

(2) A direction imposing the requirement referred to in subsection (1) shall specify how the direction is to be complied with, including -

- (a) the person to whom the information and the documents are to be provided; and
- (b) the period within which, or intervals at which, the information and documents are to be provided.

(3) The power conferred by this section is not exercisable in relation to information or documents in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

(4) The exercise of the power conferred by this section and the provision of information under it is not otherwise subject to any restriction on the disclosure of information, whether imposed by statute or otherwise.

10. Where the Financial Reporting Authority gives a direction, it may require a relevant person not to enter into or continue to participate in- Restricting or ceasing business

- (a) a specified transaction or business relationship with a listed person;
- (b) a specified description of transactions or business relationships with a listed person; or
- (c) any transaction or business relationship with a listed person.

Part IV - Procedures and Licensing in Relation to Directions

11. (1) A direction that is given to- General directions: how given

- (a) a description or class of persons operating in the financial sector;
or
- (b) all persons operating in the financial sector, shall be contained in an order made by the Financial Reporting Authority and shall, subject to subsection (3), have effect from the date the order is made.

(2) If the order made under subsection (1) contains requirements of a kind mentioned in section 10, the Financial Reporting Authority shall forthwith

transmit a copy of the order to the Attorney General who shall, as soon as practicable, lay the order before the Legislative Assembly for approval.

(3) If, following the laying of the order, the Legislative Assembly fails to approve the order within twenty-eight days from the date of laying, the order shall cease to have effect.

(4) An order that ceases to have effect in accordance with subsection (3) shall not affect anything done under the order.

(5) In calculating the period specified in subsection (3), account shall not be taken of the period when the Legislative Assembly is prorogued or dissolved.

(6) The order under subsection (1) shall be published in the Gazette.

(7) The Financial Reporting Authority may vary or revoke a direction at any time by order.

(8) The Financial Reporting Authority shall forthwith transmit a copy of the order under subsection (7) which seeks to revoke an order made under subsection (2) to the Attorney General who shall as soon as practicable lay the order before the Legislative Assembly for approval.

(9) An order, if not previously revoked and whether or not varied, ceases to have effect at the end of the period of one year beginning with the day on which it was made but this is without prejudice to the making of a further direction.

(10) Where the order is varied or ceases to have effect, whether on revocation or otherwise, the Financial Reporting Authority shall take such steps as it considers appropriate to publicise that fact.

Specific directions:
notification and duration
of direction

12. (1) This section applies in relation to a direction that is given to a particular person.

(2) Where the Financial Reporting Authority gives a direction, it shall give notice of the direction to that particular person.

(3) The direction, if not previously revoked and whether or not varied, ceases to have effect at the end of the period of one year beginning with the day on which the direction is given.

(4) The application of subsection (3) is without prejudice to the giving of a further direction by the Financial Reporting Authority.

(5) The Financial Reporting Authority may vary or revoke the direction at any time.

(6) Where the direction to a particular person is varied or ceases to have effect, whether on revocation or otherwise, the Financial Reporting Authority shall give notice of that fact to that particular person.

13. (1) A relevant person may apply to the Financial Reporting Authority, in such form as the Financial Reporting Authority may specify, for a licence exempting him from the requirements of the direction.

Directions restricting or ceasing business: exemption by licence

(2) The applicant shall provide such information and documents as the Financial Reporting Authority may require in determining the application.

(3) A licence granted under this section may be-

- (a) general or granted to a description or class of persons or to a particular person;
- (b) subject to conditions as the Financial Reporting Authority may specify in the licence; or
- (c) of indefinite duration or subject to an expiry date.

(4) The Financial Reporting Authority may at any time vary or revoke a licence issued under this section.

(5) Where the Financial Reporting Authority grants, varies or revokes a licence, it shall-

- (a) in the case of a licence granted to a particular person, give notice of the grant, variation or revocation to that particular person; and
- (b) in the case of a general licence or a licence granted to a description or class of persons, take such steps as it considers appropriate to publicise the grant, variation or revocation of the licence.

Part V - Enforcement: Information Powers

14. (1) An enforcement officer may, by notice to a relevant person, require the relevant person to-

Power to require information or documents

- (a) provide information as may be specified in the notice; or
- (b) produce documents as may be so specified,

in such form and verified or authenticated in such manner as may be required by the enforcement officer.

(2) An enforcement officer may exercise powers under this section only if the information or documents sought to be obtained as a result are reasonably

required in connection with the exercise by the Financial Reporting Authority of its functions under this Law.

(3) Where an enforcement officer requires information to be provided or documents to be produced under this section-

- (a) the notice shall set out –
 - (i) the reasons why the enforcement officer requires the information to be provided or the documents to be produced;
 - (ii) a period of seventy-two hours or such longer period as the enforcement officer considers reasonable, within which the information or the documents are to be produced; and
- (b) the information shall be provided or the documents produced-
 - (i) by or before the end of the period specified in the notice; and
 - (ii) at such place as may be so specified.

(3A) A relevant person may apply in writing to the enforcement officer for an extension of the period in the notice, before such period has expired, and shall provide reasons why an extension is required.

(4) In relation to a document that is in electronic form, the power to require the production of the document includes a power to require the production of a copy of the document in legible form or in a form from which the document can readily be produced in visible and legible form.

(5) An enforcement officer may take copies of, or make extracts from, any document that is produced under this section.

(6) The production of a document shall not affect any lien which a person has on the document.

Powers of entry and inspection without a warrant, etc.

15. (1) Where an enforcement officer has reasonable cause to believe that any premises are being used by a relevant person in connection with the relevant person's business activities, the enforcement officer may, on producing evidence of authority, at any reasonable time-

- (a) enter and inspect the premises;
- (b) observe the carrying on of business activities by the relevant person;
- (c) inspect any document found on the premises; and
- (d) require any person on the premises to provide an explanation of any document or to state where it may be found.

(2) An enforcement officer may take copies of, or make extracts from, any document found pursuant to subsection (1).

(3) An enforcement officer may exercise powers under this section only if the information or document sought to be obtained is reasonably required in connection with the exercise by the Financial Reporting Authority of its functions under this Law.

(4) In this section, “premises” means any premises other than premises used only as a dwelling.

16. (1) A magistrate or justice of the peace may issue a warrant under this section if he is satisfied, on information on oath given by an enforcement officer, that there are reasonable grounds for believing that any set of conditions specified in subsection (2), (3) or (4) is satisfied.

Entry to premises under
warrant

(2) The first set of conditions is that-

- (a) there is on the premises specified in the warrant, a document in relation to which a requirement could be imposed under section 14(1)(b); and
- (b) if the requirement under section 14(1)(b) were to be imposed-
 - (i) it would not be complied with; or
 - (ii) the document to which it relates would be removed, tampered with or destroyed.

(3) The second set of conditions is that-

- (a) a person on whom a requirement has been imposed under section 14(1)(b) has failed, wholly or in part, to comply with it; and
- (b) there is on the premises specified in the warrant, a document that has been required to be produced.

(4) The third set of conditions is that-

- (a) an enforcement officer has been obstructed in the exercise of a power under section 15; and
- (b) there is on the premises specified in the warrant a document that could be inspected under section 15(1)(c).

(5) A magistrate or justice of the peace may issue a warrant under this section if he is satisfied on information on oath given by an enforcement officer that there are reasonable grounds for suspecting that-

- (a) an offence under this Law has been, is being or is about to be committed by a relevant person; and

- (b) there is on the premises specified in the warrant a document relevant to whether that offence has been, is being or is about to be committed.

(6) A warrant issued under this section shall authorise an enforcement officer to -

- (a) enter the premises specified in the warrant;
- (b) search the premises and take possession of anything that appears to be a document specified in the warrant or to take, in relation to that document, any other steps which may appear to be necessary for preserving it or preventing interference with it;
- (c) take copies of, or extracts from, any document specified in the warrant;
- (d) require any person on the premises to provide an explanation of any document which appears to be of the kind specified in the warrant or to state where the document may be found; and
- (e) use such force as may reasonably be necessary.

Restrictions on powers

17. (1) This section applies in relation to the powers conferred by sections 14, 15 and 16.

(2) The powers referred to in subsection (1) are not exercisable in relation to information or documents in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

(3) The exercise of the powers referred to in subsection (1) and the provision of information or production of documents under those powers is not otherwise subject to any restriction on the disclosure of information, whether imposed by statute or otherwise.

Failure to comply with information requirement

18. (1) If on an application made by an enforcement officer it appears to the Grand Court that a person (“the information defaulter”) has failed to do something that he was required to do under section 14(1), the Grand Court may make an order under this section.

(2) An order made under this section may require the information defaulter to do either or both of the following-

- (a) to do the thing that he had failed to do within such period as may be specified in the order;
- (b) to take such steps to remedy the consequences of the failure as may be so specified.

(3) If the information defaulter is a body corporate, a partnership or an unincorporated body of persons that is not a partnership, the order may require any officer of the body corporate, partnership or unincorporated body who is,

wholly or partly responsible for the failure, to meet such costs of the application as may be specified in the order.

Part VI - Enforcement: Civil Penalties

19. (1) The Financial Reporting Authority may, subject to subsection (2), impose a penalty of such amount as it considers appropriate on a person who fails to comply with a requirement imposed by-

Power to impose civil penalties

- (a) a direction under this Law; or
- (b) a condition of a licence under section 13,

and for this purpose, “appropriate” means effective, proportionate and dissuasive.

(2) The Financial Reporting Authority shall not impose a penalty if it is satisfied that the person took all reasonable steps and exercised all due diligence to ensure compliance with the requirement.

(3) In deciding whether to impose a penalty for failure to comply with a requirement, the Financial Reporting Authority shall consider whether the person followed any relevant guidance which was at the time-

- (a) issued by the Financial Reporting Authority or by a professional body whose members, whether wholly or partly, operate in the financial sector; and
- (b) published in a manner approved by the Financial Reporting Authority as suitable in its opinion to bring the guidance to the attention of persons likely to be affected by it.

(4) A person on whom a penalty is imposed under this section is not liable to be proceeded against for an offence under section 22 in respect of the same failure.

(5) A penalty imposed by the Financial Reporting Authority pursuant to this section shall not exceed forty thousand dollars, unless such higher penalty is presented to and confirmed by the Grand Court.

(6) Where the Financial Reporting Authority presents a higher penalty to the Grand Court for confirmation, the Grand Court may-

- (a) confirm the penalty imposed by the Financial Reporting Authority; or
- (b) vary the penalty as it considers appropriate, having regard to the seriousness of the failure.

(7) A penalty imposed by the Financial Reporting Authority under this section is payable to the Government for its use and is recoverable in civil

proceedings by the Financial Reporting Authority as a debt due to the Government.

Duty to issue penalty notice

20. (1) The Financial Reporting Authority shall, before imposing a penalty against a person under section 19, give notice to the person-

- (a) stating its intention to impose the penalty;
- (b) stating the reasons for the intention to impose the penalty;
- (c) stating the amount proposed to be imposed as the penalty; and
- (d) inviting the person to make any representation he wishes.

(2) A notice issued under subsection (1) shall require the person to whom it relates to submit his representation, if any, within a period of twenty-eight days from the date indicated on the notice.

(3) Where the Financial Reporting Authority receives a representation under this section, it shall consider the representation and-

- (a) confirm the amount of the proposed penalty;
- (b) vary the penalty to be imposed in such manner as it considers fit; or
- (c) withdraw the penalty proposed to be imposed.

(4) Where the Financial Reporting Authority varies or withdraws a proposed penalty under paragraph (b) or (c), as the case may be, it may take further steps, if any, in consequence of the variation or withdrawal as it considers appropriate.

(5) The Financial Reporting Authority shall notify the person of its decision under subsection (3) and, where it varies or withdraws the proposed penalty, of the further steps, if any, it has taken in relation to the person.

(6) The Financial Reporting Authority shall, by the notice under subsection (5), advise the person of his right of appeal under section 21.

(7) Where the Financial Reporting Authority imposes a penalty under subsection (3)(a) or (b), it shall require the person to pay to the Financial Reporting Authority the penalty imposed within such period as the Financial Reporting Authority may determine.

(8) Where the Financial Reporting Authority varies a penalty under subsection (3)(b), the application of subsection (7) is without prejudice to any further steps that the Financial Reporting Authority may take under subsection (5).

(9) Where the Financial Reporting Authority does not receive a representation in relation to a notice it has issued under this section, it shall proceed to impose such penalty as it considers appropriate.

(10) A notice issued under this section may, at the written request of the person against whom it is issued, be extended by the Financial Reporting Authority for a period not exceeding an additional seven days.

21. (1) A person who is aggrieved by a decision of the Financial Reporting Authority to impose a penalty under section 20 may appeal the decision to the Grand Court. Right of appeal

(2) On an appeal brought under subsection (1), the Grand Court may-

- (a) set aside the decision of the Financial Reporting Authority;
- (b) confirm the decision of the Financial Reporting Authority; or
- (c) vary the decision of the Financial Reporting Authority in a manner it considers fit.

Part VII- Enforcement: Offences

22. (1) Subject to subsection (2), a person who fails to comply with a requirement imposed by a direction under this Law commits an offence. Failure to comply with requirement imposed by a direction

(2) A person has not committed an offence under subsection (1) if he took all reasonable steps and exercised all due diligence to ensure compliance with the requirement.

(3) In deciding whether a person has committed an offence under this section, the court shall consider whether the person followed any relevant guidance that was at the time-

- (a) issued by the Financial Reporting Authority or by a professional body whose members, whether wholly or partly, operate in the financial sector; and
- (b) published in a manner approved by the Financial Reporting Authority or other supervisory body or by the professional body as suitable in its opinion to bring the guidance to the attention of persons likely to be affected by it.

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

- (a) on summary conviction, to a fine of fifty thousand dollars; or
- (b) on conviction on indictment, to a fine of seventy thousand dollars or imprisonment for a term of three years, or to both.

(5) A person who is convicted of an offence under this section is not liable to a penalty under section 19 in respect of the same offence.

Offences in connection with licences

23. (1) A person commits an offence if he, for the purpose of obtaining a licence under section 13-

- (a) provides information that is false in a material respect or a document that is not what it purports to be; and
- (b) knows that, or is reckless as to whether, the information is false or the document is not what it purports to be.

(2) A person who commits an offence under subsection (1) is liable on conviction on indictment to a fine of seventy thousand dollars or imprisonment for a term of three years, or to both.

Application of the Proceeds of Crime Law

23A. A person who –

- (a) provides funds and economic resources to fund unauthorised proliferation activities; or
- (b) enters into or becomes concerned in an arrangement which that person knows or suspects facilitates, by whatever means, the acquisition, retention, use or control of funds and economic resources to fund unauthorised proliferation activities,

commits a money laundering offence for the purposes of the Proceed of Crime Law (2017 Revision) and the provisions of that Law shall apply in the investigation and prosecution of the offence and to any other procedure relating to that offence.

2017 Revision

Extra-territorial application of offences

24. (1) An offence under this Law may be committed by a person acting in the course of a business in the financial sector although the conduct which gives rise to the offence takes place wholly or partly outside the Islands.

(2) Nothing contained in this section affects any criminal liability arising otherwise than under this section.

Time limit for summary proceedings

25. An offence under this Law that is triable summarily shall be tried-

- (a) at any time within three years after the commission of the offence; or
- (b) within twelve months after the date on which evidence sufficient in the opinion of the Director of Public Prosecutions to justify the proceedings comes to his knowledge.

Liability of officers of bodies corporate, etc.

26. (1) Where an offence under this Law committed by a body corporate is shown to-

- (a) have been committed with the consent or connivance of an officer of the body corporate; or
- (b) be attributable to any neglect on the part of any such officer,

the officer as well as the body corporate commits an offence and both are liable to be proceeded against and punished accordingly.

(2) Where an offence under this Law committed by a partnership is shown to-

- (a) have been committed with the consent or connivance of a partner; or
- (b) be attributable to any neglect on the part of a partner,

the partner as well as the partnership commits an offence and both are liable to be proceeded against and punished accordingly.

(3) Where an offence under this Law committed by an unincorporated association, other than a partnership, is shown to-

- (a) have been committed with the consent or connivance of an officer of the association; or
- (b) be attributable to any neglect on the part of any such officer,

the officer as well as the association commits an offence and both are liable to be proceeded against and punished accordingly.

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

(5) In this section-

- (a) "officer"-
 - (i) in relation to a body corporate, means a director, manager, secretary, chief executive, member of the committee of management, or a person purporting to act in such a capacity; and
 - (ii) in relation to an unincorporated association, means any officer of the association or any member of its governing body, or a person purporting to act in such a capacity; and
- (b) "partner" includes a person purporting to act as a partner.

27. (1) Proceedings under this Law that are alleged to have been committed by a partnership or an unincorporated association shall be brought in the name of the partnership or association and not in that of its members.

Proceedings against unincorporated bodies

(2) Rules of court relating to the service of documents have effect in relation to proceedings for an offence under this Law as if the partnership or association were a body corporate.

(3) A fine imposed on the partnership or association on its conviction for an offence shall be paid out of the funds of the partnership or association.

Part VIII - General Provisions

Report to Legislative Assembly

28. (1) The Financial Reporting Authority shall, within a period of three months after the end of each year-

- (a) prepare a report about the exercise during that year of its functions under this Law; and
- (b) transmit a copy of the report to the Attorney General.

(2) The Attorney General shall, within a period of three months after receipt of a report under subsection (1)(b), lay the report before the Legislative Assembly.

(3) Subsection (1) shall not apply in relation to a year if no direction under this Law was in force at any time in that year.

(4) In calculating the period specified in subsection (2), account shall not be taken of the period when the Legislative Assembly is prorogued or dissolved.

Monitoring persons operating in the financial sector

29. The Financial Reporting Authority shall take appropriate measures to monitor persons operating in the financial sector for the purpose of securing compliance by those persons with the requirements of any directions given under this Law.

Assistance in preparing guidance

30. The Financial Reporting Authority shall provide such assistance as may reasonably be required by any professional body whose members operate in the financial sector in drawing up guidance that, when issued and published, would be relevant guidance for the purposes of sections 19(3) and 22(3).

Notices

31. (1) A notice required under this Law may be given to a person-

- (a) by posting it to the person's last known address;
- (b) by leaving it for him with some adult person at his usual or last known place of abode or business; or
- (c) where the person is a body corporate, partnership or unincorporated association-
 - (i) by posting it to the registered or principal office of the body corporate, partnership or association; or

- (ii) by delivering it to the secretary or clerk of the body corporate, partnership or association at the registered or principal office of the body corporate, partnership or association.

(2) Where under this Law the Financial Reporting Authority is under a duty to give a notice to a person but does not have an address for the person, it shall cause the notice to be published in the Gazette and in at least three issues of a newspaper published and circulating in the Islands.

(3) The form of a notice issued under this section shall be such as the Financial Reporting Authority may determine.

32. *Repealed by section 14 of Law 34 of 2016.*

Repealed

33. A person who knowingly and intentionally participates in activities the object or effect of which is, directly or indirectly, to circumvent any requirement imposed by a direction under this Law commits an offence and is liable-

Agreement or arrangement to circumvent direction

- (a) on summary conviction, to a fine of twenty thousand dollars; or
- (b) on conviction on indictment, to a fine, imprisonment for a term of two years, or to both.

34. Neither the Financial Reporting Authority, nor any director or employee of the Authority, shall be liable in damages for anything done or omitted in the discharge or purported discharge of their respective functions under this Law unless it is shown that the act or omission was in bad faith.

Immunity from liability

35. (1) The Cabinet may, on the advice of the Financial Reporting Authority, by order amend section 2(2) to extend the scope of persons operating in the financial sector.

Power to amend section 2(2)

(2) An order made under subsection (1) shall-

- (a) be published in the Gazette; and
- (b) be subject to a negative resolution of the Legislative Assembly.

36. (1) Subject to subsection (2), this Law binds the Crown.

Application to the Crown

(2) The Crown shall not be criminally liable on account of any contravention of this Law.

(3) The Grand Court may, on the application of a person appearing to the court to have an interest, declare unlawful any act or omission of the Crown that constitutes such a contravention.

Regulations

37. (1) The Cabinet may make regulations for the effective carrying out of the provisions of this Law and such regulations may include regulations dealing with

—

- (a) the publication of lists of designated persons;
- (b) the publication of lists of listed persons;
- (c) de-listing of persons
- (d) the freezing of funds and economic resources;
- (e) exemptions from a requirement to freeze funds and economic resources; and
- (f) remedies for persons wrongly affected by the freezing of funds and economic resources.

(2) Regulations under this Law may provide penalties for offences against the regulations but such penalties shall not exceed any penalty provided in this Law.

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Clerk of Cabinet

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