

No. 1 of 2010

VIRGIN ISLANDS

PROCEEDS OF CRIMINAL CONDUCT (AMENDMENT) ACT, 2010

ARRANGEMENT OF SECTIONS

Section

- 1.** Short title.
- 2.** Section 27 amended.
- 3.** Section 28 amended.
- 4.** Section 29 amended.
- 5.** Section 30 amended.
- 6.** Section 30A amended.
- 7.** Section 31 amended.
- 8.** Section 36 amended.
- 9.** Section 41 amended.

No. 1 of 2010

**Proceeds of Criminal Conduct
(Amendment) Act, 2010**

**Virgin
Islands**

I Assent

**Sgd. David Pearey
Governor
9th March, 2010**

**VIRGIN ISLANDS
No. 1 of 2010**

An Act to amend the Proceeds of Criminal Conduct Act, 1997 (No. 5 of 1997).

[Gazetted 9th April, 2010]

ENACTED by the Legislature of the Virgin Islands as follows:

- Short title. 1. This Act may be cited as the Proceeds of Criminal Conduct (Amendment) Act, 2010.
- Section 27
amended.
No. 5 of 1997 2. Section 27 of the Proceeds of Criminal Conduct Act, 1997 (hereinafter referred to as “the principal Act”) is amended
- (a) in subsection (4) by deleting the words “seven thousand dollars” and replacing them with the words “twenty-five thousand dollars”; and
- (b) in subsection (7) by deleting the words “four thousand dollars” and replacing them with the words “twenty thousand dollars”.
- Section 28
amended. 3. Section 28 of the principal Act is amended in subsection 8 by deleting
- (a) in paragraph (a) the words “three thousand dollars” and replacing them with the words “twenty-five thousand dollars”; and
- (b) in paragraph (b) the words “twenty thousand dollars” and replacing them with the words “forty thousand dollars”.

Section 29 amended.

4. Section 29 of the principal Act is amended in subsection (11) by deleting
 - (a) in paragraph (a) the words “three thousand dollars” and replacing them with the words “twenty-five thousand dollars”; and
 - (b) in paragraph (b) the words “twenty thousand dollars” and replacing them with the words “forty thousand dollars”.

Section 30 amended.

5. Section 30 of the principal Act is amended in subsection (4) by deleting
 - (a) in paragraph (a) the words “three thousand dollars” and replacing them with the words “twenty-five thousand dollars”; and
 - (b) in paragraph (b) the words “twenty thousand dollars” and replacing them with the words “forty thousand dollars”.

Section 30A amended.

6. Section 30A of the principal Act is amended in subsection (10) by deleting
 - (a) in paragraph (a) the words “ten thousand dollars” and replacing them with the words “twenty-five thousand dollars”; and
 - (b) in paragraph (b) the words “twenty-five thousand dollars” and replacing them with the words “forty thousand dollars”.

Section 31 amended.

7. Section 31 of the principal Act is amended
 - (a) in subsection (2) by inserting after the words “(“the disclosure”)” in paragraph (a), the words “is being or”;
 - (b) in subsection (3) by deleting the words “section 28 (2) or 29 (5)” in paragraph (a) and replacing them with the words “section 28 (2), 29 (5) or 30A (4)”.
 - (c) in subsection (9) by deleting
 - (a) in paragraph (a) the words “three thousand dollars” and replacing them with the words “twenty-five thousand dollars”; and
 - (b) in paragraph (b) the words “ten thousand dollars” and replacing them with the words “forty thousand dollars”.

Section 36 amended.

8. Section 36 of the principal Act is amended in subsection (12) by deleting the words “three thousand dollars” and replacing them with the words “twenty thousand dollars”.

Section 41
amended.

9. Section 41 of the principal Act is amended in subsection (4) by deleting the words “fifteen thousand dollars” and replacing them with the words “thirty thousand dollars”.

Passed by the House of Assembly this 9th day of February, 2010.

Sgd. ROY HARRIGAN,
Speaker.

Sgd. PHYLLIS EVANS,
Clerk of the House of Assembly.

LEGAL REPORT

This Act seeks to take account and implement some of the recommendations arising from the 2008 CFATF Mutual Evaluation Report of the Virgin Islands (MER). While the Virgin Islands has received favourable ratings in terms of its legal, regulatory and law enforcement regimes, the MER requires certain legislative reforms to be carried out in order to ensure optimum compliance by the Virgin Islands with established international benchmarks relating to anti-money laundering and countering the financing of terrorism (AML/CFT) initiatives. The Virgin Islands is required to update the CFATF as to the steps taken by the jurisdiction to implement the recommendations identified in the MER, beginning from the next CFATF Plenary in 2010.

Two of the recommendations for improvement outlined in the MER affect section 31 of the Proceeds of Criminal Conduct Act, 1997 (No. 5 of 1997) and the penalties prescribed in the Anti-money Laundering Regulations, 2008 and Anti-money Laundering and Terrorist Financing Code of Practice, 2008. In relation to these AML/CFT subjects, the MER recommended that (1) where a person who knows or suspects that any disclosure relating to money laundering has been made, discloses such information as to prejudice an investigation, should be extended to cover the period when the disclosure is in transit (that is to say, before it has actually been made); and (2) the penalties imposed under the Anti-money Laundering Regulations, 2008 and Anti-money Laundering and Terrorist Financing Code of Practice, 2008 should be enhanced to make them dissuasive. The first recommendation seeks to ensure full implementation of FATF Recommendation 14.2, while the second recommendation relates to the full implementation of FATF Recommendation 17.

Accordingly, the Act ensures the full implementation of FATF Recommendation 14.2 by amending section 31 of the Proceeds of Criminal Conduct Act, 1997 (see clause 7). In relation to FATF Recommendation 17, the sanctions imposed under the Anti-money Laundering Regulations, 2008 and Anti-money Laundering and Terrorist Financing Code of Practice, 2008 derive their authority from the penalty restrictions imposed under the Proceeds of Criminal Conduct Act, 1997. While, in relation to the Anti-money Laundering Regulations, 2008, the Act allows for the imposition of penalties in the nature of fines, such fines could not exceed the sum of fifteen thousand dollars. In relation to the Anti-money Laundering and Terrorist Financing Code of Practice, 2008, the Act restricts (under section 27 (4)) the imposition of a penalty to a fine not exceeding seven thousand dollars or a term of imprisonment not exceeding two years or both; it also empowers the Financial Services Commission (under section 27 (7)) to impose administrative penalties in the nature of monetary fines not exceeding four thousand dollars for AML/CFT breaches and non-compliance matters under the Code of Practice. The MER considers the prescribed penalties to be too low to satisfy the FATF Recommendation 17 dissuasive test.

However, in order to fully meet the dissuasive test of FATF Recommendation 17, the penalties prescribed in sections 27, 28, 29, 30, 30A and 31 of the Proceeds of Criminal Conduct Act, 1997 must be enhanced in order to ensure appropriate synergy in terms of

the gravities of the offences vis-à-vis the penalties prescribed. It is for this reason that those sections of the Act, including section 41 thereof, are being amended in this Act to provide for enhanced penalties and thus enable compliance with FATF Recommendation 17 with respect to the Anti-money Laundering Regulations, 2008 and Anti-money Laundering and Terrorist Financing Code of Practice, 2008. The new penalties have been kept modest but sufficient to ensure compliance with the FATF dissuasive test.

The enactment of this Act would therefore enable the appropriate amendments to be effected to the other related AML/CFT enactments and thus enable further the Virgin Islands to provide a positive rendition at the next CFATF Plenary that is due in 2010 of the Territory's continued commitment to meeting established international standards, especially in relation to combating money laundering and terrorist financing. Additionally, the International Monetary Fund will evaluate the Territory at a high level in 2010.

This Act was first read as a Bill in the House of Assembly on the 29th day of December, 2009, went through the various stages and passed on the 9th day of February, 2010.

In my opinion, His Excellency the Governor may properly assent to this Act in the name and on behalf of Her Majesty.

Sgd. Kathleen D.K. Quartey
Attorney General
Date: 22nd February, 2010