

M O N T S E R R A T

PROCEEDS OF CRIME (AMENDMENT) ACT 2013

No. 3 of 2013

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I ASSENT

Adrian Davis (Sgd.)
Governor

DATE: 9.4.13

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AN ACT TO AMEND THE PROCEEDS OF CRIME ACT (NO. 1 OF 2010).

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Montserrat and by the authority of the same as follows:—

1 Short title

This Act may be cited as the Proceeds of Crime (Amendment) Act, 2013.

2 Interpretation

In this Act “**principal Act**” means the Proceeds of Crime Act (No. 1 of 2010);

3 Section 2 amended

Section 2 of the principal Act is amended—

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- (a) by deleting the definition of “AML/CFT obligation” and substituting the following—

“**AML/CFT obligation**”, in relation to a service provider, means an obligation of the service provider under this Act, the Anti-money Laundering and Terrorist Financing Regulations, an applicable Code or any other law relating to money laundering and terrorist financing, and includes an obligation imposed by a direction given under sections 166;”;

- (b) by deleting the definition of “terrorism” and substituting the following—

“**terrorism**” means the use or threat of action where—

- (a) (i) the action—
- (A) involves serious violence or the threat of serious violence against a person;
 - (B) involves serious damage to property;
 - (C) is intended to cause death or serious bodily injury to a person not taking an active part in the action;
 - (D) endangers a person’s life, other than that of the person committing or taking an active part in the action;
 - (E) creates a serious risk to the health or safety of the public or a section of the public; or
 - (F) is designed seriously to interfere with or seriously to disrupt an electronic system;
- (ii) the use or threat is designed to influence the government or an international governmental

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- organisation or to intimidate the public or a section of the public; and
- (iii) the use or threat is made for the purpose of advancing a political, religious, racial or ideological cause;
- (b) the use or threat of action falling within paragraph (a)(i) which involves the use of firearms or explosives is terrorism whether or not paragraph (a)(ii) is satisfied;
- (c) in paragraphs (a) and (b)—
- (i) “action” includes action outside Montserrat;
- (ii) a reference to any person or to property is a reference to any person, or to property, wherever situated; and
- (iii) a reference to the public includes a reference to the public of a territory or country other than that of Montserrat;
- (iv) “the government” includes the government of a territory or country other than the Montserrat; or
- (d) the action constitutes an offence within the scope of and as defined in one of the treaties listed in the Annex to the International Convention for the Suppression of the Financing of Terrorism;”;
- (c) by inserting the following definition in alphabetical order—
- “**“terrorist”** means a person who carries out an act of terrorism and includes a terrorist organisation;”;
- and
- (d) in the definition of “terrorist financing”, by deleting paragraph (a)(ii) and inserting the following—
- “(ii) articles 14 to 18 and article 21 of the Al-Qa’ida (United Nations Measures) (Overseas Territories) Order 2012;”.
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4 Section 117 amended

Section 117 of the principal Act is amended—

(a) in subsection (2)(c), by deleting “section 125” and substituting “section 125(1)”;

(b) in subsection (3)—

(i) in paragraph (a), by inserting “and” after the semi-colon;

(ii) by deleting paragraph (b); and

(iii) by deleting paragraph (c) and inserting the following—

“(c) if one of the conditions specified in subsection (3A)(a), (b) or (c) is satisfied.”; and

(c) by inserting the following subsection after subsection (3)—

“(3A) The conditions referred to in subsection (3)(c) are that—

(a) the person makes the disclosure before he does the prohibited act;

(b) the person makes the disclosure while he is doing the prohibited act where,—

(i) he began to do the act at a time when, because he did not know or suspect that the property constituted or represented a person’s benefit from criminal conduct, the act was not a prohibited act;

(ii) the disclosure is made on his own initiative; and

(iii) the disclosure is made as soon as practicable after he first knows or suspects that the property constitutes or represents a person’s benefit from criminal conduct;

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- (c) the person makes the disclosure after he does the prohibited act and—
 - (ii) there is good reason for his failure to make the disclosure before he did the prohibited act; and
 - (iii) the disclosure is made on his own initiative and as soon as it is practicable for him to make it.”.

5 Section 122 amended

Section 122 of the principal Act is amended—

- (a) in subsection (1)(b), by deleting the words “an an” and substituting the word “an”; and
- (b) by deleting the post-amble to subsection (1) and inserting the following—

“he must disclose the information or other matter to the Reporting Authority as soon as is reasonably practicable and in any event within 7 days after it comes to him.”.

6 Section 123 amended

Section 123 of the principal Act is amended—

- (a) by deleting the heading and substituting the following—

“Prejudicing an investigation”; and
- (b) by deleting subsection (2).

7 Section 123A inserted

The principal Act is amended by inserting the following section after section 123—

“Tipping off

123A. (1) For the purposes of this section, “**relevant disclosure**” means a disclosure made by a person under this Part to—

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- (a) the Reporting Authority, or
- (b) the relevant Money Laundering Reporting Officer,

and includes, but is not limited to, an authorised disclosure and a protected disclosure and information disclosed that is related to the disclosure.

(2) Subject to section 124, a person commits an offence if—

- (a) he knows or suspects that a relevant disclosure is being or has been made, whether by himself or another person;
- (b) he discloses the fact that a relevant disclosure is being or has been made;
- (c) his disclosure in paragraph (b) is likely to prejudice any investigation that might be conducted following the relevant disclosure referred to in subsection (2); and
- (d) the information concerning the relevant disclosure came to him in the course of a relevant business.

(3) Subject to section 124, a person commits an offence if—

- (a) he discloses that an investigation is being contemplated or is being carried out into allegations that a money laundering offence has been committed;
- (b) the disclosure is likely to prejudice that investigation; and
- (c) the information on which the disclosure is based came to him in the course of a relevant business.

(4) A person who contravenes subsection (1) commits an offence and is liable—

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- (a) on summary conviction, to imprisonment for a term of 5 years or to a fine of \$200,000 or to both;
- (b) on conviction on indictment, to imprisonment for a term of 14 years or to a fine without limit or to both.”.

8 Section 124 amended

Section 124 of the principal Act is amended—

- (a) in the heading, by deleting “**section 123**” and substituting “**sections 123 and 123A**”—
- (b) by deleting subsection (3) and substituting the following—

“(3) In proceedings against a person for an offence under section 123 or 123A, it is a defence to prove that he did not know or suspect that the disclosure was likely to be prejudicial in the way specified in section 123(1)(b)(i), 123A(2)(c) or 123A(3)(b).”;

- (c) in subsection (5), by inserting “or 123A” after “section 123”; and
- (d) by inserting the following after subsection (5)—

“(6) The Regulations may specify circumstances in which an offence is not committed where a person makes a disclosure that falls within section 123A(2) or (3).”.

9 Section 125 amended

Section 125 of the principal Act is amended—

- (a) by deleting the heading and substituting the following—

“**Protection in relation to protected and authorised disclosures**”;

- (b) in subsection (1)—

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- (i) by inserting the following as paragraph (ba):
- “(ba) the disclosure is made under section 127(2)(b); and”;
- (ii) in paragraph (c), by deleting “, or to the relevant Money Laundering Reporting Officer in accordance with the procedures established by his employer for the purpose, as soon as is practicable” and substituting “or the relevant Money Laundering Reporting Officer, as soon as is reasonably practicable”; and
- (c) by deleting subsection (2) and substituting the following subsections—
- “(2) Where a person, including a service provider and a director, officer or employee of a service provider, makes a protected disclosure or an authorised disclosure, the disclosure—
- (a) shall not be treated as a breach of any enactment, rule of law or agreement restricting the disclosure of information; and
- (b) shall not give rise to criminal or civil proceedings.
- (3) For the avoidance of doubt, where a director, officer or employee of a service provider makes a protected disclosure or an authorised disclosure, the disclosure—
- (a) shall not be treated as a breach of any enactment, rule of law or agreement restricting the disclosure of information, and
- (b) no criminal or civil proceedings may be taken against the service provider.”.

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10 Section 126 amended

Section 126 of the principal Act is amended by deleting subsection (4) and substituting the following—

“(4) The Reporting Authority may appoint persons to assist the Reporting Authority in the performance of its functions, including—

- (a) the day-to-day management and operation of the Reporting Authority;
- (b) carrying out the functions of the Reporting Authority with respect to—
 - (i) the receiving, (and where permitted by this or any other Act, requesting) and analysing of disclosures made to the Reporting Authority; and
 - (ii) the keeping of written records as required by subsection (2)(d); and
- (c) carrying out any other function of the Reporting Authority as the Reporting Authority may direct.”.

11 Section 127 amended

Section 127 of the principal Act is amended by deleting subsection (4).

Teresina Bodkin (Sgd.)
SPEAKER

Passed the Legislative Assembly this 5th day of March, 2013.

Judith Baker (Sgd.)
CLERK OF LEGISLATIVE ASSEMBLY