

**CAYMAN ISLANDS**



**PROCEEDS OF CRIME (AMENDMENT)  
ACT, 2023**

**(Act 12 of 2023)**

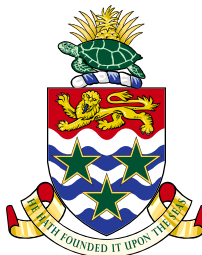
Supplement No. 3 published with Legislation Gazette No. 32 dated 6th October, 2023.

## PUBLISHING DETAILS

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# PROCEEDS OF CRIME (AMENDMENT) ACT, 2023

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## Arrangement of Sections

Section	Page
1. Short title and commencement .....	5
2. Amendment of the Proceeds of Crime Act (2020 Revision) - references to Parts .....	6
3. Amendment of section 2 - definitions and interpretation .....	6
4. Repeal of section 2A - meaning of "single family" .....	7
5. Amendment of section 4 - powers, functions and duties of Financial Reporting Authority .....	7
6. Amendment of section 9 - protection upon disclosure of information to Financial Reporting Authority .....	8
7. Insertion of Part 2A - immunity of persons appointed as Supervisory Authorities .....	8
8. Amendment of section 79 - property obtained through unlawful conduct .....	8
9. Amendment of section 82 - application for property freezing order .....	9
10. Amendment of section 110 - searches .....	9
11. Amendment of section 133 - concealing, etc. ....	10
12. Amendment of section 134 - arrangements .....	10
13. Amendment of section 135 - acquisition, use and possession .....	10
14. Amendment of section 138 - disclosure by the Financial Reporting Authority .....	10
15. Amendment of section 144 - interpretation .....	10
16. Amendment of section 145 - regulations .....	11
17. Amendment of section 196 - extradition where Schedule 1 to the Extradition Act 2003 applies .....	11
18. Amendment of Schedule 5 - modifications to the Act when applied to external confiscation orders and related proceedings .....	11
19. Amendment of Schedule 6 - activities falling within the definition of "relevant financial business" .....	11
20. Transitional provisions .....	12





**CAYMAN ISLANDS**

(Act 12 of 2023)

I Assent,



**Jane Owen**  
**Governor**

Date: 6th October, 2023

**PROCEEDS OF CRIME (AMENDMENT) ACT,  
2023**

**(Act 12 of 2023)**

**AN ACT TO AMEND THE PROCEEDS OF CRIME ACT (2020 REVISION) IN ORDER TO REFORM THAT ACT IN THE AREAS OF INTELLIGENCE GATHERING AND INVESTIGATIONS; TO ENSURE THAT THE ACT CONFORMS TO INTERNATIONAL BEST PRACTICES; TO CLARIFY THE EVIDENTIAL BASIS ON WHICH IT MAY BE SHOWN THAT PROPERTY IS CRIMINAL PROPERTY OR IS OBTAINED THROUGH UNLAWFUL CONDUCT; TO AMEND THE ACT IN ORDER TO PROTECT SELF-REGULATORY BODIES WHICH ARE SUPERVISORY AUTHORITIES FROM CERTAIN LIABILITY IN THE EXECUTION OF THEIR REGULATORY DUTIES; AND FOR INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

**Short title and commencement**

1. (1) This Act may be cited as the Proceeds of Crime (Amendment) Act, 2023.
- (2) This Act shall come into force on such date as may be appointed by Order made by the Cabinet and different dates may be appointed for different provisions of this Act and in relation to different matters.

## Amendment of the Proceeds of Crime Act (2020 Revision) - references to Parts

2. *The Proceeds of Crime Act (2020 Revision)*, in this Act referred to as the “principal Act”, is amended as follows —
- (a) by deleting the following words —
    - (i) Part I;
    - (ii) Part II;
    - (iii) Part III;
    - (iv) Part IV;
    - (v) Part V;
    - (vi) Part VI;
    - (vii) Part VII;
    - (viii) Part VIII;
    - (ix) Part IX; and
  - (b) substituting the following words for those in paragraph (a) —
    - (i) Part 1;
    - (ii) Part 2;
    - (iii) Part 3;
    - (iv) Part 4;
    - (v) Part 5;
    - (vi) Part 6;
    - (vii) Part 7;
    - (viii) Part 8; and
    - (ix) Part 9.

## Amendment of section 2 - definitions and interpretation

3. The principal Act is amended in section 2 as follows —
- (a) in the section heading, by deleting the words “Definitions and”;
  - (b) by inserting, in the appropriate alphabetical sequence, the following definitions —
    - “**appropriate officer**” means —
      - (a) a constable; or
      - (b) any other person so designated by the Cabinet by Order for the purposes of this Act; and



“**designated non-financial business and profession**” means a natural or legal person designated as such in accordance with regulations made under this Act; and

“**self-regulatory body**” means a body designated under this Act and regulations made under this Act as a Supervisory Authority for a designated non-financial business and profession;”;

- (c) by deleting the definitions of “**property investment**” and “**single family office**”; and
- (d) in the definition of “**virtual asset**”, by inserting after the word “purposes” the words “but does not include any digital representation of fiat currencies”.

#### **Repeal of section 2A - meaning of “single family”**

4. The principal Act is amended by repealing section 2A.

#### **Amendment of section 4 - powers, functions and duties of Financial Reporting Authority**

5. The principal Act is amended in section 4 as follows —

- (a) in subsection (2), by repealing paragraph (ca) and substituting the following paragraph —

“(ca) may disseminate, in its discretion or upon request, information and results of any analysis to —

- (i) any competent authority;
- (ii) any Supervisory Authority within the Islands, and
- (iii) such other institutions or persons in the Islands as may be designated in writing by the Steering Group,

and shall use dedicated, secure and protected channels for such dissemination;”;

- (b) by repealing subsection (9) and substituting the following subsection —

“(9) The Cabinet may assign to —

- (a) the Financial Reporting Authority;
- (b) a public body;
- (c) a self-regulatory body; or
- (d) any other person,

the responsibility of monitoring compliance with money laundering regulations made under this Act in relation to persons conducting “relevant financial business” who are not otherwise subject to such monitoring by the Cayman Islands Monetary Authority.”.

**Amendment of section 9 - protection upon disclosure of information to Financial Reporting Authority**

6. The principal Act is amended in section 9 by repealing subsection (1) and substituting the following subsection —

“(1) Without prejudice to any other provision of this Act, where a person discloses to a nominated officer or the Financial Reporting Authority information concerning —

- (a) the proceeds or suspected proceeds of criminal conduct;
- (b) money laundering or suspected money laundering;
- (c) terrorism or suspected terrorism;
- (d) the financing of terrorism or suspected financing of terrorism;  
or
- (e) the financing of proliferation or suspected financing of proliferation,

the disclosure shall not be treated as a breach of any restriction upon the disclosure of information by any enactment or otherwise and the fact of such disclosure shall not give rise to any criminal or civil liability.”.

**Insertion of Part 2A - immunity of persons appointed as Supervisory Authorities**

7. The principal Act is amended by inserting after Part 2 the following Part —

**“Part 2A - Immunity of persons appointed as Supervisory Authorities****Immunity of a person which is a Supervisory Authority**

**14A.**Notwithstanding the provisions of any other Act, while carrying out a regulatory function under this Act, a person which is a Supervisory Authority, and its delegates, managers, officers, employees and agents, shall not be liable in damages for anything done or omitted in the discharge or purported discharge of their respective regulatory functions unless it is shown that the act or omission was in bad faith or constituted wilful misconduct.”.

**Amendment of section 79 - property obtained through unlawful conduct**

8. The principal Act is amended in section 79(2) by repealing paragraph (b) and substituting the following paragraph —





- “(b) it is not necessary to show that the conduct was of a particular kind if it is shown that —
- (i) the property was obtained through conduct of a specific kind or kinds, and that conduct of that kind or those kinds is unlawful conduct; or
  - (ii) the circumstances in which the property was handled are such as to give rise to the irresistible inference that it can only be derived from unlawful conduct.”.

### **Amendment of section 82 - application for property freezing order**

9. The principal Act is amended in section 82 by repealing subsection (4) and substituting the following subsection —

- “(4) The court may make a property freezing order on an application if it is satisfied that the condition in paragraph (a) is met and, where applicable, that the condition in paragraph (b) is met, that is to say —
- (a) the first condition is that there is a good arguable case —
    - (i) that the property to which the application for the order relates is or includes recoverable property; and
    - (ii) that, if any of it is not recoverable property, it is associated property; and
  - (b) the second condition is that if —
    - (i) the property to which the application for the order relates includes property alleged to be associated property; and
    - (ii) the Director of Public Prosecutions has not established the identity of the person who holds it,the Director of Public Prosecutions has taken all reasonable steps to do so.”.

### **Amendment of section 110 - searches**

10. The principal Act is amended in section 110 as follows —

- (a) by repealing subsection (5) and substituting the following subsection —

“(5) The powers conferred by this section are exercisable only so far as reasonably required for the purpose of finding cash.”; and
- (b) by inserting after subsection (7) the following subsection —

“(7A) For the purposes of this section and Schedule 5 the words “**minimum amount**” means one thousand Cayman Islands dollars.”.

**Amendment of section 133 - concealing, etc.**

11. The principal Act is amended in section 133(2) as follows —

- (a) by repealing paragraph (a) and substituting the following paragraph —
  - “(a) he makes a disclosure to the Financial Reporting Authority and has the consent of the Financial Reporting Authority to commit the act, but this does not apply to the person who committed or was a party to the act from which the property derives;”;
- (b) in paragraph (b), by deleting the words “or a nominated officer”.

**Amendment of section 134 - arrangements**

12. The principal Act is amended in section 134(2) by repealing paragraph (a) and substituting the following paragraph —

- “(a) he makes a disclosure to the Financial Reporting Authority and has the consent of the Financial Reporting Authority to commit the act, but this does not apply to the person who committed or was a party to the act from which the property derives;”.

**Amendment of section 135 - acquisition, use and possession**

13. The principal Act is amended in section 135(2) as follows —

- (a) by repealing paragraph (a) and substituting the following paragraph —
  - “(a) he makes a disclosure to the Financial Reporting Authority and has the consent of the Financial Reporting Authority to commit the act, but this does not apply to the person who committed or was a party to the act from which the property derives;”;
- (b) in paragraph (b), by deleting the words “or a nominated officer”.

**Amendment of section 138 - disclosure by the Financial Reporting Authority**

14. The principal Act is amended in section 138(1) by repealing paragraph (b) and substituting the following paragraph —

- “(b) may, where it has cause to suspect that criminal conduct has been committed, disclose any information received under this Act to —
  - (i) any competent authority;
  - (ii) any Supervisory Authority within the Islands; and
  - (iii) such other institutions or persons in the Islands as may be designated in writing by the Steering Group; and”.

**Amendment of section 144 - interpretation**

15. The principal Act is amended in section 144 by repealing subsection (5A) and substituting the following subsection —



“(5A) It may be proved that property is criminal property —

- (a) by showing that it derives from conduct of a specific kind or kinds, and that conduct of that kind or those kinds is criminal conduct; or
- (b) by showing that the circumstances in which the property was handled are such as to give rise to the irresistible inference that it can only be criminal property.”.

### **Amendment of section 145 - regulations**

**16.** The principal Act is amended in section 145(1) as follows —

- (a) in paragraph (f), by deleting the word “and” at the end of the paragraph; and
- (b) by inserting after paragraph (f) the following paragraph —

“(fa) to establish a framework under which reporters of suspicion of criminal conduct may seek and obtain a defence to specified money laundering or terrorist financing offences in relation to those reported offences; and”.

### **Amendment of section 196 - extradition where Schedule 1 to the Extradition Act 2003 applies**

**17.** The principal Act is amended in section 196 by deleting the words “The offences to which the *Extradition Act (Overseas Territories) Order 2016 [UKSI 2016/990]* under sections 177, 178 and 244(2)” and substituting the words “The offences to which the *Extradition Act (Overseas Territories) Order 2016 (UKSI 2016/990)* and any other Order in Council made under sections 177, 178 and 224(2)”.

### **Amendment of Schedule 5 - modifications to the Act when applied to external confiscation orders and related proceedings**

**18.** The principal Act is amended in Schedule 5 as follows —

- (a) in paragraph 6 as follows —
  - (i) in subparagraph (3)(a), by deleting the words “subparagraph (5)” and substituting the words “subparagraph (4)”;
  - (ii) in subparagraph (10), by deleting the words “subparagraph (10)” and substituting the words “subparagraph (9)”;
- (b) in paragraph 7, by deleting the words “paragraph 6(5)” and substituting the words “paragraph 6(4)”.

### **Amendment of Schedule 6 - activities falling within the definition of “relevant financial business”**

**19.** The principal Act is amended in Schedule 6 as follows —

- (a) by repealing paragraph 14B;
- (b) in paragraph 17, by deleting the words “fifteen thousand United States dollars” and substituting the words “ten thousand dollars”; and
- (c) by repealing paragraph 22.

**Transitional provisions**

- 20.** All proceedings pending at the date of the commencement of this amending Act in respect of offences committed or alleged to have been committed against the principal Act and to which any of the provisions in sections 8, 9, 11, 12, 13 and 15 of this amending Act apply, shall be continued and dealt with under this amending Act.

**Passed by the Parliament the 20th day of September, 2023.**

**Hon. Katherine Ebanks-Wilks**  
*Speaker*

**Zena Merren-Chin**  
*Clerk of the Parliament*

