

ABILL

ENTITLED

AN ACT to Amend the Proceeds of Crime Act and provide for connected matters.

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BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Proceeds of Crime (Amendment) Act, 2013, and shall be read and construed as one with the Proceeds of Crime Act (hereinafter referred to as the "principal Act") and all amendments thereto.

Short title
and
construction.

Amendment
of section 2
of principal
Act.

2. Section 2(1) of the principal Act is amended by deleting the definition of “Court” and substituting therefor the following—

““Court” means—

- (a) the Supreme Court;
- (b) in any case where the Gun Court has jurisdiction, the High Court Division or the Circuit Court Division of the Gun Court, as the case may require; or
- (c) such other superior court of record as the Minister may specify, by order subject to affirmative resolution;”

Insertion of
new section
34A in
principal Act.

3. The principal Act is amended by inserting next after section 34 the following as section 34A—

“Deteriorating property. 34A.—(1) Where a restraint order is made in respect of any deteriorating property, an application granted for the purposes of section 34 may be made for—

- (a) the variation of the restraint order to facilitate the sale of the property; and
- (b) the restraint order to apply to the proceeds of the sale.

(2) Where the Court varies a restraint order pursuant to subsection (1), the Court may issue directions as to—

- (a) the manner in which, and terms and conditions on which, the sale is to be conducted; and
- (b) the manner in which the proceeds of the sale are to be paid over and held while the restraint order is in force, which may include provision for the proceeds to be held by a specified person in trust for the person entitled to the proceeds.

(3) In subsection (1), “deteriorating property” means property relating to a matter that is—

- (a) pending or before the Court; and
- (b) in danger of diminishing in value prior to the matter being resolved by the Court.”.

4. Section 52(1) of the principal Act is amended by inserting immediately after the words “A Resident Magistrate’s Court” the words “or the Resident Magistrate’s Division of the Gun Court, as the case may be,”. Amendment of section 52 of principal Act.

5. Section 53 of the principal Act is amended by deleting the words “Resident Magistrate’s Court” wherever they appear and substituting therefor, in each case, the words “Resident Magistrate”. Amendment of section 53 of principal Act.

6. Section 71(2) of the principal Act is amended by deleting the word “twelve” and substituting therefor the word “twenty”. Amendment of section 71 of principal Act.

7. Section 76(3) of the principal Act is amended by inserting immediately after the words “Justice of the Peace” the words “for any parish (whether the seizure takes place within the limits of the jurisdiction of that Justice of the Peace or elsewhere in Jamaica outside of that jurisdiction)”. Amendment of section 76 of principal Act.

8. Section 91(1) of the principal Act is amended— Amendment of section 91 of principal Act.

(a) by deleting paragraph (d)(i) and substituting therefor the following—

“(i) references to a person’s employer include—

- (A) any body, association or organization (including a voluntary organization) in connection with whose activities the person exercises a function (whether or not for gain or reward); and
- (B) where the employer is a company, a parent company of that company or a subsidiary company of that parent company; and”;

(b) by inserting next after paragraph (f) the following as paragraph (ff)—

“ (ff) “business in the regulated sector” has the meaning specified in section 94 for determination in accordance with the provisions of the Fourth Schedule;”.

Fourth
Schedule.

Insertion of
new section
91A in
principal Act.

9. The principal Act is amended by inserting next after section 91 the following as section 91A—

“Functions
of
competent
authority.

91A.—(1) In addition to any other functions of a competent authority under this Part, and without prejudice to any other functions which that competent authority may exercise under any other enactment, a competent authority shall exercise the functions set out in subsection (2) for the purpose of ensuring that any business in the regulated sector which that competent authority is responsible for monitoring operates in compliance with this Act and any regulations made under this Act.

(2) A competent authority—

- (a) shall establish such measures as it thinks fit, including carrying out, or directing a third party to carry out, such inspections or such verification procedures as may be necessary;
- (b) may issue directions to any of the businesses concerned; and the directions may require the business to take measures for the prevention or detection of, or reducing the risk of, money laundering or terrorist financing;
- (c) may examine and take copies of information or documents in the possession or control of any of the businesses

concerned, and relating to the operations of that business;

- (d) may share information, pertaining to any examination conducted by it under this section, with another competent authority, a supervisory authority or the designated authority, or an authority in another jurisdiction exercising functions analogous to those of any of the aforementioned authorities—
 - (i) other than information which is protected from disclosure under this Act or any other law; and
 - (ii) subject to any terms, conditions or undertakings which it thinks fit in order to prevent disclosure of the kind referred to in subparagraph (i) and secure against the compromising or obstruction of any investigation in relation to an offence under this Part or any other law;
- (e) may require the businesses concerned, in accordance with such procedures as it may establish by notice in writing to those businesses—
 - (i) if a registration requirement does not already exist under any other law, to register with the competent authority such particulars as may be prescribed; and
 - (ii) to make such reports to the competent authority in respect of

such matters as may be specified in the notice.

(3) Nothing in subsection (2)(c) shall be construed as requiring an attorney-at-law to disclose any information or advice that is subject to legal professional privilege.

(4) Subsection (3) does not apply to information or other matter that is communicated or given with the intention of furthering a criminal purpose.

(5) A business in the regulated sector which fails to comply with any requirement or direction issued to it under this Part by the competent authority, commits an offence and is liable—

- (a) on summary conviction before a Resident Magistrate, to a fine not exceeding two hundred and fifty thousand dollars; or
- (b) on indictment before a Circuit Court, to a fine not exceeding one million dollars.

(6) Where a business which is convicted of an offence under subsection (5) is registered, or is the holder of a licence or other form of permit in respect of its operations under a regime administered by the competent authority concerned, the conviction for the offence shall be deemed to constitute grounds on which the registration, licence or other form of permit may be suspended or revoked; and the competent authority may, if it thinks fit, act accordingly.”.

Amendment
of section 94
of principal
Act.

10. Section 94 of the principal Act is amended by deleting subsections (3) and (4) and substituting therefor the following as subsections (3) and (4), respectively—

“ (3) For the purposes of subsection (2)(c), the required disclosure is a disclosure—

- (a) to a nominated officer; or

(b) to the designated authority,

in the form and manner prescribed for the purposes of this subsection by regulations made under section 102, of the information or other matter on which the knowledge or belief is based, or which gives reasonable grounds for the knowledge or belief, that another person has engaged in a transaction that could constitute or be related to money laundering.

(4) For the purposes of this section, a business in the regulated sector shall, in relation to each customer—

- (a) make and retain for a period of not less than seven years or such other period as the supervisory authority shall in writing direct, a record of all —
 - (i) complex, unusual or large business transactions carried out by that customer with the business; and
 - (ii) unusual patterns of transactions, whether completed or not, which appear to the person to be inconsistent with the normal transactions carried out by that customer with the business; and
- (b) pay special attention to all business relationships and transactions with any customer resident or domiciled in a territory specified in a list of applicable territories published by notice in the *Gazette* by a supervisory authority for the purposes of this paragraph, so as to ensure that the background and purpose of all such relationships and transactions are examined and the findings thereon set out in writing —
 - (i) in accordance with procedures set out in regulations made under this Part; and
 - (ii) made available, upon request, to the designated authority, a supervisory authority or the competent authority concerned, as the case may require.”.

Amendment
of section
100 of
principal Act.

11. Section 100 of the principal Act is amended in subsection (4)(a) by inserting immediately after the words “nominated officer” the words “of information or other matter that causes the person making the disclosure to know or believe, or to have reasonable grounds for knowing or believing,”.

Amendment
of section
101 of
principal Act.

12. Section 101 of the principal Act is amended in subsection (3) by deleting the words “ten thousand dollars” and substituting therefor the words “two hundred and fifty thousand dollars or treble the amount of cash transported, whichever is the greater,”.

Insertion of
new section
101A in
principal Act.

13. The principal Act is amended by inserting next after section 101 the following as section 101A—

“Limit on cash
transaction.

101A.—(1) Subject to subsection (2), a person shall not—

- (a) pay or receive cash in excess of the prescribed amount in a transaction for the purchase of any goods or services or for the payment or reduction of any indebtedness, accounts payable or other financial obligation; or
- (b) artificially separate a single activity or course of activities into a set of transactions so that each transaction involves a payment and receipt of cash that is less than the prescribed amount but which activity or course of activities in the aggregate involves payment and receipt of cash that exceeds the prescribed amount.

(2) Subsection (1) shall not apply to—

- (a) a payment made to or by a permitted person;
- (b) an exempted person; or

(c) an exempted transaction.

(3) Where the Minister is satisfied that it is in the public interest to do so, the Minister may, by order subject to affirmative resolution, exempt a person or a particular type of transaction from the requirements of this section.

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

- (a) on summary conviction before a Resident Magistrate, to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment; or
- (b) on indictment before a Circuit Court, to a fine or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

(5) Nothing in this section affects the enforceability of transactions in civil proceedings.

(6) In this section—

“cash” means notes and coins—

- (a) of the currency of the Island issued by the Bank of Jamaica, pursuant to the Bank of Jamaica Act; or
- (b) issued by the authority responsible for the issue of notes or coins of any other country which is designated as the legal tender of the country and which circulates and is customarily

used and accepted as a medium of exchange in the country of issue.

“exempted person” or “exempted transaction” means a person or transaction in relation to which the Minister has made an order under subsection (3);

“permitted person” means any of the following persons acting in accordance with the regulatory requirements applicable to that person, namely—

- (a) a bank licensed under the Banking Act;
- (b) a licensed deposit-taking institution that is regulated by the Bank of Jamaica;
- (c) a person licensed under the Bank of Jamaica Act to operate an exchange bureau;
- (d) any other person that the Minister may, by order subject to affirmative resolution, prescribe for the purposes of this subsection;

“prescribed amount” means—

- (a) the amount of one million dollars or its equivalent (as at the date of the relevant transaction) in any other currency; or

- (b) such other amount as the Minister may, by order subject to affirmative resolution, prescribe.”.

14. Section 102(1) of the principal Act is amended—

Amendment
of section
102 of
principal Act.

- (a) by deleting the words “, subject to affirmative resolution,”;
- (b) in paragraph (a) by inserting immediately after the word “made” the words “, and different forms may be prescribed for different categories of businesses in the regulated sector”;
- (c) by deleting paragraph (b) and substituting therefor the following as paragraph (b)—
- “(b) subject to affirmative resolution, prescribing the programmes, policies, controls and procedures to be implemented by businesses in the regulated sector;”; and
- (d) in paragraph (c), by deleting the words “a prescribed amount” and substituting therefor the words “an amount prescribed for the purposes of this paragraph by regulations, subject to affirmative resolution”.

15. Section 137(2) of the principal Act is amended by deleting from paragraph (b) the words “, or any employee thereof” and substituting therefor the words “or business in the regulated sector, or any director, principal, employee or agent of that financial institution or business in the regulated sector”.

Amendment
of section
137 of
principal Act.

16. Paragraph 1(1) of the Fourth Schedule to the principal Act is amended in sub-paragraph (a) by inserting immediately after the words “financial institution” the words “or an entity that has corporate responsibility for the development and implementation of group wide anti-money laundering, or terrorism financing prevention, policies and

Amendment
of Fourth
Schedule to
principal Act.

procedures for the group of companies of which the entity forms a part”.

Amendment to
the Proceeds
of Crime
(Money
Laundering
Prevention)
Regulations,
2007.
First
Schedule.

17. The provisions of the Proceeds of Crime (Money Laundering Prevention) Regulations, 2007, set out in the first column of the First Schedule are amended in the manner specified in relation to them in the second column of the First Schedule.

Amendment
of
enactments.
Second
Schedule.

18. The provisions of the enactments specified in the first column of the Second Schedule are amended in the manner specified respectively in relation to them in the second column of the Second Schedule.

FIRST SCHEDULE

(Section 17)

*Amendments to the Proceeds of Crime
(Money Laundering Prevention) Regulations, 2007*

Provision _____	Amendment _____
Regulation 5	<p>1. In paragraph (2)—</p> <p>(a) delete the full stop appearing at the end of sub-paragraph (d) and substitute therefor a semi-colon and the word “and”; and</p> <p>(b) insert next after sub-paragraph (d) the following as sub-paragraph (e)—</p> <p style="padding-left: 40px;">“ (e) in the case of a regulated business that is a member company of a group of companies, the establishment and implementation by that company and the responsible entity for the group of such programmes, policies and procedures and controls that facilitate the prevention or detection of money laundering within that group of companies, including such as permit the disclosure of information by each member company to other companies within the group other than information which is protected from disclosure under this Act or any other law.”.</p> <p>2. Insert next after paragraph (5) the following as paragraph (6)—</p> <p style="padding-left: 40px;">“ (6) In this regulation, “responsible entity”, in relation to a member company of a group of companies, is the entity that has responsibility for the development and implementation of anti-money laundering, or terrorism financing prevention, policies and procedures for the group of companies of which the member company forms a part.”.</p>

Provision —	Amendment —
Regulation 6	<p>1. In paragraph (1)(a), insert next after sub-paragraph (iii) the following as sub-paragraph (iv)—</p> <p style="padding-left: 40px;">“(iv) procedures to assess the risk of money laundering arising from—</p> <p style="padding-left: 80px;">(A) its products and business practices (whether new or existing); and</p> <p style="padding-left: 80px;">(B) developing technologies applied or used in such products or practices,</p> <p style="padding-left: 40px;">and shall not commence or continue any such product or practice without implementing measures to identify, manage or mitigate those risks;”.</p> <p>2. In paragraph (2), delete the words “A person” and substitute therefor the words “Subject to paragraph (3), a person”.</p> <p>3. Insert next after paragraph (2) the following as paragraph (3)—</p> <p style="padding-left: 40px;">“ (3) Proceedings for an offence under paragraph (2) shall not be taken against a person for failure to comply with paragraph (1)(c) where another enactment provides for disciplinary or regulatory action that may be taken by the competent authority concerned in respect of the failure and the competent authority opts to take such action in the particular case.”.</p>
Regulation 7	<p>1. In paragraph (1)—</p> <p style="padding-left: 40px;">(a) insert in sub-paragraph (b) immediately after the word “further” the words “, and the regulated business shall make an assessment as to whether any disclosure is required under section 94 of the Act (disclosure as to transactions which constitutes or is related to money laundering)”;</p> <p style="padding-left: 40px;">(b) delete paragraph (c) and substitute therefor the following as paragraph (c)—</p> <p style="padding-left: 80px;">“(c) as concerns any business relationship, customer information is kept</p>

Provision

Amendment

under review with a view to ensuring its accuracy and is updated—

- (i) at least once in every seven years during the course of the business relationship or at more frequent intervals as warranted by the risk profile of the business relationship as determined by the regulated business in accordance with regulation 7A; and
 - (ii) whenever there is any doubt about the veracity or adequacy of previously obtained customer information; and
- (c) in sub-paragraph (d), insert immediately after the word “further” the words “, and the regulated business shall make an assessment as to whether any disclosure is required under section 94 of the Act (disclosure as to transactions which could constitute or be related to money laundering)”.

2. In paragraph (5)—

- (a) delete the full stop appearing at the end of the definition of “prescribed amount” and substitute therefor a semi-colon; and
- (b) insert next after the definition of “prescribed amount” the following definitions—

“ “risk profile” means the formal assessment made by the regulated business concerned as to the level of risk of money laundering posed to the regulated business by the business relationship or transaction concerned;”;
and

*Provision**Amendment*

“satisfactory evidence”, for the purposes of paragraph (1)(a), shall include evidence as to identity from a source independent of the regulated business concerned (for example, a recent bill from a utility provider such as a telephone, internet, cable, water or electricity service provider).”.

Insertion of new regulation 7A

Insert next after regulation 7 the following as regulation 7A—

“Risk profile and ongoing due diligence in verification procedures.

7A.—(1) A business in the regulated sector shall establish a risk profile regarding all its business relationships and one-off transactions, with a view to determining the business relationships or one-off transactions which are high-risk.

(2) For the purposes of paragraph (1), relationships or transactions which are high-risk include any case where the applicant for business concerned is—

- (a) a person specified in paragraph (6);
- (b) a person who is not ordinarily resident in Jamaica;
- (c) a person acting as a trustee for another in relation to the business relationship or one-off transaction concerned;
- (d) a company having nominee shareholders, or shares held in bearer form; or
- (e) a member of such other class or category of persons as the supervisory authority may specify by notice published in the *Gazette*.

Provision
—**Amendment**
—

(3) Subject to paragraph (4), a business in the regulated sector shall carry out reasonable due diligence in the conduct of every transaction (whether done in the course of a business relationship or as a one-off transaction) to ensure that the transaction is—

- (a) consistent with its knowledge of the applicant for business, the applicant's trade or profession, the applicant's risk profile and the stated source of the funds involved; and
- (b) verified as to the identity of the applicant for business and the source of the funds involved.

(4) Where a business relationship or one-off transaction is determined to be high-risk, a business in the regulated sector shall carry out enhanced due diligence procedures with respect thereto.

(5) For the purposes of paragraph (4), enhanced due diligence procedures shall require—

- (a) obtaining senior management approval to commence or continue the business relationship or one-off transaction;
- (b) verification of the source of funds or wealth held by the applicant for business and all other persons concerned in the business relationship or one-off transaction;

Provision

Amendment

- (c) enhanced monitoring throughout the course of the business relationship or one-off transaction, which shall include—
- (i) a requirement for more frequent updating of customer information;
 - (ii) a requirement for more detailed information as to the nature of the business relationship or one-off transaction;
 - (iii) a requirement for more detailed information about the applicant for business and other parties concerned in the transaction;
 - (iv) an increase in the number and timing of controls applied to the transaction;
 - (v) the selection of patterns of actions that require more detailed examination;
and

Provision**Amendment**

- (vi) a requirement that the first payment in the transaction be carried through an account, in the name of the applicant for business, with a financial institution; and
- (d) identification and verification standards equivalent to those required by the Act and any regulations made under the Act.
- (6) The persons specified for the purposes of paragraph (2)(a) are—
 - (a) any individual who, in relation to any State, carries out functions analogous to the functions of any of the following persons—
 - (i) a head of State;
 - (ii) a head of Government;
 - (iii) a member of any House of Parliament;
 - (iv) a Minister of Government;
 - (v) a member of the judiciary;
 - (vi) a military official above the rank of Captain;
 - (vii) a member of the police of or above the rank of Assistant Commissioner;

*Provision**Amendment*

- (viii) a Permanent Secretary, Chief Technical Director or chief officer in charge of the operations of a Ministry, department of Government, executive agency or statutory body, as the case may be;
- (ix) a director or chief executive of any company in which the Government owns a controlling interest;
- (x) an official of any political party; and
- (b) an individual who holds or has held a senior management position in an international organization; and
- (c) an individual who is a relative or is known to be a close associate of a person described in sub-paragraph (a) or (b).

(7) In this regulation—

“close associate” means an individual who is a business partner, or associated in any other form, in a common commercial enterprise with the person concerned;

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“relative”, in relation to the person concerned, means his spouse, his child (including his step child or adopted child), the spouse of his child, his parents, his brother or his sister;

“spouse” includes—

- (a) a single woman who has lived and cohabited with a single man as if she were in law his wife for a period of not less than five years immediately preceding the date of application; and
- (b) a single man who has lived and cohabited with a single woman as if he were in law her husband for a period of not less than five years immediately preceding the date of application;

“single woman” and “single man” used with reference to the definition of “spouse” include a widow or widower, as the case may be, or a divorcee.”.

Regulation 8

Delete paragraph (1) and substitute therefor the following—

“ (1) Unless the nature of the transaction is such as to give rise to the knowledge or belief, or reasonable grounds for the knowledge or belief, that the transaction constitutes or is related to money laundering, the identification procedures set out in regulation 7 shall not be required in the case of customer transactions of a value of—

- (a) two hundred and fifty dollars in the currency of the United States of America or its equivalent in any other currency or less; or

*Provision**Amendment*

specified in the order (and different amounts may be prescribed in respect of different categories of regulated business).”.

Regulation 9

1. In paragraph (1), insert immediately after the word “involved,” the words “the reference number assigned to the transaction,”.

2. Insert next after paragraph (2) the following as paragraphs (2A) and (2B)—

“ (2A) In the case of a transfer involving an amount exceeding one thousand dollars in the currency of the United States of America or its equivalent in any other currency the relevant information for the purposes of paragraph (1) shall include—

- (a) a national identification number;
- (b) the customer identification number; or
- (c) the date and place of birth,

of the person who places the order for the transfer and the holder of the account that is the source from which the funds are transferred.

(2B) The business from which the transfer originates shall give to the business to which the funds are transferred the information mentioned in paragraphs (1) and (2A) as relates to the persons mentioned in paragraph (2A), within three days (excluding Saturdays, Sundays and public general holidays) of being requested to do so by the business to which the funds are transferred.”.

Regulation 11

1. In paragraph (1), insert immediately after the word “agent” the words “, whether acting on behalf of another person or on behalf of a body corporate or other legal arrangement (such as a trust or settlement)”.

2. In paragraph (3)(a), insert immediately after the word “principal” the words “, the agent, each beneficiary and the ultimate beneficial owner of the property or funds the subject of the relevant financial business concerned”.

*Provision**Amendment***Regulation 12**

1. In paragraph (1), delete the words starting at the words “regulations 7 and 11” and ending at the word “business” and substitute therefor the words “paragraph (1A) shall apply”.

2. Insert, next after paragraph (1) the following as paragraph (1A)—

“ (1A) Where this paragraph applies, regulations 7 and 11 shall be construed as entitling the regulated business to rely on the steps taken by the person giving the assurance in accordance with paragraph (2), as to the carrying out of the identification procedures required under those regulations, if—

- (a) the information required to be obtained pursuant to the procedures is transmitted by that person to the regulated business as soon as is reasonably practicable after the introduction or without delay upon request by the regulated business; and
- (b) the regulated business is satisfied, based on a risk profile determined in accordance with regulation 7A, that the business relationship or one-off transaction is not high-risk.”.

3. Delete from paragraph (2)(b) the words “regulation 11(5)(a)” and substitute therefor the words “regulation 11(6)(a)”.

Regulation 13

1. In paragraph (1), delete sub-paragraph (c) and substitute therefor the following as sub-paragraph (c)—

“(c) in the case of any transaction involving—

- (i) a settlement, trust or other type of legal arrangement, it—
 - (A) establishes the identity of (as the case may require) the settlor, legal owner or other

*Provision**Amendment*

person who exercises effective control of the legal arrangement, and each beneficiary under the legal arrangement (including the ultimate beneficial owners of the property concerned in the arrangement);

- (B) in any case where the ultimate beneficial owner has not been identified, establishes the identity of any senior management official who makes or implements decisions with respect to the property; and
 - (C) discloses the legal status of the arrangement and the provisions regulating the power to bind the parties involved;
- (ii) a person other than an individual, it establishes the identity of the individuals who exercise ultimate effective control over that person;
 - (iii) a body corporate (other than a body corporate listed on a stock exchange) which is licensed or otherwise authorized under the laws of the jurisdiction in which the body corporate is registered, it—
 - (A) establishes the identity of each director and shareholder (if any) holding ten *per cent* or more of the voting rights in the body corporate;

Provision**Amendment**

- (B) discloses the address of the body corporate and the provisions regulating the power to bind the body corporate; and
- (C) provides evidence of incorporation.”.

2. Insert next after paragraph (2) the following as paragraph (3)—

“ (3) Nothing in paragraph (1)(c)(iii) shall be construed as exempting a body corporate, or a director or shareholder of a body corporate, from the identification procedures required by these Regulations in any case where any person handling a transaction involving any of those entities suspects that the transaction amounts to money laundering.”.

Regulation 14

1. In paragraph (4), insert immediately after the words “of transactions” the words “and the provision of information to the designated authority or competent authority as may be required under any provision of the Act, these Regulations, or any other enactment”.

2. Delete paragraph (5) and substitute therefor the following—

“ (5) For the purposes of this regulation, the prescribed period is—

- (a) a period of seven years commencing on the date on which the relevant financial business was completed or the business relationship was terminated, whichever occurs later; or
- (b) such other period as may be specified by the designated authority, by notice in writing given to the business concerned, before the expiration of the period referred to in subparagraph (a).”.

Regulation 19

Delete paragraphs (2), (3) and (4) and insert next after paragraph (1) the following as paragraphs (2) and (3)—

“ (2) Nothing in these Regulations shall require a regulated business to obtain information or evidence in respect of any transaction conducted prior to the relevant date.

(3) For the purposes of this regulation, the “relevant date” is the 29th day of March, 2007.”.

SECOND SCHEDULE

(Section 18)

Amendment of Enactments

<u>Provision</u>	<u>Amendment</u>
Bank of Jamaica Act	
Section 15	<p>1. Delete from subsection (1) the word and figure “subsection (2)” and substitute therefor the words and figures “subsections (2) and (3)”.</p> <p>2. Insert next after subsection (2) the following as subsection (3)—</p> <p style="padding-left: 4em;">“ (3) Nothing in this section affects the operation of section 101A of the Proceeds of Crime Act.”.</p>
Interception of Communications Act	
Schedule	<p>Delete paragraph 3 and substitute therefor the following—</p> <p style="padding-left: 4em;">“ 3. An offence contrary to section 92 (Concealment, <i>etc.</i>, criminal property) or section 93 (Acquisition, use and possession of criminal property) of the Proceeds of Crime Act.”.</p>
Judicature (Resident Magistrates) Act	
Section 292A	<p>In paragraph 3, insert immediately after the words “Director of Public Prosecutions” the words “, the Director of the Assets Recovery Agency or an officer authorized by the Director pursuant to the Proceeds of Crime Act,”.</p>
Legal Profession Act	
Section 5	<p>1. Delete paragraph (b) from subsection (3) and substituting therefor the following—</p> <p style="padding-left: 4em;">“ (b) the Council is satisfied that the attorney has—</p> <ul style="list-style-type: none"> (i) complied with such requirements for continuing legal professional development as may be prescribed; and (ii) filed with the Council a declaration in accordance with subsection (3C).”.

Provision

Amendment

2. Insert next after subsection (3B) the following as subsections (3C) and (3D)—

“ (3C) In respect of each calendar year, an attorney shall, on or before the 31st day of January of the next ensuing calendar year, complete and file with the Council a declaration in such form as may be prescribed by regulations made under this subsection by the Council, with the approval of the Minister, after consultation with the Minister responsible for national security, indicating whether or not the attorney has in the calendar year concerned engaged in any of the following activities on behalf of any client—

- (a) purchasing or selling of real estate;
- (b) managing clients' money, securities or other assets;
- (c) managing bank, savings or securities accounts;
- (d) organizing contributions for the creation, operation or management of companies;
- (e) creating, operating or managing a legal person or legal arrangement (such as a trust or settlement); or
- (f) purchasing or selling a business entity.

(3D) In the case of a partnership of attorneys, a single declaration filed in accordance with subsection (3C) in respect of the activities of all the attorneys constituting the partnership and signed by a partner duly appointed by the partnership for that purpose shall be sufficient for compliance with that subsection.”.

Passed in the House of Representatives this 15th day of October, 2013 with three (3) amendments.

MICHAEL A. PEART
Speaker.

MEMORANDUM OF OBJECTS AND REASONS

A decision has been taken to amend the Proceeds of Crime Act in order to—

- (a) incorporate amendments proposed by authorities involved in the administration of the Act, aimed at improving its effectiveness; and**
- (b) achieve compliance with the Financial Action Task Force Recommendations on International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation.**

This Bill seeks to give effect to that decision and also includes connected amendments to—

- (a) the Proceeds of Crime (Money Laundering Prevention) Regulations, 2007;**
- (b) the Bank of Jamaica Act;**
- (c) the Interception of Communications Act;**
- (d) the Judicature (Resident Magistrates) Act; and**
- (e) the Legal Profession Act.**

**PETER BUNTING, M.P.
Minister of National Security**

A BILL

ENTITLED

**AN ACT to Amend the Proceeds of Crime Act
and provide for connected matters.**

As passed in the Honourable House of Representatives.

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**SECTION 2 OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND**

2.—(1) In this Act—

“Agency” means the Assets Recovery Agency referred to in section 3;

... ..

“Court” means the Supreme Court;

“financial institution” means—

(a) a bank licensed under the Banking Act;

(e) a person who—

**(i) engages in insurance business within the meaning
of the Insurance Act;**

... ..

**SECTION 34 OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND**

34.—(1) An application to vary or discharge a restraint order may be made to the Court by—

(a) the person who applied for the order; or

(b) any person affected by the order;

(2) Where an application is made under subsection (1), the Court may vary or discharge the order;

Provided that if the condition that was satisfied under section 32(1) was that—

(a) proceedings were started or an application was made, the Court shall discharge the order on the conclusion of the proceedings or the determination of the application, as the case may be; or

(b) an investigation was started or an application was to be made, the Court shall discharge the order if within a reasonable time proceedings for the offence are not started or the application is not commended, as the case may be.

**SECTIONS 52 AND 53 OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND**

52.—(1) A Resident Magistrate’s Court shall act in accordance with subsection (2) if—

(a)

53. Where a defendant is committed to the Supreme Court under section 52, nothing in that section shall affect the powers of the Resident Magistrate's Court to deal with the defendant in respect of any offence for which the defendant is convicted before the Resident Magistrate's Court.

SECTION 71 OF THE PRINCIPAL ACT WHICH IT IS PROPOSED TO AMEND

71.—(1)

(2) Proceedings under any of the foregoing provisions of this Part shall not be brought after the expiration of the period of twelve years from the date on which the Agency's cause of action accrued.

... ..

SECTION 76 OF THE PRINCIPAL ACT WHICH IT IS PROPOSED TO AMEND

76.—(1)

(3) A Justice of the Peace may also exercise the power of a Resident Magistrate's Court to make an order first extending the period mentioned in subsection (1).

... ..

SECTION 91 OF THE PRINCIPAL ACT WHICH IT IS PROPOSED TO AMEND

91.—(1) For the purposes of this Part—

(a)

(d) for the purposes of paragraph (c)—

(i) references to a person's employer include any body, association or organization (including a voluntary organization) in connection with whose activities the person exercises a function (whether or not for gain or reward); and

... ..

SECTION 94 OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND

94.—(1)

(3) For the purpose of enabling the making of the required disclosure, a person in the course of business in the regulated sector shall, in relation to each customer, pay special attention to—

- (a) all complex, unusual or large business transactions carried out by that customer with the business; and
- (b) unusual patterns of transactions, whether completed or not, which appear to the person to be inconsistent with the normal transactions carried out by that customer with the business.

(4) The required disclosure is a disclosure of the information or other matter—

- (a) to a nominated officer; or
- (b) to the designated authority in the form and manner prescribed for the purposes of this subsection by regulations made under section 102.

... ..

SECTION 100 OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND

100.—(1)

(4) For the purposes of this Part, a disclosure is authorized if—

- (a) it is a disclosure to an authorized officer or nominated officer that property is criminal property;

... ..

SECTION 101 OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND

101.—(1)

(3) A person who fails to make a report as required by subsection (2) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

**SECTION 102 OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND**

102.—(1) The Minister may, subject to affirmative resolution, make regulations—

- (a) prescribing the form and manner in which a disclosure under sections 94, 95, 96 or 100(4) shall be made;**
- (b) prescribing the programmes, policies, controls and procedures to be implemented by businesses falling within the regulated sector;**
- (c) requiring financial institutions to report, in the form and manner prescribed, cash transactions involving a prescribed amount.**

... ..

**SECTIONS 137 AND 138 OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND**

137.—(1)

(2) No action, suit or other proceedings may be brought or instituted—

- (a) personally against the Director or any officer of the Agency; or**
- (b) against any financial institution, or any employee thereof, in respect of any act done or omission made in good faith, in the course of carrying out the provisions of this Act.**

138. The Minister may, subject to affirmative resolution, make regulations generally for giving effect to the provisions and purposes of this Act.

**FOURTH SCHEDULE TO THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND**

FOURTH SCHEDULE (Section 94)

1.—(1) A business is in the regulated sector if the business is—

- (a) a financial institution; or**

... ..

REGULATIONS 5, 6 AND 7 OF THE PROCEEDS OF CRIME
(MONEY LAUNDERING PREVENTION) REGULATIONS,
2007 WHICH IT IS PROPOSED TO AMEND

5.—(1)

(2) Without prejudice to the generality of paragraph (1), the programmes referred to in that paragraph shall include—

(a)

(b) arrangements for an independent audit in order to ensure that the programmes as aforesaid are being implemented.

6.—(1) No regulated business shall form a business relationship, or carry out a one-off transaction, with or for another person unless the regulated business—

(a) maintains the following procedures in relation to that business relationship or one-off transaction—

(i)

(iii) procedures of internal control and communication in accordance with regulation 15;

(2) A person who fails to comply with paragraph (1) commits an offence and is liable upon conviction—

(a)

7.—(1) Subject to regulation 8, identification procedures maintained by a regulated business are in accordance with this regulation if such procedures require that—

(a)

(b) where the regulated business is unable to verify the applicant's identity, the business relationship or one-off transaction in question shall not proceed any further;

(c) as concerns any business relationship, customer information is updated—

(i) at least once in every five years during the course of the business relationship; and

... ..

(d) where customer information is not updated as required under subparagraph (c), the business relationship in question shall not proceed any further.

... ..

(5) In this regulation—

“customer information” includes the applicant for business’s full name, current address, taxpayer registration number or other reference number, date and place of birth (in the case of a natural person) and, where applicable, the information referred to in regulation 13(1) (c);

“prescribed amount” has the meaning assigned to it in regulation 3(8).

**REGULATIONS 8 AND 9 OF THE PROCEEDS OF CRIME
(MONEY LAUNDERING PREVENTION) REGULATIONS,
2007 WHICH IT IS PROPOSED TO AMEND**

8.—(1) The identification procedures set out in regulation 7 shall not be required in the case of customer transactions of a value of two hundred and fifty dollars or less in the currency of the United States of America or its equivalent in any other currency, unless the nature of the transaction is suspicious.

9.—(1) Every regulated business conducting wire transfers or any other electronic funds transfer shall ensure that it receives and includes in its records accurate and relevant information on funds transfers throughout the payment process and chain, including the correct name, address and account number (if any), of the persons involved, any other relevant reference numbers and the instructions given in relation to the transfer.

(2) For the purposes of paragraph (1), “persons involved” means—

- (a) the holder of the account that is the source from which the funds are transferred;
- (b) the person that places the order for the transfer of the funds; and
- (c) every recipient of the funds transferred.

**REGULATIONS 11, 12 AND 13 OF THE PROCEEDS OF
CRIME (MONEY LAUNDERING PREVENTION)
REGULATIONS, 2007 WHICH IT IS PROPOSED TO AMEND**

11.—(1) This regulation applies where, in relation to any relevant financial business, a person is, or appears to be an agent.

... ..

(3) Identification procedures maintained by a regulated business are in accordance with this regulation if, in a case to which this regulation applies,

the regulated business requires reasonable measures to be take for the purpose of—

- (a) establishing the identity of the principal; and

... ..

12.—(1) Subject to paragraph (2), where—

- (a) there are reasonable grounds for believing that the applicant for business is a regulated business; or
- (b) any one-off transaction is carried out with or for a third party pursuant to an introduction effected by a person who identifies the third party and has provided an assurance in accordance with paragraph (2),

regulations 7 and 11 shall be construed as entitling the reporting entity to exercise its discretion as to whether or not to require any steps to be taken to obtain evidence of the identity of the applicant for business.

... ..

13.—(1) For the purposes of these Regulations, evidence of identity is satisfactory if—

- (c) in the case of any transaction involving—

- (i) a settlement, trust or other type of legal arrangement, it establishes the identity of the settlor, legal owner or other person who exercises effective control of the legal arrangement, as the case may require, and the beneficial owner;
- (ii) a person other than a natural person, it establishes—
 - (A) the identity of the natural persons who exercise ultimate effective control over that person; and
 - (B) in the case of a body corporate, it includes evidence of incorporation and establishes the identity of each director and shareholder (if any).

... ..

REGULATION 14 OF THE PROCEEDS OF CRIME (MONEY LAUNDERING PREVENTION) REGULATIONS, 2007 WHICH IT IS PROPOSED TO AMEND

14.—(1)

- (4) In relation to all relevant financial business a record shall be kept of each transaction, in such manner and form as shall facilitate the reconstruction of transactions.

(5) For the purposes of paragraph (1), the prescribed period is a period of five years commencing with the date on which the relevant financial business was completed or the business relationship was terminated, whichever occurs later.

REGULATION 19 OF THE PROCEEDS OF CRIME (MONEY
LAUNDERING PREVENTION) REGULATIONS, 2007
WHICH IT IS PROPOSED TO AMEND

19.—(1)

(2) Subject to paragraph (3), nothing in these Regulations shall require a regulated business to maintain procedures in accordance with regulations 7 and 11 which require evidence to be obtained in respect of any business relationship formed by him prior to the relevant date, as to the identity of the person with whom that relationship has been formed.

(3) Notwithstanding paragraph (2), the provisions of regulation 7(1)(c) shall, as of the relevant date, apply to the updating of evidence of identity in relation to any business relationship formed by the regulated business prior to the relevant date.

(4) For the purpose of paragraphs (2) and (3), the “relevant date” is the 29th day of March, 2007.