

M O N T S E R R A T

**PROCEEDS OF CRIME (AMENDMENT) ACT**

No. 18 of 2023

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**I ASSENT**

*Sgd. Sarah Tucker (Mrs.)*

**GOVERNOR**

**DATE:** 27 December 2023

**M O N T S E R R A T**

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AN ACT TO AMEND THE PROCEEDS OF CRIME ACT (CAP. 4.04).

BE IT ENACTED by the King'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, 2023.

**2. Interpretation**

In this Act, “**principal Act**” means the Proceeds of Crime Act (Cap. 4.04).

**3. Section 2 amended**

Section 2(1) of the principal Act is amended—

(a) by inserting the following definitions in the correct alphabetical order—

““**Banking Act**” means the Banking Act (Cap 11.03);”;

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“**Banking Act licensee**” means a regulated service provider who holds a licence under the Banking Act;”;

“**Central Bank**” means the Eastern Caribbean Central Bank established under Article 3 of the Eastern Caribbean Central Bank Agreement set out as the Schedule of the Eastern Caribbean Central Bank Act (Cap. 17.22);”;

“**Companies Act**” means the Companies Act (Cap. 11.12);”;

“**Financial Intelligence Supervisory Board**” means the Financial Intelligence Supervisory Board established under section 13 of the Financial Intelligence Unit Act;”;

“**Financial Intelligence Unit**” means the Financial Intelligence Unit established under the Financial Intelligence Unit Act;

“**Financial Intelligence Unit Act**” means the Financial Intelligence Unit Act, 2023 (No. 12 of 2023);”;

“**International Business Companies Act**” means the International Business Companies Act (Cap. 11.13);”;

“**the Code**” means a Code issued under section 184(1);”;

“**winding up**” includes liquidation.”;

- (b) in the definition of “AML/CFT obligation”, by deleting “an applicable Code” and substituting “the Code”;
- (c) by deleting the definition of “FATF” and substituting the following—

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“**FATF**” means the international body known as the Financial Action Task Force or such other international body as may succeed it;”;

- (d) by deleting the definition of “financial institution” and substituting the following—

“**financial institution**” has the meaning specified in the Anti-money Laundering and Terrorist Financing Regulations;”;

- (e) by deleting the definition of “non-profit organisation” and substituting the following—

“**non-profit organisation**” or “**NPO**” means an organisation that—

- (a) is established solely or primarily for charitable, religious, cultural, educational, social or fraternal purposes or for the purpose of benefiting the public or a section of the public; and
- (b) raises or disburses funds in pursuance of those purposes;”;

- (f) by deleting the definition of “supervisory authority” and substituting the following—

“**supervisory authority**”, with respect to a service provider, means the supervisory authority responsible for the service provider under section 157;”;

- (g) by deleting the definition of “terrorist financing” and substituting the following—

“**terrorist financing**” means—

- (a) conduct referred to in—

- (i) articles 3, 4, 5 and 6 of the Terrorism (United Nations Measures) (Overseas Territories) Order 2001;

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(ii) articles 6, 7, 8 and 9 of the Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002; or

(iii) articles 8 to 13 of the The ISIL (Da'esh) and Al-Qaida (United Nations Sanctions) (EU Exit) Regulations 2019; or

(b) wilfully providing or collecting funds by any means, directly or indirectly, with the knowledge or intention that they are to be used or should be used in full or in part to facilitate the commission of terrorist acts, or to any persons or entities acting on behalf of, or at the direction of a person who finances terrorism;” and

(h) by deleting the definitions of “applicable Code”, “company”, “financial intelligence unit”, “offence” and “Reporting Authority”;

#### 4. Section 3 amended

Section 3 of the principal Act is amended by inserting the following after subsection (3)—

“(4) In subsection (2)(d) and (e), “company” means a company which may be wound up under or in accordance with the Companies Act and includes a company—

(a) in respect of which notice has been given under section 109 of the International Business Companies Act; or

(b) that is being wound up by the Court under section 110 of the International Business Companies Act.”.

#### 5. Section 10 amended

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Section 10(2) of the principal Act is amended in the chapeau by inserting “if” after “the defendant’s general criminal conduct,”.

## **6. Section 12A inserted**

The principal Act is amended by inserting the following after section 12—

### **“12A. Determination of extent of defendant's interest in property**

- (1)** If the Court considers it appropriate to do so, it may determine the extent, at the time a confiscation order is made, of the defendant's interest in property held by the defendant if it appears to the Court that—
  - (a)* the property is likely to be realised or otherwise used to satisfy the confiscation order; and
  - (b)* a person other than the defendant holds, or may hold, an interest in the property.
- (2)** The Court shall not exercise the power conferred by subsection (1) unless it gives to anyone who the Court thinks is or may be a person holding an interest in the property a reasonable opportunity to make representations to it.
- (3)** A determination under this section is conclusive in relation to any question as to the extent of the defendant's interest in the property that arises in connection with—
  - (a)* the realisation of the property or the transfer of an interest in the property, with a view to satisfying the confiscation order; or

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(b) any action or proceedings taken for the purposes of any such realisation or transfer.

(4) Subsection (3) does not apply in relation to a question that arises in proceedings before the Court of Appeal.

(5) In this section, the “extent” of the defendant’s interest in property means the proportion that the value of the defendant’s interest in it bears to the value of the property itself.”.

### 7. Section 13 amended

Section 13 of the principal Act is amended by inserting the following after subsection (6)—

“(7) In subsections (4) and (5) “company” means a company which may be wound up under or in accordance with the Companies Act and includes a company—

(a) in respect of which notice has been given under section 109 of the International Business Companies Act; or

(b) that is being wound up by the Court under section 110 of the International Business Companies Act.”.

### 8. Section 29 amended

Section 29(2) of the principal Act is amended by deleting “apples” and substituting “applies”.

### 9. Section 42 amended

Section 42 of the principal Act is amended by inserting the following subsection after subsection (2)—

“(2A) Provision shall not be made under subsection (2)(a) for any legal expenses which—

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- (a) are incurred by the defendant or a recipient of a tainted gift; and
- (b) relate to an offence referred to in section 41(1)(a) or (b) and the conditions specified in section 41(1)(a) or (b) are satisfied.”.

### 10. Section 101 amended

Section 101 of the principal Act is deleted and the following is substituted—

#### “101. Seizure of cash

- (1) A police officer may seize cash if he has reasonable grounds for suspecting that—
  - (a) it is recoverable cash; or
  - (b) part of the cash is recoverable cash and it is not reasonably practicable to seize only that part.
- (2) After a seizure is made by a police officer under subsection (1), the police officer shall promptly and, in any event within 24 hours of the seizure, report the seizure to the Financial Intelligence Unit.”.

### 11. Section 102 amended

Section 102(1) of the principal Act is amended, by inserting “, excluding public holidays and weekends” after “period of seventy two hours”.

### 12. Section 116 amended

Section 116 of the principal Act is amended by inserting “and “pecuniary advantage”” at the end of the heading of the section.

### 13. Section 117 amended

Section 117 of the principal Act is amended—

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(a) by inserting the following subsection after subsection (2)—

“(2A) For the purposes of a disclosure to a relevant Money Laundering Reporting Officer—

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

(b) references to employment are construed accordingly.”;

(b) in subsection (3)—

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

“(a) it is a disclosure that property is criminal property that is made to—

(i) the Financial Intelligence Unit; or

(ii) the relevant Money Laundering Reporting Officer in accordance with the procedures established by the person’s employer for the purpose; and”;

(ii) in paragraph (b), by deleting “if” at beginning of the paragraph;

(c) in subsection (5), in the chapeau, by deleting “section 129(2)(b)” and substituting “Part 6 of the Financial Intelligence Unit Act.”

#### 14. Section 121 amended

Section 121 of the principal Act is deleted and the following is substituted—

“121. Inchoate offences

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A person commits an offence if he—

- (a) attempts, conspires or incites another to commit an offence under section 118(1), 119(1) or 120(1); or
- (b) aids, abets counsels or procures the commission of an offence under section 118(1), 119(1) or 120(1).”.

#### 15. Section 122 amended

Section 122 of the principal Act is amended—

- (a) in the postamble to subsection (1), by deleting “as soon as is practicable after it comes to him to the relevant Money Laundering Reporting Officer or to the Financial Intelligence Unit” and substituting “to the relevant Money Laundering Reporting Officer or to the Financial Intelligence Unit promptly after the information or matter comes to him”;
- (b) in subsection (3), by inserting “promptly” before “disclose”; and
- (c) in subsections (4)(a) and (5), by inserting “promptly” before “disclosing”.

#### 16. Section 123 amended

Section 123 of the principal Act is amended—

- (a) in the postamble to subsection (1), by deleting “to the Financial Intelligence Unit as soon as is reasonably practicable and in any event within 7 days after it comes to him” and substituting “to the Financial Intelligence Unit promptly after the information or matter comes to him”;
- (b) in subsection (3), by inserting “promptly” before “disclose”; and
- (c) in subsection (4), by inserting “promptly” before “disclosing”.

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### 17. Section 127 amended

Section 127 of the principal Act is amended—

- (a) in subsection (1)—
  - (i) in paragraph (b), by deleting the semi colon and substituting a full stop;
  - (ii) by deleting paragraph (d); and
- (b) by deleting subsections (2) and (3).

### 18. Section 134 amended

Section 134 of the principal Act is amended in subsection (1), by deleting the definition of “criminal recovery investigation” and substituting the following—

“**criminal recovery investigation**” means an investigation into—

- (a) whether a person has benefited from his criminal conduct;
- (b) the extent or whereabouts of the person’s benefit from his criminal conduct;
- (c) the available amount for satisfying a confiscation order made in respect of the person who has benefitted from his criminal conduct; or
- (d) the extent or whereabouts of realisable property available for satisfying a confiscation order made in respect of the person who has benefitted from his criminal conduct;”.

### 19. Section 157 amended

Section 157 of the principal Act is amended—

- (a) by deleting subsection (1) and substituting the following—

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- “(1) The Central Bank is the supervisory authority for Banking Act licensees.
- (1A) The Financial Services Commission is the supervisory authority for—
- (a) regulated service providers other than Banking Act licensees; and
  - (b) financial institutions that are not regulated service providers.”;

(b) by deleting subsections (3) and (4) and substituting the following—

“(3) A supervisory authority shall, for the purpose of securing compliance by those service providers for which the supervisory authority is responsible (“its service providers”), with their AML/CFT obligations—

    - (a) supervise its service providers on an individual and, if appropriate, group basis;
    - (b) monitor compliance by its service providers with their AML/CFT obligations;
    - (c) take appropriate steps to identify and assess the AML/CFT risk of its service providers and apply appropriate supervisory measures to prevent or mitigate the risk; and
    - (d) take appropriate enforcement action against its service providers for breaches of their AML/CFT obligations.

(4) In undertaking its functions, a supervisory authority has—

    - (a) in the case of the Central Bank, the supervisory, information gathering and

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enforcement powers provided for in sections 161 to 170;

- (b) in the case of the Commission—
  - (i) when acting as the supervisory authority for regulated service providers, other than Banking Act licensees, the supervisory, information gathering and enforcement powers provided for in the Financial Services Commission Act;
  - (ii) when acting as the supervisory authority for financial institutions that are not regulated service providers, the supervisory, information gathering and enforcement powers provided for in sections 161 to 170; and
- (c) in the case of the supervisory authority for non-financial service providers, the supervisory, information gathering and enforcement powers provided for in sections 161 to 170.”;

(c) in subsection (5), by deleting “an applicable Code” and substituting “the Code”; and

(d) by inserting the following after subsection (6)—

“(7) Subsection (1) does not affect or limit the powers of the Central Bank with respect to Banking Act licensees under the Banking Act.”.

#### **20. Section 157A inserted**

The principal Act is amended by inserting the following after section 157—

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### **“157A. Cooperation between supervisory authorities**

- (1)** A supervisory authority shall take such steps as it considers appropriate to co-operate with other supervisory authorities.
- (2)** Co-operation under subsection (1) includes the sharing of information and documents which the supervisory authority is not prevented from disclosing.
- (3)** The Central Bank may, with the agreement of the Commission, delegate to the Commission the performance of any of the Central Bank’s functions specified in section 157(3)(a), (b), (c) or (d).
- (4)** In the performance of any functions of the Central Bank delegated to it under subsection (3), the Commission has the supervisory, information gathering and enforcement powers provided for in sections 161 to 170.
- (5)** The Central Bank and the Commission shall notify each other of any concerns that either has with respect to the compliance by a Banking Act licensee with its AML/CFT obligations.
- (6)** The Central Bank and the Commission shall use their best endeavours to enter into a Memorandum of Understanding concerning their co-operation under this section.”.

### **21. Section 160 amended**

Section 160 of the principal Act is deleted and the following is substituted—

#### **“160. Interpretation for sections 161 to 172**

In sections 161 to 172—

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“**relevant supervisory authority**” means—

- (a) in the case of a regulated service provider that is a Banking Act licensee, the Central Bank;
- (b) in the case of a regulated service provider other than a Banking Act licensee, the Commission; and
- (c) in the case of a non-financial service provider, the supervisory authority for non-financial service providers; and

“**relevant service provider**”—

- (a) in relation to the exercise of a power by the Central Bank, means a regulated service provider that is a Banking Act licensee;
- (b) in relation to the exercise of a power by the Commission, means a regulated service provider that is not a Banking Act licensee; and
- (c) in relation to the exercise of a power by the non-financial supervisory authority, means a non-financial service provider.”.

### 22. Section 162 amended

Section 162(a)(i) of the principal Act is amended by deleting “an applicable Code” and substituting “the Code”.

### 23. Section 165 amended

Section 165(a)(ii) of the principal Act is amended by deleting subparagraph (ii) and substituting the following—

“(ii) a provision of the Code that is specified in the Code as a disciplinary violation.”.

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### 24. Section 166 amended

Section 166(3)(b) of the principal Act is amended by deleting “the relevant Anti-Money Laundering and Terrorist Financing Code” and substituting “the Code”.

### 25. Section 170 amended

Section 170(1) of the principal Act is amended in the chapeau by deleting “an applicable Code” and substituting “the Code”.

### 26. Section 173 amended

Section 173 of the principal Act is amended—

(a) in subsection (1)—

(i) by inserting the following definitions in the appropriate alphabetical order—

“**appropriate supervisory authority**” means—

(a) in relation to a direction, the supervisory authority that gave the direction; and

(b) in relation to a financial institution, the supervisory authority with the power to give a direction to the financial institution;”;

“**relevant financial institution**” means a financial institution to whom a direction is given;”;

“**supervisory authority**” means—

(a) in the case of a financial institution that is a Banking Act licensee, the Central Bank; and

(b) in the case of any other financial institution, the Financial Services Commission;”;

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(ii) by deleting the definition of “general direction” and substituting the following—

“**general direction**” means a direction given—

(a) by the Central Bank to—

- (i) all Banking Act licensees; or
- (ii) all Banking Act licensees of the description specified in the direction; or

(b) by the Financial Services Commission to—

- (i) all financial institutions other than Banking Act licensees; or
- (ii) all financial institutions, other than Banking Act licensees, of the description specified in the direction;”;

(iii) by deleting the definition of “general exemption” and substituting the following—

“**general exemption**” means an exemption granted under section 175(3)—

(a) by the Central Bank to—

- (i) all Banking Act licensees; or
- (ii) all Banking Act licensees of the description specified in the exemption; or

(b) by the Financial Services Commission to—

- (i) all financial institutions other than Banking Act licensees; or
- (ii) all financial institutions, other than Banking Act licensees, of

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the description specified in the exemption;”; and

(v) by deleting the definitions of “**prescribed service provider**” and “**relevant service provider**”; and

(b) by inserting the following after subsection (2)—

“(3) A reference in this Part to a supervisory authority and a financial institution is a reference to the supervisory authority responsible for the financial institution.”

### 27. Section 174 amended

Section 174 of the principal Act is amended—

(a) in the heading of the section, by deleting “Financial Services Commission” and substituting “supervisory authority”;

(b) in subsection (1), by deleting the chapeau and substituting the following—

“A supervisory authority may give a direction of a type specified in section 175 to a financial institution, financial institutions of a specified description or all financial institutions, in relation to transactions or business relationships with—”;

(c) in subsection (2), in paragraphs (b) and (c), by deleting “the Financial Services Commission” and substituting “the supervisory authority”;

(d) in subsection (3), by deleting “different prescribed service providers” and substituting “different financial institutions”; and

(e) by deleting subsection (4) and substituting the following—

“(4) A supervisory authority that gives a direction under this section must take appropriate

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measures to monitor the compliance of financial institutions to which the direction applies with the requirements of the direction given.”.

### **28. Section 175 amended**

Section 175 of the principal Act is amended—

- (a) in subsection (1) in the chapeau, by deleting “relevant service provider” and substituting “relevant financial institution”;
- (b) in subsection (3), by deleting “the Commission” and substituting “the supervisory authority”;
- (c) in subsection (4)—
  - (i) in paragraph (a), by deleting “particular prescribed service provider” and substituting “particular financial institution”; and
  - (ii) in paragraph (d), by deleting the Commission” and substituting “the supervisory authority”.

### **29. Section 176 amended**

Section 176 of the principal Act is amended—

- (a) by deleting subsection (1) and substituting the following—

“(1) If a supervisory authority gives a general direction or grants a general exemption, the supervisory authority must publicise the direction or exemption in such manner as it considers appropriate.”;
- (b) in subsection (3), by deleting “the Financial Services Commission” and substituting “the appropriate supervisory authority”;
- (c) by deleting subsections (4), (5) and (6) and substituting the following—

“(4) Where a supervisory authority gives a direction or grants an exemption under section 175(3), to

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a particular financial institution, the supervisory authority must give written notice of the direction or the exemption to that financial institution.

- (5) Where a direction or exemption referred to in subsection (4) is varied or ceases to have effect, whether on revocation or otherwise, the appropriate supervisory authority must give notice of that fact to the relevant financial institution.
- (6) A direction, whether a general direction or a direction to a particular financial institution—
- (a) may be varied or revoked by the appropriate supervisory authority at any time; and
  - (b) if not previously revoked, ceases to have effect at the end of one year from the date that it was first given.”.

### 30. Section 177 amended

Section 177 of the principal Act is amended—

- (a) in subsection (1), by deleting the chapeau and substituting the following—
- “Where reasonably required by a supervisory authority for the discharge of its functions under this Part, the supervisory authority may, by notice in writing given to a relevant financial institution, require it—”
- (b) in subsection (2)(b)(ii), by deleting “the Commission” and substituting “the appropriate supervisory authority”;
- (c) in subsection (3) in the chapeau, by deleting “The Commission” and substituting “A supervisory authority”; and
- (d) in subsection (5), by deleting “The Commission” and substituting “A supervisory authority”.

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### 31. Section 178 amended

Section 178 of the principal Act is amended—

- (a) in subsection (1), by deleting the chapeau and substituting the following—

“Where a supervisory authority has reasonable cause to believe that any premises are being used by a relevant financial institution in connection with the financial institution’s business activities, an officer of the supervisory authority may, on producing evidence of authority, at any reasonable time—”;

- (b) in subsection (2), by deleting “The Commission” and substituting “A supervisory authority”; and

- (c) by deleting subsection (3) and substituting the following—

“(3) A supervisory authority may exercise powers under this section only if the information or document sought to be obtained as a result is reasonably required in connection with the exercise by the supervisory authority of its functions under this Part.”

### 32. Section 179 amended

Section 179 of the principal Act is amended—

- (a) in subsection (1), by deleting “the Commission” and substituting “a supervisory authority”;

- (b) in subsection (2)(c), by deleting “the Commission” and substituting “the appropriate supervisory authority”;

- (c) in subsection (3)(a), by deleting “relevant service provider” and substituting “relevant financial institution”; and

- (d) in subsection (4) in the chapeau, by deleting “the Commission” and substituting “the appropriate supervisory authority”.

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**33. Section 181 amended**

Section 181 of the principal Act is amended by deleting “service provider” wherever it appears and substituting “financial institution”.

**34. Section 183 amended**

Section 183(4) of the principal Act is amended  
by deleting “by the Financial Services Commission” and  
substituting “the appropriate supervisory authority”.

**35. Section 184 amended**

Section 184 of the principal Act is amended—

(a) by deleting subsection (1) and inserting the following—

“(1) The Financial Services Commission may, after consulting with the Governor acting on the advice Cabinet, make rules in the form of a Code setting out measures for the prevention and detection of money laundering and terrorist financing,

(1A) The Code made under subsection (1) must not be inconsistent with this Act, the Anti-money Laundering and Terrorist Financing Regulations, the Anti-terrorist Financing Order, the Terrorism (United Nations Measures) (Overseas Territories) Order 2001, the ISIL (Da'esh) and Al-Qaida (United Nations Sanctions) (EU Exit) Regulations 2019 or any subsequent law which replaces the Regulations or Orders.”;

(b) in subsection (2), by deleting “A Code” and substituting “The Code”;

(c) in subsection (3), by deleting “a Code” in each place it occurs and substituting “the Code”;

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- (d) in subsection (4), by deleting “A Code” and substituting “The Code”;
- (e) in subsection (5), by deleting “a Code” and substituting “the Code”;
- (f) in subsection (6), by deleting “A Code” and substituting “The Code”;
- (g) by deleting subsection (7), and substituting the following—
  - “(7) Subject to subsection (8), the Commission may issue guidance concerning compliance with the requirements of this Act, the Anti-money Laundering Regulations and the Code and concerning such other matters as it considers relevant to its functions.”; and
- (h) by inserting the following as subsection (8)—
  - “(8) Prior to issuing guidance under subsection (7) in relation to a Banking Act licensee, the Commission must consult the Central Bank.”.

*Sgd. Charliena M. L. White (Miss.)*

**SPEAKER**

Passed by the Legislative Assembly this 20<sup>th</sup> day of December, 2023.

*Sgd. Dr. Judith Baker*

**CLERK OF THE LEGISLATIVE ASSEMBLY**