

Overview of proposed changes to the Terrorism Law (2015 Revision) (“TL”) and the Proliferation Financing (Prohibition) Law (2014 Revision) (“PFPL”)

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Introduction

The changes proposed in **The Terrorism (Amendment) Bill, 2016** and **The Proliferation Financing (Prohibition) (Amendment) Bill, 2016** are required in order to bring some provisions of the TL and PFPL into compliance with the international standards recommended by the Financial Action Task Force. These include Recommendations 5 and 6 with respect to the TL, and Recommendation 7 with respect to the PFPL.

The Terrorism (Amendment) Bill, 2016

- **New Definitions:**

- **Terrorist:** means a person who –
 - (a) has committed an offence under sections 3 to 7, 14 to 16 and 19 to 22; or
 - (b) is or has been concerned in the commission, preparation or instigation of acts of terrorism; and includes a person who has been, whether before or after the passing of this Law concerned in the commission, preparation or instigation of acts of terrorism.
- **Terrorist financing:** means the financing of acts of terrorism, of terrorists and terrorist organisations and includes offences contrary to sections 19, 20, 21 and 22.

The Terrorism (Amendment) Bill, 2016

- **New Definitions:**

- **Terrorist organization:** means any group of terrorists that –
 - (a) commits, or attempts to commit, an act of terrorism by any means, directly or indirectly, unlawfully and wilfully;
 - (b) participates as an accomplice in an act of terrorism;
 - (c) organises or directs others to commit an act of terrorism;
 or
 - (d) contributes to the commission of an act of terrorism by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the act of terrorism or with the knowledge of the intention of the group to commit an act of terrorism.”

The Terrorism (Amendment) Bill, 2016

- **Revised Definitions:**

- **Property:** includes money and all other property, real or personal, including things in action, tangible or intangible property, moveable or immoveable property and legal documents or instruments in any form evidencing title to or interest in property.

The Terrorism (Amendment) Bill, 2016

- **Terrorism:** means –
 - (a) an act whether committed in or outside of the Islands which causes or is likely to cause –
 - loss of human life or serious bodily harm;
 - damage to property; or
 - prejudice to national security or disruption of public safety including disruption in the provision of emergency services or to any computer or electronic system or to the provision of services directly related to banking, communications, infrastructure, financial services, public utilities, transportation or other essential infrastructure,
 and is intended to –
 - (A) compel a government or an international organisation to do or refrain from doing any act; or
 - (B) intimidate the public or a section of the public, for the purpose of advancing a political, religious, racial or ideological cause; or
 - (b) an offence under sections 3 to 7, 14 to 16 and 19 to 22.

The Terrorism (Amendment) Bill, 2016

- **Delegation by the Governor (2A)**: The Governor may, to such extent and subject to such restrictions and conditions as the Governor may think necessary, delegate, or authorise the delegation of any of the Governor's powers under this Law to any person, or class or description of persons, approved by the Governor.
- **New Section 16**: more comprehensive section regarding inciting, participating and organizing, including making it an offence to travel to a country or territory other than the Islands to commit, plan or participate in an act of terrorism.

The Terrorism (Amendment) Bill, 2016

- **New Section 18**: New definition of **terrorist property** - means property that is used in the financing of acts of terrorism, terrorists and terrorist organisations. It also makes it clear that a reference to "proceeds" means proceeds from the financing of acts of terrorism, terrorists and terrorist organisations.
- **New Section 19: Soliciting terrorist property** - an offence is committed if a person knowingly provides or collects property with the intention or knowledge that the property will be used for purposes of terrorism. Of note, still an offence:
 - Even if the act of terrorism does not occur or is not attempted.
 - Even if the property is not actually used to commit or to attempt the act of terrorism, or is linked to a specific act of terrorism.
 - Regardless of whether the property is from legitimate or illegitimate sources.

The Terrorism (Amendment) Bill, 2016

- **New Section 20: Use and possession of terrorist property** - it is an offence to possess or acquire terrorist property with intent or knowledge that it will be used for the purpose of financing terrorism, terrorists or terrorist organisations.
- **Amendments to Schedule 4A – Freezing of funds etc. of designated persons:**
 - (a) in paragraph 1, by inserting the following in the definition of “relevant Security Council resolutions” in their appropriate sequence –
 - “(a) resolution 1267 (1999) adopted by the Security Council of the United Nations on 15th October, 1999;
 - (b) resolution 2178 (2014) adopted by the Security Council Resolution on 24th September, 2014; and
 - (c) any successor resolutions to the above resolutions adopted by the Security Council of the United Nations.”;

The Terrorism (Amendment) Bill, 2016

Amendments to Schedule 4A (cont) :

- (b) in paragraph 3 as follows –
 - (i) by repealing paragraph (i) and substituting the following paragraph –
 - “(i) The Governor may, for purposes of this Schedule –
 - (a) make a final designation of a person if the United Nations Security Council has advised that measures should be taken in relation to a person because of the risks of terrorist activities being carried on by that person; or
 - (b) propose to the United Nations Security Council that a final designation should be made in relation to a person because of the risks of terrorist activities being carried on by that person.”; and
 - (ii) in subparagraph (4), by inserting after the word “terrorism” where it appears for the second time a comma and the words “terrorist financing”.

The Terrorism (Amendment) Bill, 2016

Amendments to Schedule 4A (cont) :

- (c) by repealing paragraphs 12(1) and (2) and substituting the following paragraphs –
 - 12. (1) A person shall **freeze, without delay**, funds or economic resources owned, held or controlled by a designated person if the first-mentioned person knows, or has reasonable cause to suspect, that the designated person is dealing with such funds or economic resources.
 - (2) In subparagraph (1) –
 - “dealing with” includes –
 - (a) in relation to funds, transferring, converting, disposing, moving or using; or
 - (b) in relation to economic resources, exchanging or using in exchange for funds, goods or services; and
 - “freeze” means to prohibit the transfer, conversion, disposition, movement or use of any funds or economic resources that are owned or controlled by a designated person.

The Terrorism (Amendment) Bill, 2016

Amendments to Schedule 4A (cont) :

- (d) in paragraph 37 as follows –
 - (i) in subparagraph (1), by inserting after the word “kind,” the words “whether from a legitimate or illegitimate source;” and
 - (ii) in subparagraph (2), by inserting after the word “kind,” the words “whether from a legitimate or illegitimate source and”.

The Proliferation Financing (Prohibition) (Amendment) Bill, 2016

- **New Definitions:**

- **Economic resources:** means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services.
- **Financial Reporting Authority:** means the Authority established under section 3 of the Proceeds of Crime Law (2016 Revision). The FRA will become the agency required to administer the PFPL rather than CIMA.
- **Freeze:** means to prohibit the transfer, conversion, disposition, movement or use of any funds or economic resources of a designated person that are specified in section 2B.

The Proliferation Financing (Prohibition) (Amendment) Bill, 2016

- **New Definitions:**

- **Funds:** means financial assets and benefits of every kind, including –
 - (a) cash, cheques, claims on money, drafts, money orders and other payment instruments;
 - (b) deposits with relevant institutions or other persons, balances on accounts, debts and debt obligations;
 - (c) publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivative products;
 - (d) interest, dividends and other income on or value accruing from or generated by assets;
 - (e) credit, rights of set-off, guarantees, performance bonds and other financial commitments;
 - (f) letters of credit, bills of lading and bills of sale;
 - (g) documents providing evidence of an interest in funds or financial resources; and
 - (h) any other instrument of export financing.

The Proliferation Financing (Prohibition) (Amendment) Bill, 2016

- **New Definitions:**

- **Listed person:** in relation to a direction means a person, including any subsidiary or other entity owned or controlled by that person, in relation to whom a direction is given.
- **Security Council:** means the Security Council of the United Nations.
- **Directors Registration and Licensing Law, 2014:** to be added to Section 2(2) – persons operating in the financial sector.

The Proliferation Financing (Prohibition) (Amendment) Bill, 2016

- **Revised Definitions:**

- **Designated Person:** means a person, including any subsidiary or other entity owned or controlled by that person, to whom Security Council anti-proliferation financing measures relates.
- **Money laundering:** means conduct that constitutes an offence under section 23A.
- **Deleted definitions:**
 - The definitions of terrorism and terrorist financing have been removed.

The Proliferation Financing (Prohibition) (Amendment) Bill, 2016

- **New Part 1A: Security Council measures and freezing of funds and economic resources:**

- **Lists of designated persons:** Where the Security Council has published a list of designated persons to whom, or a list of funds or economic resources or a class of funds and economic resources to which, measures against proliferation financing shall apply, the FRA shall, as soon as reasonably practical,
 - disseminate the list in such media as it considers appropriate; and
 - provide the list to CIMA and the department in Government charged with the responsibility for monitoring compliance with anti-money laundering and combating the financing of terrorism measures for DNFBPs (DCI).

The Proliferation Financing (Prohibition) (Amendment) Bill, 2016

- **New Part 1A:**
 - **Freezing of funds or economic measures:**
 - (i) Subject to any regulations, a person that has in that person's possession, custody or control in the Islands, any funds or economic resources or is otherwise dealing with all funds or economic resources that are –
 - (a) wholly or jointly owned or controlled, directly or indirectly, by a designated person; or
 - (b) derived or generated from funds or economic resources owned or controlled, directly or indirectly, by a designated person,
 shall –
 - (i) **immediately freeze** all such funds or economic resources; and
 - (ii) ensure that such funds or economic resources are not made available, whether directly or indirectly, to or for the benefit of the designated person.
 - (2) For the purposes of subsection (i), any funds or economic resources that are held by –
 - (a) any entity owned or controlled, directly or indirectly, by a designated person; or
 - (b) any individual or entity who acts on behalf of or under the direction of any designated person,
 are treated as funds or economic resources owned or controlled by the designated person.

The Proliferation Financing (Prohibition) (Amendment) Bill, 2016

- **New Part 1A:**
 - **Reporting to the FRA:** A person who freezes shall, as soon as reasonably practicable, disclose to the Financial Reporting Authority details of any frozen funds or economic resources or actions taken in compliance with the prohibition requirements of the relevant Security Council measures, including attempted transactions.
 - **Civil Penalties for failing to freeze or report:** The FRA may impose a penalty of such amount as it considers appropriate on a person who fails to freeze or report (up to \$40k). A person on whom a civil penalty is imposed is not liable to be proceeded against for a criminal offence.

The Proliferation Financing (Prohibition) (Amendment) Bill, 2016

- **New Part 1A:**
 - **Criminal penalties for failing to freeze or report:** A person who fails to freeze or report commits an offence.
 - Failing to freeze, liable:
 - on summary conviction, to a fine of \$50k; or
 - on conviction on indictment, to a fine of \$70k or imprisonment for a term of three years, or to both.
 - Failing to report, liable on summary conviction, to a fine of \$10k.
 - A person who is convicted of an offence is not liable to a civil penalty in respect of the same offence.

The Proliferation Financing (Prohibition) (Amendment) Bill, 2016

- **New Part 1A:**
 - **De-listing of designated persons:**
 - (1) The Financial Reporting Authority may, in accordance with any regulations, submit to the United Kingdom, requests for de-listing of designated persons if the Financial Reporting Authority is satisfied that subsection (3) applies and –
 - (a) if the designated persons are individuals, they reside in the Islands; or
 - (b) if the designated persons are not individuals, they are incorporated or otherwise established in the Islands.
 - (2) The Financial Reporting Authority may submit a request for de-listing either at the Financial Reporting Authority's own instigation or on application by a designated person.
 - (3) In so far as a listing by the Security Council gives effect to a particular decision of the Security Council, the listing is revoked when Article 25 of the Charter of the United Nations ceases to require the United Kingdom to carry out that decision.

The Proliferation Financing (Prohibition) (Amendment) Bill, 2016

- **Amendments to Section 5:**
 - **New 5(1)(a):** (a) the Financial Action Task Force, or such other international or inter-governmental organisation has advised that measures should be taken in relation to the country because of the risks of **proliferation activities** being carried on –
 - (i) in the country;
 - (ii) by the government of the country; or
 - (iii) by persons resident or incorporated in the country.
 - **Amend 5(1)(b):** Delete the words “terrorist financing or money laundering activities” and substitute the words “proliferation activities”.

The Proliferation Financing (Prohibition) (Amendment) Bill, 2016

- **New provisions in Section 5:**
 - The FRA shall publish a list of any persons or countries to whom directions shall apply and shall disseminate such lists in such media as it considers appropriate.
 - The FRA shall provide such list to CIMA and the department in Government charged with the responsibility for monitoring compliance with anti-money laundering and combating the financing of terrorism measures for DNFBPs (DCI).
 - The Cabinet may make regulations prescribing the matters of which the FRA must be satisfied before listing a person.
 - The FRA may, in accordance with regulations, revoke a listing if it is satisfied that the specified conditions for listing no longer apply.

The Proliferation Financing (Prohibition) (Amendment) Bill, 2016

- **Delete “designated person” and substitute with “listed person” in the following sections:**
 - **6(3)(a)**
 - **7(1)(a) and (b)**
 - **7(4)(a)(i), (ii) and (iii)**
 - **8(1) and 8(3)(b)**
 - **9(1)**
 - **10(a), (b) and (c)**

The Proliferation Financing (Prohibition) (Amendment) Bill, 2016

- **Amendment to Section 14: Power to require information or documents -**
 - Information shall be provided or the documents produced within 72 hours, or such longer period as the enforcement office considers reasonable.
 - **Application for extension:** A relevant person may apply in writing to the enforcement officer for an extension of the period in the notice, before such period has expired, and shall provide reasons why an extension is required.

The Proliferation Financing (Prohibition) (Amendment) Bill, 2016

- **Section 23A – Application of the Proceeds of Crime Law (2014 Revision):**
 - 23A. A person who –
 - (a) provides funds and economic resources to fund unauthorised proliferation activities; or
 - b) enters into or becomes concerned in an arrangement which that person knows or suspects facilitates, by whatever means, the acquisition, retention, use or control of funds and economic resources to fund unauthorised proliferation activities,
 - commits a money laundering offence for the purposes of the Proceeds of Crime Law (2014 Revision) and the provisions of that Law shall apply in the investigation and prosecution of the offence and to any other procedure relating to that offence.

The Proliferation Financing (Prohibition) (Amendment) Bill, 2016

- **New Section 37: Regulations:**
 - 37. (1) The Cabinet may make regulations for the effective carrying out of the provisions of this Law and such regulations may include regulations dealing with –
 - (a) the publication of lists of designated persons;
 - (b) the publication of lists of listed persons;
 - (c) de-listing of persons;
 - (d) the freezing of funds and economic resources;
 - (e) exemptions from a requirement to freeze funds and economic resources; and
 - (f) remedies for persons wrongly affected by the freezing of funds and economic resources.
 - (2) Regulations under this Law may provide penalties for offences against the regulations but such penalties shall not exceed any penalty provided in this Law.

Questions?