

THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4551 of 08 March, 2019

B. 08/19

BILL

FOR

AN ACT to amend the Proceeds of Crime Act 2015, the Terrorism Act 2018 and for connected purposes.

ENACTED by the Legislature of Gibraltar.

Title.

1. This Act may be cited as the Proceeds of Crime and Terrorism (Amendment) Act 2019.

Commencement.

2. This Act comes into operation on the day of publication.

Amendment of the Proceeds of Crime Act 2015.

3.(1) The Proceeds of Crime Act 2015 (in this section, “the Act”) is amended in accordance with the provisions of this section.

(2) In section 1E(1) of the Act for “other EU FIUs and Egmont Group FIUs” substitute “other FIUs”.

(3) In section 1F(2) of the Act for “EU FIUs or Egmont Group FIUs” substitute “other FIUs”.

(4) For section 1G(1) of the Act substitute-

“ (1) Where the GFIU receives a disclosure pursuant to section 1ZDA, 2, 3 or 4 of this or any other Act, which concerns a State or territory outside Gibraltar it shall promptly forward it to the FIU of that State or territory.”.

(5) In section 1GA of the Act in the heading and in subsections (1) and (2) delete “EU” on the three occasions it appears.

- (6) For section 1H of the Act substitute-

“Obtaining further information.

1H. When the GFIU seeks to obtain additional information from an entity established in a State or territory outside Gibraltar which operates on the territory of that State or territory, the request shall be addressed to the FIU of the State or territory in whose territory the entity is established.”.

- (7) In section 1IA of the Act in subsection (2) delete “EU”.

- (8) In Section 1IB of the Act-

- (a) delete “EU” on both occasions it appears;
- (b) for “Member State” substitute “State or territory”.

- (9) In section 1IC of the Act-

- (a) in subsection (2) delete “EU” on both occasions it appears;
- (b) after subsection (6) insert-

“ (7) Where-

- (a) the GFIU receives a request for the dissemination of information or a document exchanged pursuant to sections 1E to 1I for a purpose beyond that originally approved; and
- (b) the request does not fall within subsections (4) to (6) of this section;

it may, on a case by case basis, grant consent to the dissemination of the information or document by the FIU to a competent authority, agency or department within the State or Territory of the FIU subject to such restrictions and conditions for the use of that information or document as the GFIU deems appropriate and reasonable.

(8) Where under subsection (7) the GFIU refuses to consent to the dissemination of information or documents exchanged under sections 1E to 1I, the GFIU must appropriately explain its decision to the FIU which sent the request for dissemination of such information or documents.”.

- (10) In section 1T of the Act after subsection (2) insert-

“ (3) For the avoidance of doubt, “independent legal professional” includes, but is not limited to, a barrister, solicitor or other lawyer.”

- (11) In section 4F(8) of the Act delete “EU”.

(12) In section 7 of the Act-

- (a) in subsection (1B) for “subregulation (1)” substitute “subsection (1A)”;
- (b) in subsection (1C) for “subregulation (2)” substitute “subsection (1B)”.

(13) In section 8 of the Act-

- (a) renumber the current text as subsection (1);
- (b) after the newly numbered subsection (1) insert the following sub-sections-

“(2) A relationship where the relevant person is asked to form a company for its customer is to be treated as a business relationship for the purpose of this Act, whether or not the formation of the company is the only transaction carried out for that customer.

(3) For the purposes of this Act, an estate agent is to be treated as entering into a business relationship-

- (a) with a purchaser (as well as with a seller), at the point when the purchaser’s offer is accepted by the seller;
- (b) with a tenant (as well as with a landlord), at the point when the tenant’s offer is accepted by the landlord.”.

(14) In section 11 of the Act-

- (a) in subsection (1) for “Subject to sections 13, 14, 16 to 20 and 23, a” substitute “A”;
- (b) after subsection (5) insert-

“(6) Nothing in this section shall be read as derogating from the obligation of a relevant financial business to apply due diligence measures under subsections (1) to (5), including the application of those measures pursuant to sections 13, 14, 16 to 20 and 23.”.

(15) In section 19 of the Act for “A credit” substitute “A credit institution or financial institution”.

(16) In section 26(2A) of the Act for “subsection 2(d)” substitute “subsection 2(c)”.

(17) In section 33(1) of the Act for “sections 11(1), (2) or (3), 12(1) or (3), 13(2), 14, 15(1)(a), (b) or (c), 17, 21(1) or (2), 22(1), (2), (3) or (4), 25(1), (4), (5) or (6), 26(1), (4) or (5) or 27,” substitute “11(1), (2) or (3), 12(1) or (3), 13(2), (4) or (5), 14, 15(1)(a), (b) or (c), 16(3), 17, 17A, 19, 20, 20B, 21(1) or (2), 22(1), (2), (3) or (4), 23(1)(a), 25(1), (4), (5) or (6), 25A, 26(1), (1A), (1B), (2), (2A), (4) or (5), 26A, 27 or 28,”.

(18) In section 184 of the Act after subsection (2) insert-

“(3) The Minister with responsibility for Finance may, by regulation, make, amend or replace regulations made under this Act regarding a Register of Ultimate Beneficial Owners within Gibraltar so as to make provision including-

- (a) making such a register public, (in accordance with relevant international standards or obligations), either on the date of publication of such regulations or on such date as the Minister may determine by notice in the Gazette;
- (b) setting out exemptions to disclosure in exceptional circumstances to persons or entities other than competent authorities or financial intelligence units;
- (c) prescribing the manner in which access to the register is granted;
- (d) prescribing any forms to be used;
- (e) for any fees to be payable in respect of access to the register; and
- (f) for any matter incidental to any of the foregoing.”.

(19) In Part VII (General) after section 184 of the Act, insert the following section-

“Power to make subordinate legislation regarding external requests and orders.

184A. (1) Notwithstanding the generality of section 184, the Government may by Order-

- (a) make provision for a prohibition on dealing with property which is the subject of an external request;
- (b) make provision for the realisation of property for the purpose of giving effect to an external order.

(2) An Order under this section may include—

- (a) provision about the functions of persons in relation to external requests and orders;
- (b) provision about the registration of external orders;
- (c) provision about the authentication of any judgment or order of an overseas court, and of any other document connected with such a judgment or order or any proceedings relating to it;
- (d) provision about evidence (including evidence required to establish whether proceedings have been started or are likely to be started in an overseas court);

- (e) provision to secure that any person affected by the implementation of an external request or the enforcement of an external order has an opportunity to make representations to a court in Gibraltar.

Power to make subordinate legislation regarding external investigations.

184B.(1) Notwithstanding the generality of section 184, the Government may by Order-

- (a) make provision to enable orders to be made, and warrants to be issued, for the purposes of an external investigation;
- (b) provision creating offences in relation to external investigations.

(2) An Order under this section may include—

- (a) provision corresponding to any provision of Part VI (subject to any specified modifications);
- (b) provision about the functions of persons in relation to external investigations;
- (c) provision about evidence (including evidence required to establish whether an investigation is being carried out in a country or territory outside Gibraltar).

Rules of court.

184C. Rules of court may make such provision as is necessary or expedient to give effect to an Order made under section 184A or 184B (including provision about the exercise of functions of a judge conferred or imposed by the Order).

Interpretation for the purposes of sections 184A, 184B and 184C.

184D. (1) For the purposes of sections 184A, 184B and 184C-

- (a) an external request is a request by an overseas authority to prohibit dealing with relevant property (including property which was, or was intended to be, the instrumentalities of criminal conduct) which is identified in the request;
- (b) an external order is an order which—
 - (i) is made by an overseas court where property is found or believed to have been obtained as a result of or in connection with criminal conduct or was, or was intended to be, the instrumentalities of criminal conduct, and
 - (ii) is for the recovery of specified property or a specified sum of money;
- (c) an external investigation is an investigation by an overseas authority into—

- (i) whether property has been obtained as a result of or in connection with criminal conduct or was, or was intended to be, the instrumentalities of criminal conduct,
 - (ii) the extent or whereabouts of property obtained as a result of or in connection with criminal conduct, or
 - (iii) whether a money laundering offence has been committed.
- (d) property is all property wherever situated and includes—
 - (i) money;
 - (ii) all forms of property, real or personal, heritable or moveable;
 - (iii) things in action and other intangible or incorporeal property.
- (2) Property is obtained by a person if he obtains an interest in it.
- (3) References to an interest in relation to property other than land, include references to a right (including a right to possession).
- (4) A person who obtains a pecuniary advantage as a result of or in connection with conduct is to be taken to obtain, as a result of or in connection with the conduct, a sum of money equal to the value of the pecuniary advantage.
- (5) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained both in that connection and some other.
- (6) Property is relevant property if there are reasonable grounds to believe that it may be needed to satisfy an external order which has been or which may be made.
- (7) Criminal conduct is conduct which—
 - (a) constitutes an offence in Gibraltar, or
 - (b) would constitute an indictable offence in Gibraltar if it occurred in Gibraltar.
- (8) An overseas court is a court of a country or territory outside Gibraltar.
- (9) An overseas authority is an authority which has responsibility in a country or territory outside Gibraltar—
 - (a) for making a request to an authority in another country or territory (including Gibraltar) to prohibit dealing with relevant property,

- (b) for carrying out an investigation into whether property has been obtained as a result of or in connection with criminal conduct, or
- (c) for carrying out an investigation into whether a money laundering offence has been committed.”.

(20) For paragraph (g) of Part I of Schedule 2 to the Act, substitute-

“(g) the Office of Fair Trading as defined in section 3 of the Fair Trading Act 2015 (in relation to businesses engaging in relevant financial business in accordance with sections 9(1)(h) (real estate agents) and 9(1)(k) (dealers in high value goods) of the Proceeds of Crime Act 2015;”.

(21) In regulation 11 of the Supervisory Bodies (Powers Etc.) Regulations 2017, after sub regulation (2) insert-

“(3) For the avoidance of doubt a supervisory body may issue or promulgate such rules, codes or guidance in respect of the laws concerning the prevention of the laundering of the proceeds of crime or terrorist financing as it considers relevant.”.

Amendment of the Terrorism Act 2018.

4.(1) The Terrorism Act 2018 (in this section, “the Act”) is amended in accordance with the provisions of this section.

(2) In section 19(1)(b) of the Act for “ section (1)” insert “section 17(1)”.

(3) For subsection (5) of section 41 of the Act substitute-

“(5) References to a police officer include references to-

- (a) the Head of the GFIU,
- (b) police officers and customs officers within the GFIU, and
- (c) such other personnel authorised for the purposes of this section by the Head of GFIU.”.

(4) In section 43 of the Act-

- (a) in subsection (3) for “7 working days” substitute “14 working days”;
- (b) in subsection (4) for “the police officers and customs officers in the GFIU.” substitute-

“(a) the Head of the GFIU,

- (b) police officers and customs officers within the GFIU, and
- (c) such other personnel authorised for the purposes of this section by the Head of GFIU.”.

(5) In section 51(2)(c) of the Act after “Member State” insert “, the United Kingdom, Gibraltar”.

(6) In section 53(4) of the Act for “2006/70/EC.” substitute “2006/70/EC, as amended from time to time”.

(7) For section 96(1) of the Act substitute-

“(1) The power conferred by an authorisation under section 95 shall be exercised by placing a traffic sign specifying that the prohibition or restriction is made under section 95 of this Act on the road concerned.”.

(8) In section 160 of the Act-

(a) substitute the following for subsection (2)-

“(2) Substitute the following paragraph for paragraph (b) of section 5(9) of the Act-

“(b) doing any act which constitutes an offence under section 35, 36, 37 or 39 of the Terrorism Act 2018;”.

(b) substitute the following for subsection (3)-

“(3) Substitute the following paragraph for paragraph (b) in the definition of “money laundering” in section 7(2) of the Act-

“(b) under section 35, 36, 37 or 39 of the Terrorism Act 2018;”.

(9) In Schedule 2 to the Act for paragraph 1(1)(r) substitute-

“(r) the carrying on of gambling services as defined in section 7 of the Proceeds of Crime Act 2015;”.

(10) In paragraph 1(2) of Schedule 9, for “designates” substitute “designated”.

Amendment of the Crimes Act 2011.

5.(1) The Crimes Act 2011 (in this section, “the Act”) is amended in accordance with the provisions of this section.

(2) In section 22(2)(a) of the Act after the words “section 47 or any other enactment” insert “, (but excepting an offence under any of sections 35 to 39 of the Terrorism Act 2018)”.

(3) In section 22(2)(c) of the Act after the words “section 47” insert “, (but excepting an offence under any of sections 35 to 39 of the Terrorism Act 2018)”.

EXPLANATORY MEMORANDUM

This Bill amends the Proceeds of Crime Act 2015 (and the Supervisory Bodies (Powers Etc.) Regulations 2017), the Terrorism Act 2018 and the Crimes Act 2011.

