

No. 21 of 2015.

Criminal Code (Money Laundering and Terrorist Financing)(Amendment) Act 2015.

Certified on : 20.1.2016



No. of 2015.

Criminal Code (Money Laundering and Terrorist Financing)(Amendment) Act 2015.

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No. of 2015.

AN ACT

entitled

Criminal Code (Money Laundering and Terrorist Financing)(Amendment) Act 2015,

Being an Act to amend the ***Criminal Code Act*** (Chapter 262) to criminalise money laundering and terrorist financing, and for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

1. NEW SECTION 1A.

The principal Act is amended by inserting a new section after Section 1 as follow:

“1A. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3C (*qualified rights*) of the ***Constitution***, namely -

- (a) the right of liberty of the person conferred by Section 42; and
- (b) the right to freedom of Conscience, thought and religion conferred by Section 45; and
- (c) the right to freedom of expression conferred by Section 46; and
- (d) the right to freedom of assembly and association conferred by Section 47; and
- (e) the right to freedom of employment conferred by Section 48; and
- (f) the right to privacy conferred by Section 49,

of the ***Constitution*** is a law that is made for the purpose of complying with Section 38 of the ***Constitution***, that is necessary for the purpose of giving effect to the public interest in public safety, public order and public welfare and is reasonably justifiable in a democratic society having proper respect and regard for the rights and dignity of mankind, taking into account the National Goals and Directive Principles and Basic Social Obligations, and to give effect to certain international obligations of Papua New Guinea and meet relevant Financial Action Task Force Recommendations because of the risk that money laundering and terrorist financing poses to public safety, public order and public welfare as well as to the successful economic and human development of Papua New Guinea and its citizens and to the stability of the State of Papua New Guinea.”.

2. NEW PART VIA.

The Principal Act is amended by adding a new part after Part VI as follows:

“PART VIA. - MONEY LAUNDERING AND TERRORIST FINANCING.

Division 1. - Money Laundering.

508A. INTERPRETATION FOR THIS DIVISION.

The following definitions apply for the purposes of this Division:

“criminal conduct” is conduct which -

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- (a) constitutes an offence in Papua New Guinea for which the maximum penalty is death or a term of imprisonment for at least six months; or
- (b) would constitute an offence in Papua New Guinea if it occurred in Papua New Guinea and for which the maximum penalty under the law of Papua New Guinea is death or a term of imprisonment for at least six months;

“criminal property” means property that is, in whole or in part and whether directly or indirectly, derived from, obtained or used in connection with criminal conduct and includes any interest, dividends or other income on or value accruing from or generated by such property, regardless of who carried out the criminal conduct or who benefited from it;

“property” means assets of every kind, whether tangible or intangible, corporeal or incorporeal, moveable or immovable, however acquired, including an enforceable right of action, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including but not limited to currency, bank credits, deposits and other financial resources, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit, whether situated in Papua New Guinea or elsewhere, and includes a legal or equitable interest, whether full or partial, in any such assets.

508B. CRIME OF MONEY LAUNDERING.

(1) A person who deals with property that is criminal property and who knows or reasonably ought to know that the property is criminal property is guilty of an offence.

- Penalty:
- (a) if the offender is a natural person - a fine not exceeding K500,000.00 or imprisonment for a term not exceeding 25 years or both; or
 - (b) if the offender is a body corporate - a fine not exceeding K1,000,000.00.

(2) Knowledge in Subsection (1) may be inferred from objective factual circumstances.

(3) For the purposes of Subsection (1) “deals with property” includes one or more of the following:

- (a) conceals property; and
- (b) disguises property; and
- (c) converts property; and
- (d) transfers property; and
- (e) removes property from Papua New Guinea; and
- (f) brings property into Papua New Guinea; and
- (g) receives property; and
- (h) acquires property; and
- (i) uses property; and
- (j) possesses property; and
- (k) consenting to or enabling any of the actions referred to in any of Paragraphs (a) to (j).

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(4) For the purposes of Subsection (3), conceals or disguises property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

508C. CRIME OF DEALING WITH PROPERTY REASONABLY SUSPECTED TO BE CRIMINAL PROPERTY.

(1) A person who deals with property in circumstances where it is reasonable to suspect that the property is criminal property is guilty of an offence.

- Penalty: (a) if the offender is a natural person - a fine not exceeding K100,000.00 or imprisonment for a term not exceeding three years or both; or
(b) if the offender is a body corporate - a fine not exceeding K200,000.00.

(2) For the purposes of Subsection (1) "deals with property" includes one or more of the following:

- (a) conceals property; and
- (b) disguises property; and
- (c) converts property; and
- (d) transfers property; and
- (e) removes property from Papua New Guinea; and
- (f) brings property into Papua New Guinea; and
- (g) receives property; and
- (h) acquires property; and
- (i) uses property; and
- (j) possesses property; and
- (k) consenting to or enabling any of the actions referred to in any of Paragraphs (a) to (j).

(3) Reasonable suspicion in Subsection (1) may be inferred from objective factual circumstances.

(4) Without limiting Subsection (1), it is reasonable to suspect that the property is criminal property if -

- (a) the conduct involves a number of transactions that are structured or arranged to avoid the reporting requirements under anti-money laundering and counter terrorist financing laws of Papua New Guinea; or
- (b) the conduct involves using one or more accounts maintained in false names; or
- (c) the value of the property involved is grossly disproportionate to the person's lawful income and expenditure over a reasonable period of time within which the act occurs; or
- (d) the conduct involves a transaction which exceeds the threshold reporting obligation under anti-money laundering and counter terrorist financing laws of Papua New Guinea, and the person has -
 - (i) contravened his obligations under those laws relating to reporting the transaction; or
 - (ii) given false or misleading information in purported compliance with those obligations; or

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- (e) the conduct involves an importation or exportation which is required to be the subject of a report under section 14 of the *Proceeds of Crime Act 2005* and the person has -
 - (i) contravened his obligations under that Act relating to making the report; or
 - (ii) given false or misleading information in purported compliance with those obligations; or
- (f) the person has -
 - (i) stated that the conduct was engaged in on behalf or at the request of another person; and
 - (ii) not provided information enabling the other person to be identified.

(5) For the purposes of Subsection (2), conceals or disguises property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

(6) It is a defence to the crime created by Subsection (1) that the defendant had no reasonable grounds for suspecting that the property was criminal property.

(7) A defendant bears the legal burden of proof in relation to Subsection (6) and the legal burden must be discharged on the balance of probabilities.

508D. ALTERNATIVE VERDICT.

If, on a trial for a crime against Section 508B, the Court -

- (a) is not satisfied that the person is guilty of the crime charged; but
- (b) is otherwise satisfied that the person is guilty of a crime against Section 508C,

the Court may find the person not guilty of a crime against Section 508B, but guilty of a crime against Section 508C.

508E. COMBINING SEVERAL CONTRAVENTIONS IN A SINGLE CHARGE.

A single charge of a crime against Section 508B or 508C will constitute a crime against that section even though it may include more than one instance of the person engaging in conduct, whether that conduct occurs at the same time or at different times.

508F. PROOF OF CRIMINAL PROPERTY.

To avoid doubt, in order to prove that property is criminal property for the purposes of Section 508B -

- (a) it is not necessary to establish -
 - (i) who committed the criminal conduct in relation to the property; or
 - (ii) that there is a charge or a conviction relating to the criminal conduct; and
- (b) the prosecution -
 - (i) does not need to prove the property was derived from particular criminal conduct, but must prove either the general type or types of criminal conduct from which the property derived; or

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- (ii) can rely on evidence that the circumstances in which the property is handled are such as to give rise to the inference that it can only be derived from criminal conduct.

508G. MULTIPLE CHARGES.

Nothing in this Division precludes a person from being charged with or convicted of any criminal conduct, in addition to being charged with or convicted of a crime against Section 508B or 508C.

Division 2. - Terrorist Financing.

508H. APPLICATION.

In addition to Section 12 of the *Criminal Code Act 1974*, this Division applies to an offence -

- (a) committed in Papua New Guinea; or
- (b) committed on board a ship flying the flag of Papua New Guinea or an aircraft registered in Papua New Guinea; or
- (c) directed towards or resulting in the carrying out of a terrorist act in the territory of or against a citizen of Papua New Guinea; or
- (d) directed towards or resulting in the carrying out of a terrorist act committed against a facility of Papua New Guinea abroad, including diplomatic or consular premises of Papua New Guinea; or
- (e) committed by a citizen of Papua New Guinea or a body corporate incorporated under a law of Papua New Guinea (whether or not the offence took place in Papua New Guinea).

508I. INTERPRETATION FOR THIS DIVISION.

- (1) The following definitions apply for the purposes of this Division:
 - “electronic system” includes an information system, telecommunications system, financial system, system used for the delivery of essential government services, system used for, or by, an essential public utility, or system used for, or by, a transport system;
 - “property” means assets of every kind, whether tangible or intangible, corporeal or incorporeal, moveable or immovable, however acquired, including an enforceable right of action, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including but not limited to currency, bank credits, deposits and other financial resources, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit, whether situated in Papua New Guinea or elsewhere, and includes a legal or equitable interest, whether full or partial, in any such assets;
 - “terrorist” means any natural person who -
 - (a) commits, enables, aids, counsels or procures a terrorist act; or
 - (b) attempts to commit a terrorist act; or
 - (c) conspires to commit (whether directly or indirectly) a terrorist act.
 - “terrorist act” has the meaning given by Subsections (2) and (3);
 - “terrorist organisation” means a group of persons or a body corporate that -

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- (a) commits, enables, aids, counsels or procures a terrorist act; or
- (b) attempts to commit a terrorist act; or
- (c) conspires to commit (whether directly or indirectly) a terrorist act.

(2) An act which is an offence within the scope of and as defined by any of the following treaties is a terrorist act -

- (a) the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970; and
- (b) the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971; and
- (c) the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973; and
- (d) the International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979; and
- (e) the Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980; and
- (f) the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988; and
- (g) the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988; and
- (h) the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988; and
- (i) the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

(3) Any other act or threat of action is a terrorist act if -

- (a) the act or threat of action -
 - (i) involves serious violence against a person not taking an active part in hostilities in a situation of armed conflict; or
 - (ii) involves serious damage to property; or
 - (iii) endangers another person's life; or
 - (iv) creates a serious risk to the health or safety of the public or a section of the public; or
 - (v) is designed to seriously interfere with or to seriously disrupt an electronic system; and
- (b) either the act or threat of action -
 - (i) is designed to influence a government, or international organisation or to intimidate the public or a section of the public; or
 - (ii) is made for the purpose of advancing a political, religious or ideological cause.

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508J. TERRORIST FINANCING.

(1) A person who by any means, directly or indirectly, provides or collects property, with the intention that the property should be used, or in the knowledge that it is to be used, in whole or in part -

- (a) in order to carry out a terrorist act; or
- (b) by a terrorist organisation,

is guilty of an offence.

- Penalty:
- (a) if the offender is a natural person - a fine not exceeding K500,000.00 or imprisonment for a term not exceeding 25 years or both; or
 - (b) if the offender is a body corporate - a fine not exceeding K1,000,000.00.

(2) A person who, without lawful justification, by any means, directly or indirectly, provides or collects property, with the intention that the property should be used, or in the knowledge that it is to be used, in whole or in part by a terrorist is guilty of an offence.

- Penalty:
- (a) if the offender is a natural person - a fine not exceeding K500,000.00 or imprisonment for a term not exceeding 25 years or both; or
 - (b) if the offender is a body corporate - a fine not exceeding K1,000,000.00.

(3) In this section, a reference to providing or collecting property includes a reference to it being given, lent or otherwise made available, whether or not for consideration.

- (4) A person commits a crime under this section -
- (a) even if a terrorist act does not occur or is not attempted; and
 - (b) even if the property was not actually used to commit or attempt to commit a terrorist act or linked to a specific terrorist act; and
 - (c) regardless of whether the property was from a legitimate or illegitimate source; and
 - (d) regardless of the country in which the terrorist or terrorist organisation is located; and
 - (e) regardless of the country in which the terrorist act has occurred or is intended to occur.

(5) Intention and knowledge in Subsections (1) and (2) may be inferred from objective factual circumstances.”.

3. APPLICATION OF AMENDMENTS.

The amendments made by Section 2 of this Act apply -

- (a) to conduct that takes place on or after this Act comes into operation; and
- (b) to property that is criminal property, regardless of whether the criminal conduct that gave rise to the property being criminal property occurred before, on or after this Act comes into operation.

Criminal Code (Money Laundering and Terrorist Financing)(Amendment)

I hereby certify that the above is a fair print of the *Criminal Code (Money Laundering and Terrorist Financing)(Amendment) Act 2015* which has been made by the National Parliament.

Acting Clerk of the National Parliament.

I hereby certify that the *Criminal Code (Money Laundering and Terrorist Financing) (Amendment) Act 2015* was made by the National Parliament on 30 July, 2015 by an absolute majority in accordance with the *Constitution*.

Speaker of the National Parliament.