

No. of 2021

**VIRGIN ISLANDS**

**DRUG TRAFFICKING OFFENCES (AMENDMENT) ACT, 2021**

**ARRANGEMENT OF SECTIONS**

*Section*

- 1... Citation and commencement.
- 2... Section 2 amended.
- 3... Section 4A inserted.
- 4... Section 9 amended.
- 5... Section 32A inserted.
- 6... Section 33 amended.
- 7... Section 34 amended.
- 8... Section 35 amended.
- 9... Section 36 amended.
- 10... Section 37 amended.
- 11... Section 38 amended.
- 12... Section 39 amended.
- 13... Section 48 amended.

No. of 2021

**Drug Trafficking Offences  
(Amendment) Act, 2021**

**Virgin  
Islands**

**I Assent**

**Governor**

**, 2021**

**VIRGIN ISLANDS**

**No. of 2021**

**A BILL** for

An Act to amend the Drug Trafficking Offences Act, 1992 (No. 5 of 1992) and to provide for other matters connected therewith.

[Gazetted , 2021]

ENACTED by the Legislature of the Virgin Islands as follows:

Citation and  
commencement.

**1.** (1) This Act may be cited as the Drug Trafficking Offences (Amendment) Act, 2021.

(2) This Act shall come into force on such date as the Governor may, by Proclamation published in the *Gazette*, appoint.

Section 2  
amended.

**2.** Section 2 of the Drug Trafficking Offences Act, 1992 (hereinafter referred to as the “principal Act”) is amended by deleting the definition of “Steering Committee”.

Section 4A  
inserted.

**3.** The principal Act is amended by inserting immediately after section 4, the following new section—

“Investigation  
of drug  
trafficking  
offence.

**4A.** (1) Where a police officer or the Agency institutes investigations in respect of a drug trafficking offence, the police officer or the Agency, as the case may be, shall where it is reasonable to do so having regard to the nature and circumstance

of the drug trafficking offence, at the same time investigate any related drug money laundering offence.

(2) Subsection (1) also applies where the Agency, acting in accordance with the powers conferred on it under section 4 (2) (1) of the Financial Investigation Agency Act, 2003, provides documents and other information to the Commissioner of Police in relation to the commission of an offence.”

Section 9 amended.

**4.** Section 9 of the principal Act is amended—

(a) by inserting after subsection (5), the following new subsection—

“(5A) Subsection (5) shall not affect the power of the court to deal with the defendant in respect of a failure to comply with an order under this section.”; and

(b) by adding after subsection (7), the following new subsections—

“(8) Where the court makes an order under this section, it may at any time vary it by making another order.

(9) No information given under this section which amounts to an admission by the defendant that he has benefitted from criminal conduct is admissible in evidence in proceedings for an offence, but such document or information is otherwise admissible in evidence in proceedings for a confiscation or forfeiture order.”.

Section 32A inserted.

**5.** The principal Act is amended by inserting after section 32, the following new section—

“Authority for receipt of suspicious transaction reports.

**32A.** (1) The Agency shall be the authority responsible for the receipt of reports on suspicious transactions and other disclosures relating to drug money laundering.

(2) Where an obligation is placed on a person under this Act or any other enactment to make a suspicious transaction report or other disclosure in relation to a drug money laundering activity, that report or disclosure shall be made to the Agency.

(3) Where the Agency receives a suspicious transaction report or other disclosure relating to drug money laundering, it shall deal with the report or other disclosure in accordance with its functions under the Financial

Investigation Agency Act, 2003 or in such other manner as may be provided under this Act or any other enactment.”

Section 33  
amended.

**6.** Section 33 of the principal Act is amended—

- (a) in subsection (3), by deleting the words “a police officer” in the opening paragraph and substituting the words “the Agency”;
- (b) in subsection 4 (c) (i), by deleting the words “a police officer” and substituting the words “the Agency”;
- (c) in subsection (5), by deleting the words “a police officer” and substituting the words “the Agency”;
- (d) by deleting subsection (6) and substituting the following subsection—

“(6) Where information is disclosed to or received by the Agency under this section, the Agency may disclose the information—

- (a) to any law enforcement agency in the Territory;
- (b) to any law enforcement agency in any other country, in order—
  - (i) to report the possible commission of an offence;
  - (ii) to initiate criminal investigation respecting the matter disclosed;
  - (iii) to assist with any criminal investigations or criminal proceedings respecting the matter disclosed; or
  - (iv) to generally give effect to the purposes of this Act.”; and
- (e) in subsection (8), by deleting the words “the Steering Committee or”.

Section 34  
amended.

**7.** Section 34 of the principal Act is amended—

- (a) in subsection (5), by deleting the words “a police officer” wherever

they appear in the opening paragraph and substituting the words “the Agency”;

- (b) in subsection (7) (a), by deleting the words “a police officer” and substituting the words “the Agency”;
- (c) in subsection (8), by deleting the words “a police officer” and substituting the word “the Agency”;
- (d) by deleting subsection (9) and substituting the following subsection—

“(9) Where information is disclosed to or received by the Agency under this section, the Agency may disclose the information—

- (a) to any law enforcement agency in the Territory;
- (b) to any law enforcement agency in any other country, in order—
  - (i) to report the possible commission of an offence;
  - (ii) to initiate criminal investigation respecting the matter disclosed;
  - (iii) to assist with any criminal investigations or criminal proceedings respecting the matter disclosed; or
  - (iv) to generally give effect to the purposes of this Act.”; and
- (e) in subsection (12), by deleting the words “the Steering Committee or”.

Section 35 amended. **8.** Section 35 of the principal Act is amended in subsection (5), by deleting the words “the Steering Committee or”.

Section 36 amended. **9.** Section 36 of the principal Act is amended—

- (a) in subsection (1)(c), by deleting the words “a police officer” and substituting the words “the Agency”; and

- (b) in subsection (4), by deleting the words “a police officer” and substituting the words “the Agency”.

Section 37  
amended.

**10.** Section 37 of the principal Act is amended—

- (a) in subsection (1)(a), by inserting the words, “the Agency” after the words “knows or suspects that”;
- (b) in subsection (2)(a), by deleting the words “a police officer” and substituting the words “the Agency”;
- (c) by repealing subsection (7); and
- (d) in subsection (9), by deleting the words “the Steering Committee or”.

Section 38  
amended.

**11.** Section 38 of the principal Act is amended—

- (a) in subsection (1),
  - (i) by deleting paragraph (a) and substituting the following paragraph—
    - “(a) direct in relation to a country or territory outside the Territory (referred to in this section and section 33 as a “requesting country”) that, subject to such modifications as may be specified, this Act shall apply to external confiscation orders and to proceedings which have been and are to be instituted in the requesting country and may result in an external confiscation order being made there;” and
  - (ii) in paragraphs (b) and (c), by deleting the words “designated country” wherever they occur and substituting the words “requesting country”;
- (b) in subsection (2), by deleting the words “designated country”, in the definition of “external confiscation order”, and substituting the words “requesting country”.

Section 39  
amended.

**12.** Section 39 of the principal Act is amended in subsection (1), by replacing the words “designated country” where they occur with the words “requesting country”.

Section 48  
amended.

**13.** Section 48 of the principal Act is amended—

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

“(1) A police officer or customs officer may seize or detain any cash which —

- (a) is found in the Territory, or
- (b) is being imported into or exported from the Territory if its amount is not less than \$10,000,

and he or she has reasonable grounds for suspecting the cash—

- (i) is intended by any person for use in drug trafficking or drug money laundering; or
- (ii) directly or indirectly represents any person’s proceeds of drug trafficking or drug money laundering.”; and

- (b) in subsection (2), by deleting the words “in subsection (1)” and substituting the words “in subsection (1) (b)”.

Passed by the House of Assembly this            day of            , 2021.

Speaker.

Clerk of the House of Assembly.

## **OBJECTS AND REASONS**

As part of the Territory's ongoing reform process to ensure full technical and effectiveness compliance standards under the FTAF Recommendations, this Bill seeks to amend the Drug Trafficking Offences Act, 1992 ("the Act") to provide for necessary reforms. The Act is the Territory's primary legislation on matters relating to drug money laundering activities.

The Bill makes it a requirement, in respect of every drug trafficking offence where it is considered reasonable to do so having regard to the nature and circumstances of any particular case, for an investigating officer or the Financial Investigation Agency (FIA) to expand the investigation to establish whether or not a drug money laundering offence may also have been committed. This will ensure that investigating officers are not confined to investigating only the normal established drug trafficking offence under the law, but also widen the net to better protect the Territory against activities relative to drug money laundering.

Furthermore, the Bill formally establishes the FIA as the central institution in the Territory with the responsibility for receiving suspicious transactions reports (STRs) (also referred to as suspicious activity reports (SARs)). This thus removes the ability for STRs to be filed with a police officer, and requires them to be filed solely with the FIA. This accords with the established FATF standards, such that no doubt is created as to which institution has the primary duty of collecting and analysing STRs (considering that one of the functions of the FIA is to receive and analyse STRs).

With the proposed reforms to the FIAA whereby the work assigned to the Steering Committee established under that Act is now to be performed exclusively by the FIA, the Bill has been amended in relevant sections removing the references to "Steering Committee" and substituting or retaining the FIA.

The Bill also seeks to effect amendments made in the Drug Trafficking Offences (Amendment) Act, 2017, which did not take into account the changes made in the 2013 revision of the Drug Trafficking Offences Act.

In addition, the Bill widens the scope of the circumstances under which a police officer or customs officer may seize cash, to include cash found in the Territory if reasonable grounds exist to suspect that the cash is intended to be used in relation to criminal conduct or that it represents the proceeds of criminal conduct. These enforcement powers will ensure greater certainty with regard to the ability of law enforcement to appropriately deal with cash found in the Territory without attaching any specific threshold; the governing rule will be the suspicion attached to it in relation to drug trafficking or drug money laundering.



The remaining areas of the Bill merely update and better streamline the provisions of the Act. Accordingly, the support of the Hon. Members of the House of Assembly is sought with respect to the enactment of the Bill.

Attorney General