Proceeds of Crime (Miscellaneous) Regulations 2023

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Proceeds of Crime (Miscellaneous) Regulations 2023

TABLE OF AMENDMENTS

The Proceeds of Crime (Miscellaneous) Regulations 2023 2023 SL 33 were notified and commenced on 6 October 2023 (GN No 1107/2023; Gaz 215/2023).

Amending Legislation	Notified	Date of Commencement
Proceeds of Crime (Miscellaneous) (Amendment) Regulations 2024 SL 6	28 March 2024	28 March 2024

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The Cabinet makes the following Regulations under Section 107 of the *Proceeds of Crime Act 2004*:

1 Citation

These Regulations may be cited as the *Proceeds of Crime (Miscellaneous) Regulations 2023*.

2 Commencement

These Regulations commence on the day they are notified in the Gazette.

3 Ancillary orders and further orders

(1) For the purpose of Section 53(2)(a), the court in varying the property to which an order relates, may order the restraining of a property of corresponding value, such value being equal to the value of the property which cannot be made subject to a restraining order.

(2) For the purposes of subregulation (1), a property cannot be made subject to a restraining order where:
   (a) it cannot with exercise of due diligence, be found;
   (b) has been transferred to a third party in circumstances that do not give rise to a reasonable inference that the title or interest was transferred to avoid the forfeiture of the property;
   (c) is located outside the Republic;
   (d) has been mingled with other property that cannot be divided without difficulty; or
   (e) has been substantially diminished in value or rendered worthless.

4 Physical transportation of cash

For the purpose of Sections 96 and 96A, the physical transportation of cash, bearer negotiable instrument, precious metals or precious stones including gold, silver, diamonds or sapphire includes the transportation of such:
(a) on a person;
(b) by mail;
(c) in the person's cargo; or
(d) in the person's luggage.

5 Duty of authorised officer to request and obtain information

For the purposes of Sections 96 and 96A, an authorised officer may stop and detain any person and ask the person questions to ascertain whether the person is physically transporting cash, bearer negotiable instruments, precious metals or precious stones including gold, silver, diamonds or sapphire.

6 Duty of authorised officer to ascertain purpose and intended use

Where a person makes a declaration under the *Proceeds of Crime (Border Declaration Form) Regulations 2023*, an authorised officer shall ascertain the

origin, purpose and intended use of the cash, bearer negotiable instrument, precious metals or precious stones including gold, silver, diamonds or sapphire.

7 Record of border declaration forms

(1) The Nauru Customs Service shall keep and maintain a record of all declarations made for the purposes of Part 6 of the Act, for a period of 7 years from the date the declaration is made.

(2) The declarations under subregulation (1) shall include:
 (a) any border declaration form; or
 (b) a declaration form noting an authorised officer's suspicion of the commission of any offence including a money laundering or terrorist related offence.

(3) For the purpose of subregulation (1), '***Nauru Customs Service***' has the meaning given to it under Section 4 of the *Customs Act 2014*.

8 Reporting of suspicion of money laundering or terrorist financing offence

Where an authorised officer notes under Regulation 7, the suspicion of the commission of an offence including a money laundering or terrorist related offence, the authorised officer shall immediately report the matter to the Financial Intelligence Unit or the Nauru Police Force.

9 Confidentiality

A person who processes or receives information in accordance with these Regulations shall regard the information as confidential and not disclose it unless required by law.

10 Regulations not to affect trade payment or capital movement

The Financial Intelligence Unit, Customs officer or any other competent authority shall ensure that the enforcement of these Regulations does not affect:
(a) a trade payment between the Republic and other countries, for goods and services; or
(b) the freedom of movement of capital in any way, in and out of the Republic.

11 Forfeiture order where person is untraceable or unknown

For the purpose of Section 21(2) of the Act, the following category of persons, may also be considered by the Court, against which a forfeiture order may be issued:
(a) a person who cannot be traced or his or her whereabouts is unknown; or
(b) the person is not known.

[reg 11 insrt SL 6 of 2024 reg 4, opn 28 Mar 2024]

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