

No. of 2021

VIRGIN ISLANDS

**CRIMINAL JUSTICE (INTERNATIONAL COOPERATION)
(AMENDMENT) ACT, 2021**

ARRANGEMENT OF SECTIONS

Section

- 1... Short title and commencement.
- 2... Section 2 amended.
- 3... Section 3 amended.
- 4... Section 4 amended.
- 5... Section 5 amended.
- 6... Section 8 amended.
- 7... New sub-part and sections inserted.
- 8... Section 24 amended.
- 9... Schedule 1 amended.

No. of 2021

**Criminal Justice (International
Cooperation) (Amendment) Act, 2021**

**Virgin
Islands**

I Assent

Governor

, 2021

VIRGIN ISLANDS

No. of 2021

A BILL for

An Act to amend the Criminal Justice (International Cooperation) (Amendment) Act, 1993 (No. 8 of 1993) and to provide for other matters connected therewith.

[Gazetted , 2021]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and
commencement.

1. (1) This Act may be cited as the Criminal Justice (International Cooperation) (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 Criminal Justice (International Cooperation) Act, 1993 (hereinafter referred to as “the principal Act”) is amended in subsections (1), (2) and (5) by deleting from each of those subsections, the words “Director of Public Prosecutions” and substituting the words “Attorney General”.

Section 3
amended.

3. Section 3 of the principal Act is amended in subsection (1), by deleting the words “Director of Public Prosecutions” and substituting the words “Attorney General”.

4. Section 4 of the principal Act is amended in subsections (2) and (3) by deleting from each of those subsections, the words “Director of Public Prosecutions after consultation with the”. Section 4 amended.
5. Section 5 of the principal Act is amended in subsection (2) by deleting the words “Director of Public Prosecutions and the”. Section 5 amended.
6. Section 8 of the principal Act is amended – Section 8 amended.
- (a) in the heading by deleting the words “Director of Public Prosecutions” and substituting the words “Attorney General”;
- (b) in subsections (1), (2), (3), (7), (10) and (11) by deleting from each of those subsections, the words “Director of Public Prosecutions” and substituting the words “Attorney General”; and
- (c) in subsection (17) by deleting the words “after consultation with the Director of Public Prosecutions”.
7. The principal Act is amended by inserting after section 10 – New sub-heading and sections inserted.
- (a) a new sub-heading titled “*Council of Competent Authorities*”; and
- (b) the following new sections –
- “Establishment and composition of Council of Competent Authorities. **10A.** (1) There is established a Council to be known as the Council of Competent Authorities (referred to in this section and sections 10B and 10C as “the Council”).
- (2) The Council comprises the following membership
- (a) the Managing Director of the Financial Services Commission, as Chairperson;
- (b) the Attorney General, as Deputy Chairperson;
- (c) the Director of the Financial Investigation Agency;
- (d) the Director of the International Tax Authority; and

(e) a representative of the Governor's Office, appointed by the Governor.

(3) The Governor may at any time revoke the appointment of a representative under subsection (2) (e) and replace the representative with such other person as the Governor may determine.

(4) Every member of the Council shall endeavour to attend and participate in all meetings of the Council, but where a member is, for any reason, unable to attend and participate, he or she shall designate a senior officer ("designated person") of his or her office to attend and participate as his or her representative.

(5) For the purposes of subsection (4), a designated person shall –

(a) be the person to attend and participate in meetings of the Council in the absence of the member; and

(b) have all the powers of the member he or she is representing as if he or she were such member.

(6) Subsection (5) shall not be a bar to a designated person attending a meeting of the Council when the member is also attending and participating in the meeting, but shall not exercise the powers of the member.

Functions and powers of the Council.

10B. (1) The Council shall be responsible for –

(a) setting appropriate policies and standards which competent authorities may use to implement their

respective mandates as provided in this Act and other enactments governing their affairs;

- (b) coordinating the activities of the competent authorities by holding regular meetings to foster cooperation on law enforcement, regulatory and tax matters, including all other related issues;
- (c) exploring areas of convergence on issues of international cooperation as they affect or relate to the Virgin Islands and determine or recommend appropriate measures to facilitate the Virgin Islands' cooperation on, and implementation of, such issues;
- (d) preparing and submitting periodic reports to the National Anti-money Laundering and Terrorist Financing Coordinating Council established under section 26B of the Proceeds of Criminal Conduct Act, 1997 –
 - (i) on identified needs and reforms as they pertain to each competent authority; and
 - (ii) in relation to the efficient and effective functioning of the Virgin Islands' overall domestic and

international cooperation regimes;

- (e) providing technical assistance to its members for purposes of ensuring the efficient and effective implementation of their respective mandates under this Act and other enactments governing their affairs;
- (f) initiating and providing training for staff of the competent authorities and other persons considered relevant by the Council on mutual legal assistance and other domestic and international cooperation matters;
- (g) reviewing, monitoring and undertaking risk assessment on money laundering, terrorist financing and proliferation financing matters as they relate to international cooperation; and
- (h) performing such other tasks as are consistent with the mandates of the competent authorities in the areas of law enforcement, financial regulation and supervision, tax and domestic and international cooperation.

(2) The Council may, for the purposes of performing its functions under subsection (1) –

- (a) co-opt any staff of a competent authority that the Council considers qualified

and competent to participate in the proceedings of the Council to provide necessary technical and such other advice as the Council may determine; and

(b) form such sub-committees as it considers fit to perform such specific tasks on behalf of the Council as the Council may determine in writing.

(3) Where the Council exercises any of its powers under subsection (2), the exercise of the power shall be on such terms and conditions as the Council may determine.

Proceedings of
the Council.

10C. (1) The quorum of the Council for the purposes of any meeting shall be three.

(2) In the performance of its functions under section 10B (1), the Council –

- (a) shall determine its own rules of procedure;
- (b) shall determine the time and place at which to hold its meetings, except that the Council shall meet not less than once in every quarter;
- (c) shall determine its own agenda; and
- (d) may delegate the performance of any such functions, except that any decision related to the outcome of the performance of those functions shall be taken by the Council.”.

8. Section 24 of the principal Act is amended by deleting the words “Director of Public Prosecutions” and substituting the words “Attorney General”.

Section 24
amended

Schedule 1
amended.

9. Schedule 1 of the principal Act is amended in paragraph 4 (1) by deleting the words “Director of Public Prosecutions” and substituting the words “Attorney General”.

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

Speaker.

Clerk of the House of Assembly.

OBJECTS AND REASONS

The primary objective of this Bill is two-fold: firstly, to establish the Council of Competent Authorities and define its role, functions and powers; and secondly, to substitute the references in the Criminal Justice (International Cooperation) Act, 1993 to the “Director of Public Prosecutions” by the “Attorney General”.

In 2017, Cabinet approved the establishment of the Council of Competent Authorities (CCA) to (amongst other things) guide the Territory’s international cooperation regime by ensuring compliance with internationally established standards of cooperation in the areas of anti-money laundering, terrorist financing and proliferation financing (AML/CFT), regulation and supervision of financial services business, and tax administration. This decision enabled all the domestic competent authorities – Governor’s Office, Attorney General’s Chambers, Financial Investigation Agency, International Tax Authority and Financial Services Commission – to work much more closely together to ensure synergy in their approach to cooperation both at the domestic and international levels. In addition, the competent authorities, working together, would take appropriate steps to advise on necessary reforms to achieve compliance with established international standards of cooperation and oversee compliance in the implementation of the laws and administrative practices in such areas.

Considering the pivotal role that the CCA plays in the Territory’s overall compliance with established international standards, the CCA considered it relevant that the body should be given statutory recognition to place it on the same level with similar bodies that have similar responsibilities for advancing the Territory’s compliance with its international obligations. For instance, the Joint Anti-money Laundering and Terrorist Financing Advisory Committee (JALTFAC) and the Inter-governmental Committee on Money Laundering and Terrorist Financing Matters (IGC) are respectively established under the Proceeds of Criminal Conduct Act, 1997 and the Anti-money Laundering and Terrorist Financing Code of Practice, 2008. The former has responsibility for advising on AML/CFT issues relative to the FATF standards, while the latter (comprising only Government and Government-related institutions) is responsible for coordinating public sector compliance with AML/CFT matters. A proposal is currently in trend for the amendment of the Proceeds of Criminal Conduct Act, 1997 to establish the National Anti-money Laundering and Terrorist Financing Coordinating Committee (NAMLCC) to ensure full compliance with Recommendation 2 of the FATF Recommendations. In this context, therefore, it is considered advisable that the CCA is equally established statutorily to obviate questions regarding its efficacy and ability to perform effective functional roles.

Towards this end, the Bill seeks to establish the CCA in clause 7 by providing for its composition and defining its role, functions and powers. It also makes provision for the conduct of the proceedings of the CCA.

Prior to the revision of the Criminal Justice (International Cooperation) Act, 1993 in 2013, the Attorney General, along with the Governor, was responsible for processing all the international cooperation matters relative to criminal conduct (the Attorney General is also responsible for mutual legal assistance matters under the Mutual Legal Assistance (USA) Act, 1989). This role was inadvertently altered to substitute the Director of Public Prosecutions in place of the Attorney General. This was an error and indeed the Attorney General had never ceased performing the function of competent authority in relation to requests for mutual legal assistance in criminal matters. While such requests from foreign competent authorities relate to criminal conduct generally, the process for securing mutual legal assistance is a civil process (not criminal) and therefore properly vests in the Attorney General.

The Act, therefore, seeks to restore the Attorney General as the appropriate competent authority (along with the Governor who serves as the conduit for such requests) under the Criminal Justice (International Cooperation) Act, 1993. This is carried out by amending the relevant sections of the Act as outlined in this Bill.

Accordingly, the Honourable Members of the House are requested to lend support to the Bill.

Attorney General