



COMMONWEALTH OF THE BAHAMAS

ATTORNEY-GENERAL'S DIRECTIVE 2019

WHEREAS pursuant to Article 78A(3) of the Constitution the Director of Public Prosecutions shall have power in any case in which he considers it desirable so to do —

- (a) to institute and undertake criminal proceedings against any person before any court in respect of any offence against the law of The Bahamas;
- (b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and
- (c) to discontinue, at any stage before judgement is delivered, any such criminal proceedings instituted or undertaken by himself or any other person or authority;

AND WHEREAS the Attorney-General pursuant to Article 78(3) may, in any case involving considerations of public policy, national security or the international obligations of The Bahamas give general or specific directions to the Director of Public Prosecutions as to the exercise of the powers conferred upon the Director of Public Prosecutions by Article 78A(3) and the Director of Public Prosecutions shall act in accordance with those general or specific directions;

AND WHEREAS the inherent constitutional responsibility for the initiation and conduct of all criminal investigations remains with the Attorney-General;

AND WHEREAS the Director of Public Prosecutions being constitutionally responsible for the initiation of prosecutions, is also called upon to provide advice to investigative agencies during the course of investigations;

AND WHEREAS the Proceeds of Crime Act, 2018 (*No. 4 of 2018*), which has strengthened the legal regime to combat money laundering, terrorism, the financing of terrorism and proliferation offences, as well as other Identified Risks, has been enacted and is in force;

AND WHEREAS:

- criminal activity may be motivated by a desire to obtain monetary benefit. It may also be motivated by a desire to attain an illicit ideological objective;
- objectives-based crimes can often require financing, whether of living or travel expenses or to finance operational necessities;

- the Proceeds of Crime Act 2018 criminalizes a host of “identified risk” criminal offences, inclusive of the financing of terrorism or proliferation offences;
- in order to move money through the financial system in a manner which renders illicit funds usable by criminals, whether to enable them to enjoy the financial benefits of criminal activities, or to finance the commission of objectives-based crimes, such as terrorism, the sources and/or intended uses of such money must be disguised. The process of disguising the criminal origins or intended uses of money during its introduction and passage through the financial system, domestically or internationally, is called “money laundering”;
- money laundering must be investigated and considered from the initiation of a criminal investigation until the outcome in all relevant matters,

I, HEREBY DIRECT the Director of Public Prosecutions as follows:

- (a) in every case at the investigation stage, to consider whether —
- any money laundering charges should be laid, either in association with a predicate offence, or as a stand-alone charge (against a person or entity who facilitated the disguised transmission or enjoyment of illicit money);
 - any proceeds of crime, i.e., assets for seizure, restraint and confiscation, have been identified which may be recoverable;
 - there are instrumentalities of crime, and property of an equivalent value, involving domestic or foreign predicates, which may be forfeited or confiscated;
 - further investigation such as a parallel inquiry should be conducted (for example, to determine the extent to which a financial intermediary may have knowingly facilitated money laundering) and ultimately; or
 - tracing, locating and eventually seizing with a view to confiscating the proceeds of crime from foreign/domestic predicates located abroad ought to be considered;
- (b) to give consideration to non-conviction based (civil) forfeiture orders where proceeds of crime or funds intended to finance crimes have been identified; but no criminal charges can be or are to be laid in respect of that property (such as, where the offender is unknown, or is not otherwise amenable to apprehension, arrest, service of process or criminal charges within the jurisdiction); and
- (c) to give consideration to the preservation and management of the value of seized/confiscated proceeds of crime, and their deposit into the Confiscated Assets Fund and/or the repatriation or sharing of assets.

Dated the *23rd* day of *August*, A.D. 2019

Carl W. Zehner
ATTORNEY-GENERAL