

**ANTI-MONEY LAUNDERING ACT, 2006**

*(Act 5 of 2006)*

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ANTI-MONEY LAUNDERING ACT, 2006

(Act 5 of 2006)

*I assent*

A handwritten signature in cursive script, appearing to read 'Michel'.

J. A. Michel  
President  
28th April, 2006



**AN ACT to repeal and replace the Anti-Money Laundering Act (Cap 9A)**

**ENACTED** by the President and the National Assembly.

**PART 1 - PRELIMINARY**

1. This Act may be cited as the Anti-Money Laundering Act, 2006 and shall come into operation on a date appointed by the Minister by notice in the Official Gazette.

Short title and commencement

Interpretation

2. In this Act —

“business relationship” means any arrangement made between a person and a reporting entity where —

- (a) the purpose or effect of the arrangement is to facilitate an occasional, frequent, habitual or regular course of dealing between the person and the reporting entity; and
- (b) the total amount of any payment to be made by any person to any other person in the course of that arrangement is not known or capable of being ascertained at the time the arrangement is made;

“Court” means the Supreme Court of the Republic of Seychelles;

“customer”, in relation to a transaction or an account, includes —

- (a) the person in whose name a transaction or account is arranged, opened or undertaken;
- (b) a signatory to a transaction or account;
- (c) any person to whom a transaction has been assigned or transferred;
- (d) any person who is authorised to conduct a transaction; or
- (e) such other person as may be prescribed;

“data” means representations in any form of information or concepts;

“financing of terrorism” means any of the offences referred to in sections 5, 6, 7, 8, 9, 10, 12, 15, 16 or 19 of the Prevention of Terrorism Act, 2004;

“FIU” means the Financial Intelligence Unit established under section 16;

“law enforcement agency” means the government department under the Commissioner of Police or the Comptroller of Trades Tax or the Director General of Immigration;

“Minister” means the Minister responsible for Internal Affairs;

“person” means any natural or legal person and includes a body of persons, whether it has legal personality or not;

“police officer” means a police officer above the rank of inspector;

“proceeds of a crime” means any money or property that is derived, obtained or realised, directly or indirectly, by any person from —

- (a) an act or omission against any law of Seychelles punishable by imprisonment for life or for a period exceeding 12 months or by a fine exceeding R6500;
- (b) an act or omission committed or done outside Seychelles which, if it were committed or done in Seychelles, would constitute an act or omission referred to in paragraph (a);

“production order” means an order requiring a person to produce any document or information in readable form for the purpose of identifying, locating or quantifying the property, or identifying or locating such document or information, of a person who has been convicted of the offence of money laundering;

“property” means currency and assets of any kind, whether corporeal or incorporeal, movable or

immovable 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 bank credits, travellers' cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit, whether situated in Seychelles or elsewhere and includes any legal or equitable interest in any such property;

“reporting entity” means any person carrying on the following businesses or activities including, but not limited to, a financial institution licensed under the Financial Institutions Act—

Act 8 of 2005

- (a) acceptance of deposits and other repayable funds from the public and lending including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions;
- (b) financial leasing;
- (c) money transmission services;
- (d) issuing and administering means of payment (such as credit cards, travellers' cheques and bankers' drafts);
- (e) financial guarantees and commitments;
- (f) trading for his or its own account or for the account of customers in money market instruments (such as cheques, bills, certificates of deposit), foreign exchange, financial futures and options, exchange and interest rate and index instruments, commodity futures trading and transferable securities;
- (g) participation in securities issues and the provision of services related to such issues;

- (h) money-broking;
- (i) individual and collective portfolio management;
- (j) safekeeping and administration of cash or liquid securities on behalf of other persons;
- (k) safe custody services;
- (l) investing, administering or managing funds or money on behalf of other persons;
- Cap 97 (m) business of an insurer, an insurance broker or insurance agent operated under the Insurance Act;
- (n) functioning as trustee, administrator or investment manager of a superannuation scheme not being a closed-ended scheme where contributions are deducted from salaries of employees by a single employer and withdrawals are for limited purposes;
- (o) money and currency changing;
- (p) operating a gambling house, casino or lottery, including such operations through the internet;
- (q) a trust or company service provider not otherwise covered by this definition, which as a business, provides any of the following services—
  - (i) acting as a formation agent of legal persons;
  - (ii) acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership or a similar position in relation to other legal persons;



- (iii) providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
  - (iv) acting as (or arranging for another person to act as) a trustee of an express trust;
  - (v) acting as (or arranging for another person to act as) a nominee shareholder for another person;
- Act 8 of 2004
- (r) offshore banks provided for in the Financial Institutions Act, 2004;
  - (s) attorneys-at-law, notaries and accountants when they prepare for or carry out transactions for their clients concerning the following activities—
    - (i) buying or selling of real estate;
    - (ii) management of client money, securities or other assets;
    - (iii) management of bank, savings or securities accounts;
    - (iv) organisation of contributions for the creation, operation or management of companies;
    - (v) creation, operation or management of legal persons or arrangements, and buying or selling of business entities;
  - (t) estate agents when they are involved in transactions for their clients concerning the buying and selling of immovable property;

- (u) dealing in precious metals or precious stones, when the persons dealing engage in any cash transaction with a customer equal to or above the prescribed value; and
- (v) such other business as may be prescribed;

“Republic” means the Republic of Seychelles;

“supervisory authority” means the Central Bank of Seychelles or any other authority having oversight over a reporting entity;

“tainted property” means property that would be liable to forfeiture under section 32(1);

“unlawful activity” means an act or omission referred to in the definition of “proceeds of a crime”.

**3. (1) A person who—**

- (a) converts or transfers property knowing or having reason to believe that the property is the proceeds of a crime with the aim of concealing or disguising the illicit origin of that property, or of aiding any person involved in the commission of the offence to evade the legal consequences thereof;
- (b) conceals or disguises the true nature, origin, location, disposition, movement or ownership of the property knowing or having reason to believe that the property is the proceeds of a crime;
- (c) acquires, possesses or uses property knowing or having reason to believe that the property is the proceeds of a crime,

Offence of  
money  
laundering

commits the offence of money laundering.

- (2) Every person who
- (a) organises or directs others to commit;
  - (b) attempts to commit;
  - (c) conspires to commit; or
  - (d) participates as an accomplice to a person committing, or attempting to commit,

an offence under subsection (1) commits the offence of money laundering.

(3) Knowledge, intent or purpose required as an element of any act referred to in subsection (1) may be inferred from surrounding facts.

(4) Where it is necessary in the case of an offence of money laundering alleged to have been committed by a body corporate to establish the state of mind of the body corporate, it shall be sufficient to show that a director, officer, employee or agent of the body corporate, acting in the course of employment or agency as the case may be, had that state of mind.

## **PART 2 - OBLIGATIONS OF REPORTING ENTITY**

Reporting entity to verify customer's identity etc.

4. (1) A reporting entity shall ascertain, before or within a reasonable time after entering into a business relationship, the identity of a customer on the basis of any official or other identifying document and verify such identity on the basis of reliable and independent source documents, data or information or other evidence as is reasonably capable of verifying the identity of the customer when —

- (a) a reporting entity —
  - (i) enters into a continuing business relationship;

(ii) in the absence of such a relationship, conducts any transaction;

(b) carrying out an electronic transfer of funds;

(c) there is a suspicion of money laundering or financing of terrorism; or

(d) the reporting entity has doubts about the veracity or adequacy of the customer identification and verification documentation or information it had previously obtained.

(2) Without limiting the generality of subsection (1), a reporting entity shall—

(a) when establishing a business relationship, obtain information on the purpose and nature of the business relationship;

(b) if the transaction is conducted by a natural person, adequately identify and verify his or her identity including information relating to—

(i) the person's name, address and occupation;

(ii) the national identity card or passport or other applicable official identifying document;

(iii) the source of the wealth and property of the person;

(c) if the transaction is conducted by a legal entity, identify it and verify its legal existence and structure, including information relating to—

- (i) the customer's name, legal form, address and directors;
- (ii) the principal owners and the beneficiaries and the control structure;
- (iii) provisions regulating the power to bind the entity;

and verify that any person purporting to act on behalf of the customer is so authorised, and identify such person;

- (d) if the customer is a politically exposed person, a reporting entity shall —
  - (i) adequately identify the person and verify his or her identity as set out in this section;
  - (ii) have appropriate risk management systems to determine whether the customer is a politically exposed person;
  - (iii) obtain the approval of senior management before establishing a business relationship with the customer;
  - (iv) take reasonable measures to establish the person's source of wealth and source of property; and
  - (v) conduct regular enhanced monitoring of the business relationship.

(3) If a natural person conducts a transaction through a reporting entity and the reporting entity has reasonable grounds to believe that the person is undertaking the transaction on behalf of any other person or persons, then, in addition to

complying with subsections (1) and (2), the reporting entity shall identify and verify the identity of the other person or persons for whom, or for whose ultimate benefit, the transaction is being conducted.

(4) A reporting entity shall take reasonable measures to ascertain the purpose of any transaction in excess of R100,000, or of R50,000 in the case of cash transactions, and the origin and ultimate destination of the funds involved in the transaction.

(5) (a) A reporting entity shall, in relation to its cross-border correspondent banking and other similar relationships —

(i) adequately identify and verify the identity of the person with whom it conducts such a business relationship;

(ii) gather sufficient information about the nature of the business of the person;

(iii) determine from publicly available information the reputation of the person and the quality of supervision to which the person is subject;

(iv) assess the person's anti-money laundering and terrorist financing controls;

(v) obtain approval from senior management before establishing a new correspondent relationship;

(vi) document the responsibilities of the reporting entity and the person.

(b) Where the relationship is a payable-through account, a reporting entity shall ensure that the

person with whom or with which it has established the relationship—

- (i) has verified the identity of and performed on-going due diligence on such of that person's customers as have direct access to accounts of the reporting entity;
- (ii) is able to provide the relevant customer identification data upon request to the reporting entity; and
- (iii) has a physical presence in the Republic under the law under which it is established unless it is a part of a group that is subject to supervision as a whole.

(6) Where a reporting entity relies on an intermediary or third party to undertake its obligations under subsection (1), (2) or (3) or to introduce business to it, it shall—

- (a) immediately obtain the information required by subsections (1), (2) and (3);
- (b) ensure that copies of identification data and other relevant documentation relating to the requirements in subsections (1), (2) and (3) will be made available to it from the intermediary or the third party upon request without delay; and
- (c) where the reporting entity is a financial institution, satisfy itself that the third party or intermediary is regulated and supervised for, and has measures in place to comply with, the requirements set out in sections 5, 6 and 7 of this Act.

(7) Subsection (1), (2) or (4) does not apply—

- (a) if the transaction is part of an existing and regular business relationship with a person who has already produced satisfactory evidence of identity unless the reporting entity has reason to suspect that the transaction is unlawful; or
- (b) if the transaction is an occasional transaction not exceeding R50,000 unless the reporting entity has reason to suspect that the transaction is unlawful; or
- (c) in such other circumstances as may be prescribed.

(8) In this section —

“occasional transaction” means any transaction involving cash that is conducted by any person other than through an account in respect of which the person is the customer;

“politically exposed persons” means persons holding prominent public positions in a foreign country such as heads of state or government, senior politicians on the national level, senior government, judicial, military or party officials on the national level, or senior executives of State-owned enterprises of national importance, or individuals or undertakings identified as having close family ties or personal or business connections to the aforementioned persons.

(9) Regulations may prescribe —

- (a) the official or identifying documents or the reliable and independent source documents, data or information or other evidence that is required for identification or verification of any particular customer or class of customers;



- (b) the circumstances in which the provisions of this section shall apply in relation to any particular customer or class of customers.

Necessity of identification to conduct business

5. If satisfactory evidence of the identity is not produced to or obtained by a reporting entity under section 4, the reporting entity shall not proceed any further with the transaction unless directed to do so by the FIU and the reporting entity shall report the attempted transaction to the FIU.

Reporting entity to maintain records

6. (1) A reporting entity shall maintain records of—

- (a) a person's identity obtained in accordance with section 4;
- (b) all transactions carried out by it and correspondence relating to the transactions as is necessary to enable any transaction to be readily reconstructed at any time by the FIU or the Attorney-General, and the records shall contain particulars sufficient to identify—
  - (i) the nature and date of the transaction;
  - (ii) the type and amount of currency involved;
  - (iii) the type and identifying number of any account with the reporting entity involved in the transaction;
  - (iv) if the transaction involves a negotiable instrument other than currency, the name of the drawer of the instrument, the name of the institution on which it was drawn, the name of the payee (if any), the amount and date of the instrument, the number (if any) of the instrument and details of any endorsements appearing on the instrument;

(v) the name and address of the reporting entity, and of the officer, employee or agent of the reporting entity who prepared the record;

(c) all reports made to the FIU under section 10; and

(d) enquiries relating to money laundering and financing of terrorism made to it by the FIU.

(2) The records mentioned in subsection (1) shall be kept for a minimum period of 7 years from the date—

(a) on which evidence of a person's identity is obtained;

(b) of any transaction or correspondence; or

(c) on which the business relationship ceases.

(3) The records established and maintained for purposes of subsection (1) (b) shall be—

(a) sufficient to enable the transaction to be readily reconstructed at any time by the FIU or the Attorney-General to provide, if necessary, evidence for the prosecution of any offence;

(b) maintained in a manner and form that will enable the reporting entity to comply immediately with requests for information from the law enforcement agencies or the FIU.

(4) Where any record is required to be kept under this Act, a copy of it with the appropriate back-up and recovery procedures shall be kept:—

(a) in a machine-readable form, if a paper copy can be readily produced from it; or

- (b) in an electronic form, if a paper copy can be readily produced from it and in a manner that enables appropriate authentication.

(5) The records maintained under subsection (1) shall be made available upon request to the FIU or the Attorney-General for purposes of ensuring compliance with this Act and an investigation and prosecution of an offence.

Account to be in true name

7. (1) A reporting entity that maintains accounts shall maintain them in the true names of the account holders.

(2) A reporting entity shall not open, operate or maintain any anonymous account or any account which is in a fictitious, false or incorrect name.

Money transmission to accompany originator information

8. (1) A person licensed to do business in Seychelles as a financial institution or a money transmission service provider shall include accurate originator information and other related messages on electronic funds transfers and such information shall remain with the transfer.

(2) Subsection (1) shall not apply to a money transfer effected from the use of a credit or debit card as a means of payment that results from a transaction carried out using a credit or debit card, but the credit or debit card number shall be included in the information accompanying such a transfer.

(3) Subsection (1) shall not apply to electronic funds transfers and settlements between financial institutions where the originator and beneficiary of the funds transfer are acting on their own behalf.

Reporting entity to monitor transactions

9. (1) A reporting entity shall pay special attention to —

- (a) any complex, unusual or large transaction;
- (b) any unusual pattern of transactions,

with no apparent economic or lawful purpose.

(2) A reporting entity shall pay special attention to —

- (a) business relations and transactions with persons in jurisdictions that do not have adequate systems in place to prevent or deter money laundering or financing of terrorism;
- (b) electronic funds transfers that do not contain complete originator information.

(3) In relation to subsections (1) and (2), a reporting entity shall—

- (a) examine as far as possible the background and purpose of the transactions or business relations and record its findings in writing; and
- (b) upon request, make available such findings to the FIU or to the Attorney-General to assist them in any investigation of an offence of money laundering or of financing of terrorism.

(4) A reporting entity shall monitor its business relationships and the transactions undertaken throughout the course of the relationships to ensure that its obligations under section 4 are met and that the transactions conducted are consistent with the information that the reporting entity has of its customer and the profile of the customer's business.

**10.(1)** Where a reporting entity has—

- (a) reasonable grounds to suspect that any transaction or attempted transaction may be related to the commission of an offence of money laundering or of financing of terrorism;
- (b) information that may be —

Reporting  
suspicious  
transaction or  
certain  
information

- (i) relevant to an act preparatory to such an offence;
- (ii) relevant to an investigation or prosecution of a person or persons for such an offence or may otherwise be of assistance in the enforcement of this Act,

the reporting entity shall, as soon as practicable, after forming that suspicion or receiving the information, in no later than two working days, report the transaction or attempted transaction or the relevant information to the FIU.

(2) A report under subsection (1) shall—

- (a) be in writing and may be given by way of mail, telephone to be followed up in writing, fax or electronic mail or such other manner as may be prescribed;
- (b) be in such form and contain such details as may be prescribed;
- (c) contain a statement of the grounds on which the reporting entity holds the suspicion; and
- (d) be signed or otherwise authenticated by the reporting entity.

(3) A reporting entity that has made a report to the FIU shall give the FIU or the law enforcement agency that is carrying out an investigation arising from, or relating to, the information contained in the report, any further information that it has about the transaction or attempted transaction or about the parties to the transaction if requested to do so by the FIU or the law enforcement agency.

(4) If the FIU, after consulting a reporting entity required to make a report under subsection (1), has reasonable

grounds to suspect that a transaction or a proposed transaction may involve an offence of money laundering or of financing of terrorism, it may direct the reporting entity in writing or by telephone to be followed up in writing, not to proceed with the carrying out of that transaction or proposed transaction or any other transaction in respect of the funds affected by that transaction or proposed transaction for such period as may be determined by the FIU, which may not be more than five days, in order to allow the FIU—

- (a) to make necessary inquiries concerning the transaction; and
- (b) if the FIU deems it appropriate, to inform and advise the Attorney-General.

For the purpose of calculating the period of five days referred to in this subsection, Saturdays, Sundays and public holidays shall not be taken into account.

11. Where a supervisory authority or an auditor of a reporting entity has reasonable grounds to suspect that information that it has concerning any transaction or attempted transaction may be—

Supervisory authority or auditor to report suspicious transaction

- (a) related to the commission of the offence of money laundering or of financing of terrorism;
- (b) of assistance in the enforcement of this Act;
- (c) relevant to an act preparatory to the offence of money laundering or of financing of terrorism,

the supervisory authority or the auditor of the reporting entity shall report the transaction or attempted transaction to the FIU.

12.(1) A reporting entity, its officers, employees or agents shall not disclose to any other person—

Disclosure of information

- (a) that a report to the FIU under section 10 or section 11 has been or may be made, or that further information has been given under section 10;
  - (b) that the reporting entity has formed a suspicion in relation to a transaction for the purposes of section 10; or
  - (c) any other information from which the person to whom the information is disclosed could reasonably be expected to infer that a suspicion has been formed or that a report has been or may be made.
- (2) Subsection (1) shall not apply to disclosures made to—
- (a) an officer or employee or agent of the reporting entity for any purpose connected with the performance of that person's duties;
  - (b) a legal practitioner, attorney or legal adviser for the purpose of obtaining legal advice or representation in relation to the matter;
  - (c) the supervisory authority of the reporting entity for the purpose of carrying out the supervisory authority's functions.
- (3) No person referred to in subsection (2)(b) to whom disclosure of any information to which that subsection applies has been made shall disclose that information except to another person of the kind referred to in that subsection, for the purpose of—
- (a) the performance of the first-mentioned person's duties; or
  - (b) obtaining legal advice or representation in relation to the matter.

(4) No person referred to in subsection (2)(c) to whom disclosure of any information to which that subsection applies has been made shall disclose that information except to a person referred to in that subsection for the purpose of giving legal advice or making representations in relation to the matter.

(5) Subject to this Act, nothing in any of subsections (1) to (4) shall prevent a court, on the application of the Attorney-General and on proof to the satisfaction of the court that the information is required for the purpose of any inquiry or trial into or relating to an offence from ordering a person to disclose any information to which subsection (1) applies and such person shall comply with the order.

13.(1) A person shall not disclose any information that will identify or is likely to identify —

Protection of  
identity of  
persons and  
information

- (a) any person who has handled a transaction in respect of which a suspicious transaction report has been made;
- (b) any person who has prepared a suspicious transaction report;
- (c) any person who has made a suspicious transaction report; or
- (d) any information contained in a suspicious transaction report or information provided pursuant to section 10,

except for the following purposes —

- (i) the investigation or prosecution of a person or persons for an offence under this Act or any other law; or
- (ii) the enforcement of this Act.

(2) Nothing in this section prohibits the disclosure of any information for the purpose of the prosecution of any



offence against any of the provisions of section 12.

Protection of  
person reporting  
suspicious  
transaction

**14.(1)** No civil, criminal or disciplinary proceedings shall be taken against—

- (a) a reporting entity, an auditor or supervisory authority of a reporting entity; or
- (b) an officer, employee or agent of a reporting entity or an auditor or supervisory authority of a reporting entity acting in the course of that person's employment or agency,

in relation to any action by the reporting entity, the auditor or the supervisory authority or their officer, employee or agent taken under sections 9, 10 or 11 in good faith or in compliance with directions given by the FIU pursuant to section 24 of this Act.

(2) Subsection (1) shall not apply in respect of proceedings for an offence against section 12.

Other duties of  
reporting  
entities

**15.(1)** A reporting entity shall—

- (a) appoint a compliance and reporting officer who shall be responsible for ensuring the reporting entity's compliance with the provisions of this Act;
- (b) the compliance and reporting officer appointed pursuant to this section shall—
  - (i) be a senior officer with the necessary qualifications and experience and able to respond adequately to enquiries relating to the reporting entity and the conduct of its business;
  - (ii) be responsible for establishing and maintaining such a manual of compliance

- procedures in relation to its business as the supervising authority or the FIU may from time to time require;
- (iii) be responsible for ensuring that the staff of the reporting entity comply with the provisions of this Act and any other law relating to money laundering or financing of terrorism and the provisions of any manual of compliance procedures established pursuant to this section; and
  - (iv) act as the liaison officer between the reporting entity and the supervising authority and the FIU in matters relating to compliance with the provisions of this Act and any other law with respect to money laundering or financing of terrorism;
- (c) establish and maintain procedures and systems to—
- (i) implement the customer identification requirements under section 4;
  - (ii) implement record keeping and retention requirements under sections 6 and 7;
  - (iii) implement the reporting requirements under section 10;
  - (iv) make its officers and employees aware of the laws relating to money laundering and financing of terrorism;
  - (v) make its officers and employees aware of the procedures, policies and audit systems adopted by it to deter money laundering and financing of terrorism;

- (vi) screen persons before recruiting them as employees; and
- (d) train its officers, employees and agents to recognise suspicious transactions, trends in money laundering and financing of terrorism activities and money laundering and financing of terrorism risks within the reporting entity's products, services and operations;
- (e) establish an audit function to test its anti-money laundering and financing of terrorism procedures and systems.

(2) Subsection (1) does not apply to an individual who, in the course of carrying on his or her business, does not employ or act in association with any other person.

### **PART 3 - FINANCIAL INTELLIGENCE UNIT**

Establishment  
of the FIU

**16.(1)** A financial intelligence unit to be known as the FIU is hereby established as a unit within the Central Bank of Seychelles (hereafter referred to as the "Central Bank").

(2) The Board of the Central Bank (hereafter referred to as the "Board") is responsible for the FIU.

(3) The Board shall appoint a fit and proper person as the Director of the FIU (hereafter referred to as the Director) on such terms as the Board may determine.

(4) The Director shall exercise all powers, duties and functions of the FIU under this Act.

(5) The Director may authorise any person, subject to any terms and conditions that the Director may specify, to exercise any power or perform any duty or function of the Director under this Act.

17.(1) The Director shall report to the Board on the exercise and performance of the Director's powers and duties under this Act and advise the Board on any matter relating to money laundering and financing of terrorism.

Reports to the Board and the National Assembly

(2) The Director shall keep the Board informed of any matter that could materially affect public policy or the functions of the FIU and any other matter the Board considers necessary.

(3) The Director shall, on or before the 31<sup>st</sup> day of March of any year, submit a report on the activities of the FIU during the preceding year to the Board and the Board shall cause a copy of the report to be tabled before the National Assembly.

18.(1) This section applies to a person while the person is, or after the person ceases to be, the Director, an officer, an employee or an agent of the FIU.

Disclosure of information

(2) Except for the purpose of the discharge of his or her functions under this Act or when lawfully required to do so by any court, a person referred to in subsection (1) shall not disclose any information or matter which has been obtained by him or her in the discharge of his or her functions under this Act or which he or she has knowledge of, except for one or more of the following purposes —

(a) the detection, investigation or prosecution of an offence under this Act or any other law; or

(b) the enforcement of this Act.

(3) A person to whom this section applies shall not disclose any information that would directly or indirectly identify an individual who provided a report or information to the FIU, or a person or an entity about whom a report or information was provided under this Act.

Duties and  
powers of the FIU

**19.** The FIU—

- (a) shall receive reports made under sections 10 and 11, information provided to the FIU by a government institution or agency of Seychelles or any other State and any other information voluntarily provided to the FIU about suspicions of an offence under this Act or any other law;
- (b) shall have the authority to collect any information that the FIU considers relevant to an offence under this Act or any other law that is publicly available, including commercially available databases, or information that is collected or maintained including information that is stored in databases maintained by the government;
- (c) shall have the authority to request information from reporting entities, any supervisory agency and any law enforcement agency for the purposes of this Act;
- (d) shall analyse and assess all reports and information;
- (e) shall carry out examinations of reporting entities as set out in section 23;
- (f) shall send any report, any information derived from such report or any other information it receives to the appropriate law enforcement agency and supervisory authorities if on the basis of its analysis and assessment the FIU has reasonable grounds to suspect that the transaction is unlawful;
- (g) shall have the authority to instruct any reporting entity to take such steps as may be

- appropriate in relation to any information or report received by the FIU to enforce compliance with this Act or to facilitate any investigation anticipated by the FIU;
- (h) shall compile statistics and records and may disseminate information within Seychelles or elsewhere as well as make recommendations arising out of any information received;
  - (i) shall, in consultation with supervisory authorities, issue guidelines to reporting entities in relation to customer identification, record keeping and reporting obligations and the identification of suspicious transactions;
  - (j) may obtain further information on parties or transactions referred to in a report made to it under this Act;
  - (k) may provide training programs for reporting entities in relation to customer identification, record keeping and reporting obligations and the identification of suspicious transactions;
  - (l) may periodically inform reporting entities and other relevant agencies regarding the outcome of reports or information given under the Act;
  - (m) may conduct research into trends and developments in the area of money laundering and financing of terrorism and improved ways of detecting, preventing and deterring money laundering and the financing of terrorism;
  - (n) may educate the public and create awareness on matters relating to money laundering and financing of terrorism;

- (o) may disclose any report, any information derived from such report or any other information it receives to an institution or agency of a foreign State or of an international organisation in accordance with section 20 or 22;
- (p) may enter into any agreements or arrangements with any local institution or agency regarding exchange of information.

Disclosure to  
foreign  
institutions and  
agencies

**20.** The FIU may, with the approval of the Attorney-General, disclose any report or information as set out under section 19(o) to an institution or agency of a foreign State or to an international organisation or institution or agency established by the governments of foreign States that has powers and duties similar to those of the FIU—

- (a) on such terms and conditions as are set out in the agreement or arrangement between the FIU and that foreign State or international organisation, institution or agency regarding the exchange of such information under section 22; or
- (b) where such an agreement or arrangement has not been entered into between the FIU and that foreign State or international organisation or institution or agency, on such terms and conditions as may be agreed upon by the FIU and the foreign State, international organisation, institution or agency at the time of disclosure and such terms and conditions shall include the following—
  - (i) restriction on the use of the report or information for purposes relevant to investigating or prosecuting an unlawful

activity, a money laundering offence or an offence of the financing of terrorism, or an offence that is substantially similar to such an offence; and

- (ii) the stipulation that the report or information be treated in a confidential manner and not be further disclosed without the written consent of the FIU.

21. The Auditor General and every person acting on behalf of or under the direction of the Auditor General shall not disclose any information that they have obtained or to which they have had access in the course of their audit of the FIU except in the performance of their functions and when ordered by a court of law.

Disclosure by  
Auditor  
General

22.(1) The FIU may, with the approval of the President, enter into an agreement or arrangement in writing with the government of a foreign State, or an international organisation or an institution or agency established by the governments of foreign States regarding the exchange of information between the FIU and any institution or agency of that State or organisation that has powers and duties similar to those of the FIU.

Agreements and  
arrangements by  
the FIU

(2) The FIU may, with the approval of the Attorney-General, enter into an agreement or arrangement, in writing, with—

- (a) an institution or agency of a foreign State or an international organisation established by the governments of foreign States that has powers and duties similar to those of the FIU; and
- (b) a foreign law enforcement or supervisory authority,

regarding the exchange of information between the FIU and the institution, agency or authority.



(3) The information exchanged under subsection (1) or (2) shall be information that the FIU, the institution or agency has reasonable grounds to suspect would be relevant to investigating or prosecuting an offence of money laundering or of financing of terrorism or an offence that is substantially similar to either offence.

(4) Agreements or arrangements entered into under subsection (1) or (2) shall include the following—

- (a) restriction on the use of information to purposes relevant to investigating or prosecuting an offence of money laundering or of financing of terrorism or an offence that is substantially similar to either offence; and
- (b) the stipulation that the information be treated in a confidential manner and not be further disclosed without the express consent of the FIU.

Power to  
examine

**23.(1)** The Director or any person authorised by the Director may examine records, and—

- (a) during business hours, enter any premises in which the Director or the person believes, on reasonable grounds, that there are records relevant to ensuring compliance with the provisions of this Act;
- (b) use or cause to be used any computer system or data processing system in the premises to examine any data contained in or available to the system;
- (c) reproduce any record, or cause it to be reproduced from data in the form of a printout or other intelligible output and remove the

printout or other output for examination or copying; and

- (d) use or cause to be used any copying equipment in the premises to make copies of any record.

(2) The owner or person in charge of premises referred to in subsection (1) and every person found there shall give the Director or any authorised person all reasonable assistance to enable them to carry out their responsibilities and shall furnish them with any information that they may reasonably require with respect to the administration of the provisions of this Act or regulations made thereunder.

(3) The FIU may transmit any information derived from such examination to the appropriate domestic law enforcement authorities if the FIU has reasonable grounds to suspect that the information is relevant to an investigation for non-compliance with this Act, an unlawful activity, a money laundering offence or an offence of financing of terrorism.

24.(1) All officers and employees of a reporting entity shall take all reasonable steps to ensure that the reporting entity complies with its obligations under this Act.

Powers to  
enforce  
compliance

(2) The FIU may direct any reporting entity that has without reasonable excuse failed to comply in whole or in part with any of its obligations to implement an action plan to ensure compliance with such obligations.

(3) Where a reporting entity fails to comply with a direction given under subsection (2), the FIU may make an application to the Supreme Court supported by an affidavit stating that a reporting entity has failed without reasonable excuse to comply in whole or in part with any of its obligations under this Act and the Court shall, after such inquiry as it thinks fit, issue an order to any or all of the officers or employees of that reporting entity in such terms as the Court deems necessary to enforce compliance with such obligations.

(4) In granting an order pursuant to subsection (3) the Court may order that should the reporting entity or any officer or employee of that entity fail without reasonable excuse to comply with all or any of the requirements of that order within such period of time as may be specified in the order such reporting entity, officer or employee shall pay a financial penalty in a sum not exceeding R100,000 as the Court may determine.

Immunity

25. No action shall lie against the Director, any officer, employee or agent of the FIU or any person acting under the direction of the FIU for anything done in good faith in the exercise or discharge of any powers, duties or functions under this Act.

#### **PART 4 - RESTRAINT, SEIZURE AND FORFEITURE OF PROPERTY**

Restraint of property

26.(1) Where a police officer investigating an unlawful activity, an offence of money laundering or of financing of terrorism, has reasonable grounds to believe that any money or property involved in such unlawful activity or offence is held, or is under the control of, any person, the police officer may, with the approval of the Attorney-General, make an application in writing accompanied by an affidavit to a judge of the Supreme Court in Chambers for a restraining order prohibiting the person from disposing of or otherwise dealing with that property except in such manner as may be specified in the order.

(2) The Court shall make an order under this section if it is satisfied that there are reasonable grounds for making the order.

(3) The Court may, in making any order under subsection (2), give directions as to

- (a) the effective period of the order;
- (b) the proper administration of the money or

property during the effective period of the order;

- (c) the disposal of that money or property for the purpose of determining any dispute as to the ownership of, or other interest in, the property, payment of debts incurred in good faith to creditors prior to the order, or payment of the costs of the person to whom the order is addressed to defend criminal proceedings against that person.

(4) The power of administration referred to in subsection (3)(b) includes—

- (a) in the case of perishable or rapidly depreciating property, the power to sell that property including stocks and bonds;
- (b) the requirement that before the person restrained under subsections (1) and (2) disposes of any property referred to in that subsection, the person shall apply to the Court for a disposal order.

(5) In making an order under this section in respect of money or property held by or under the control of a person, the Court may make provision for the payment out of that money or property of the—

- (a) reasonable living expenses of the person in respect of whom the investigation is being made and those of the person's dependants;
- (b) reasonable expenses of that person in defending any criminal charge or any other proceedings under this Act.

(6) Compliance with an order under this section by any person shall not be treated as a breach of any restriction or

obligation imposed on the person by any written law or otherwise.

(7) Any order under subsection (2) shall cease to have effect at the end of a period of six months following the date on which the order was made if the person against whom such order was made has not been charged within the period with an unlawful activity or an offence of money laundering or financing of terrorism.

(8) The Republic shall not be liable for any damages or costs arising directly or indirectly from the making of an order under subsection (2) unless it can be proved that the application for the order was not made in good faith.

Service of  
restraining  
order

27. A copy of an order under section 26 shall be served in accordance with the law on the person to whom it is addressed.

Registration of  
restraining  
order

28.(1) A copy of a restraining order which affects land shall be registered with the Registrar of Lands.

(2) A restraining order is of no effect with respect to land unless it is registered as a charge under the Land Registration Act.

Cap. 107

(3) Where particulars of a restraining order are registered under the Land Registration Act, a person who subsequently deals with the property shall, for the purposes of section 29, be deemed to have notice of the order at the time of the dealing.

Contravention  
of restraining  
order

29.(1) A person who knowingly contravenes a restraining order by disposing of or otherwise dealing with property that is subject to the restraining order commits an offence punishable upon conviction with—

- (a) a fine of R10,000 or imprisonment for a period of 2 years or both, in the case of an individual;  
or

(b) a fine of R50,000 in the case of a body corporate.

(2) Where a restraining order is made against property and the property is disposed of or otherwise dealt with in contravention of the restraining order, and the disposition or dealing was not for sufficient consideration or not in favour of a person who acted in good faith and without notice, the Attorney-General may apply to the Court for an order that the disposition or dealing be set aside.

(3) Upon an application under subsection (2), the Court may—

(a) set aside the disposition or dealing as from the day on which the disposition or dealing took place; or

(b) set aside the disposition or dealing as from the day of the order under this subsection and declare the respective rights of any persons who acquired interests in the property on or after the day on which the disposition or dealing took place and before the day of the order under this subsection.

**30.(1)** A police officer may, with the approval of the Attorney-General, apply to the Court for an extension of the period of the operation of the order.

Extension of  
restraining  
order

(2) Upon an application under subsection (1), the Court may extend the operation of a restraining order for a specified period if it is satisfied that an order of forfeiture may be made in respect of the property or part thereof or that a pecuniary penalty order may be made against the person.

**31.(1)** In order to prevent property subject to a restraining order from being disposed of or removed contrary to that order, any police officer may seize any such property if he or she has

Seizure of  
property subject  
to restraining  
order

reasonable grounds to believe that such property will be so disposed of or removed.

(2) Property seized under subsection (1) shall be dealt with in accordance with the order of the Court which made the relevant restraining order.

Forfeiture of  
property

**32.(1)** Where a person is convicted of an unlawful activity, an offence of money laundering or of financing of terrorism and the Court is satisfied that the person has derived, obtained or realised, directly or indirectly, property from the commission of any such offence, the Court may, on the application of the Attorney-General or a person authorised by the Attorney-General after the conviction of the person, make an order of forfeiture in respect of that property.

(2) Property subject to a forfeiture order under subsection (1) includes the assets laundered or terrorist property, the proceeds, income, and gains from such assets, the assets intended to be laundered, assets used to facilitate or commit the unlawful activity or instrumentalities used or intended to be used in the commission of the offence of money laundering or of financing of terrorism.

(3) Where the Court is satisfied that a forfeiture order should be made under this section but the specified property or any part thereof or interest therein cannot, for whatever reason, be made subject to such an order and, in particular—

- (a) cannot, on the exercise of due diligence be located;
- (b) has been transferred to a third party in circumstances which do not give rise to a reasonable inference that the title or interest was transferred for the purpose of avoiding forfeiture of the property;
- (c) is located outside the Republic;

- (d) has been substantially diminished in value or rendered worthless; or
- (e) has been commingled with other property that cannot be divided without difficulty,

the Court may, instead of ordering the property or part thereof or interest therein to be forfeited, order the person to pay to the Republic an amount equal to the value of such property, part or interest.

(4) Where property subject to forfeiture has been commingled with property acquired legitimately or acquired using funds from legitimate sources, the Court shall, in the forfeiture order, declare the nature, extent and value of the property which is to be forfeited only in regard to the property involved with the unlawful activity or the offence of money laundering or of financing of terrorism.

(5) A Court shall not make an order of forfeiture under this section in respect of any property where the Court is satisfied that the person, not being the person who was convicted, who is in possession of the property or purports to be its owner acquired the property in good faith and—

- (a) for sufficient consideration; and
- (b) without knowing or without having reason to believe, that the property was, at the time of its acquisition, property derived, obtained or realised from the commission of the unlawful activity or the offence of money laundering or financing of terrorism.

(6) A person who under this section claims an interest in any property in respect of which an application for forfeiture has been made may—

- (a) before the Court makes an order of forfeiture;  
or



- (b) when the Court has made an order of forfeiture, within 30 days after the order was made,

apply to the Court against the granting of the order or, where the Court has made an order of forfeiture, for an order—

- (a) declaring the nature, extent and value of the claimant's interest;
- (b) directing the Republic to transfer the property to the claimant;
- (c) directing the Republic to pay the claimant an amount equal in value to the value of the claimant's interest declared under this section.

(7) If the Court is satisfied that a person referred to in subsection (5)—

- (a) has an interest in the property which is the subject of the application; and
- (b) has exercised reasonable care to ensure that the property is not the proceeds of a crime, or terrorist property, or would not be used to commit or facilitate the commission of a terrorist act and would not be used by a terrorist group; and
- (c) is not a member of a terrorist group,

the Court shall order that the interest shall not be affected by the order. The order shall declare the nature and extent of the interest in question.

(8) Where—

- (a) the Court has made an order of forfeiture under this section; and

- (b) the conviction of the person in relation to whom the order was made is quashed,

the order of forfeiture shall cease to have effect and a person who claims to have an interest in any property in respect of which the order was made may apply to the Court for an order—

- (c) declaring the nature, extent and value of the claimant's interest; and
- (d) directing the Republic to transfer the property to the claimant; or
- (e) directing the Republic to pay to the claimant an amount equal in value to the value of the claimant's interest declared under this subsection.

(9) Where—

- (a) the Court has made an order of forfeiture under this section; and
- (b) the conviction of the person in relation to whom the order was made is quashed,

the Court shall, as soon as is practicable after the quashing of the conviction, cause notice to be given to any person the Court has reason to believe may have had an interest in any money or property in respect of which the order of forfeiture was made immediately before the order was made or to any other person or class of persons whom the Court considers appropriate.

(10) A person who makes an application under subsection (5) or (6) shall give notice thereof to the Attorney-General who shall be a party to a proceeding on the application.

(11) Where an application has been made under

subsection (1), the Court may, for the purpose of tracing of the property or preventing the circumventing of an order of forfeiture which the Court may make under this section, make such order or give such direction as the Court thinks necessary and may in particular make—

- (a) a restraining order referred to in section 26;
- (b) a production order; or
- (c) an order that any property be transferred to a named person to be held by the person pending the determination of the application.

(12) For the purpose of an order of forfeiture under this section, it shall be presumed that any money or property which appears—

- (i) to have been under the control of the person convicted or held by that person any time after the person committed the offence and before the Court makes an order under subsection (1);
- (ii) to have been transferred to or by, or deposited with or by, the person convicted at any time after that person committed an offence and before the Court makes an order under subsection (1),

is the proceeds of a crime or used in or intended to be used in the commission of an unlawful activity, the offence of money laundering or the offence of financing of terrorism.

(13) In determining whether or not any property is derived from an unlawful activity or money laundering or related to financing of terrorism, the Court shall apply the standard of proof required in civil proceedings.

33. Notwithstanding anything contained in any other Act, where the Court orders a person to pay an amount under section 38(1), that amount shall be treated as if it were a fine imposed upon him or her, and accordingly the Court shall—

Application of  
procedure for  
enforcing fines

- (a) impose in default of the payment of that amount, a term of imprisonment;
- (b) direct that the term of imprisonment imposed pursuant to paragraph (a) be served consecutively to any other term of imprisonment imposed on that person or that the person is then serving;
- (c) direct that the remission of sentences of prisoners serving a term of imprisonment shall not apply in relation to the term of imprisonment imposed on the person pursuant to paragraph (a).

34.(1) Where a Court makes a forfeiture order against any property, the property vests absolutely in the Republic by virtue of the order.

Effect of  
forfeiture  
order

(2) Where the Court makes a forfeiture order against property—

- (a) the property shall not, except with the leave of the Court and in accordance with any directions of the Court, be disposed of or otherwise dealt with, by or on behalf of the Republic before the relevant appeal date; and
- (b) if, after the relevant appeal date, the order has not been discharged, the property may be disposed of and the proceeds applied or otherwise dealt with by or on behalf of the Republic.

(3) In this section “relevant appeal date” means—

- (a) the date on which the period allowed by rules of court for the lodging of an appeal against a person's conviction or for the lodging of an appeal against the making of a forfeiture order whichever is the later, expires without an appeal having been lodged; or
- (b) where an appeal against a person's conviction or against the making of a forfeiture order is lodged, the date on which the appeal lapses in accordance with the rules of court or is finally determined, whichever is the later.

Procedure for  
forfeiture order  
where person  
dies or absconds

**35.(1)** Where —

- (a) information has been laid alleging the commission of an offence by a person; and
- (b) a warrant for the arrest of the person has been issued in relation to that information,

the Attorney-General may apply to the Court for a forfeiture order in respect of any tainted property if the defendant has died or absconded.

(2) For the purposes of subsection (1), a person is deemed to have absconded if reasonable attempts to arrest the person pursuant to the warrant have been unsuccessful during the period of 6 months commencing on the day the warrant was issued. Such a person shall be deemed to have so absconded on the last day of that period.

(3) Where the Attorney-General applies under this section for a forfeiture order against any tainted property, the Court shall, before hearing the application —

- (a) require notice of the application to be given to any person who, in the opinion of the Court,

appears to have an interest in the property; and

- (b) direct notice of the application to be published in the Gazette and in a newspaper published and circulating in the Republic containing such particulars and for so long as the Court may require.

**36.** Subject to section 35(3), where an application is made to the Court under section 35(1) for a forfeiture order against any tainted property and the Court is satisfied that —

Forfeiture where a person dies or absconds

- (a) any property is tainted property;
- (b) an information has been laid alleging the commission of an offence by that person and a warrant for the arrest of that person has been issued in relation to that information; and
- (c) the accused charged with the offence referred to in paragraph (b) has died or absconded;

the Court may order that the property or such property as is specified by the Court in the order be forfeited.

**37.** The Court may, before making a forfeiture order, set aside any conveyance or transfer of property that occurred during or after the commission of an unlawful activity or offence, unless the conveyance or transfer was made for sufficient consideration to a person acting in good faith and without notice.

Voidable transfer

## **PART 5 - PECUNIARY PENALTY ORDER**

**38.(1)** Subject to this section, where the Attorney-General applies to the Court for a pecuniary penalty order against a person in respect of that person's conviction for an unlawful activity or offence the Court shall, if it is satisfied that the

Pecuniary penalty order on conviction

person has benefited from that unlawful activity or offence, order the person to pay to the Court an amount equal to the value of the person's benefit from the unlawful activity or offence or such lesser amount as the Court certifies in accordance with section 39(2) to be the amount that might be realised at the time the pecuniary penalty order is made.

(2) The Court shall assess the value of the benefit derived by a person from the commission of an unlawful activity or offence in accordance with sections 39, 40, 41 and 42.

(3) The Court shall not make a pecuniary penalty order under this section—

- (a) until the period allowed by the rules of court for the lodging of an appeal against the conviction has expired without such appeal having been lodged; or
- (b) where an appeal against the conviction has been lodged, until the appeal lapses in accordance with the rules of court or is finally determined, whichever is the later date.

(4) For the purposes of this Part, “offence” means the offence of money laundering or the offence of financing of terrorism.

**39.(1)** Where a person obtains property as the result of, or in connection with, the commission of an unlawful activity or offence, the person's benefit is the value of the property so obtained.

(2) Where a person derives a reward or advantage as a result of, or in connection with the commission of, an unlawful activity or offence, the person's reward or advantage shall be deemed to be a sum of money equal to the value of the reward or advantage so derived.

(3) The Court, in determining whether a person has

benefited from the commission of an unlawful activity or offence or from that offence taken together with other offences shall, unless the contrary is proved, deem —

- (a) all property appearing to the Court to be —
  - (i) held by the person on the day on which the application is made; and
  - (ii) all property appearing to the Court to be held by the person at any time —
    - (A) within the period between the day the unlawful activity or offence or the earliest unlawful activity or offence was committed and the day on which the application is made, or
    - (B) within the period of 6 years immediately before the day on which the application is made,

whichever is the longer,

to be property that came into the possession or under the control of the person by reason of the commission of that unlawful activity or offence or those unlawful activities or offences for which the person was convicted;

- (b) any expenditure by the person since the beginning of that period to be expenditure met out of payments received by the person as a result of, or in connection with, the commission of that unlawful activity or offence or those unlawful activities or offences; and
- (c) any property received or deemed to have been received by the person at any time as a result of,



or in connection with, the commission by the person of that unlawful activity or offence or those unlawful activities or offences as property received by the person free of any interest therein.

(4) Where a pecuniary penalty order had been previously made against a person, in assessing the value of any benefit derived by the person from the commission of the unlawful activity or offence, the Court shall leave out of account any benefits that are shown to the Court to have been taken into account in determining the amount to be recovered under that order.

(5) If evidence is given at the hearing of the application that the value of the person's property at any time after the commission of the unlawful activity or offence exceeded the value of the person's property before the commission of the unlawful activity or offence, then the Court shall, subject to subsection (6) treat the value of the benefit as being not less than the amount of that excess.

(6) If, after evidence of the kind referred to in subsection (5) is given, the person satisfies the Court that the whole or part of the excess was due to causes unrelated to the commission of the unlawful activity or offence, subsection (5) shall not apply to the excess or, as the case may be, that part.

40.(1) Where—

Statements  
relating to  
benefits from  
commission of  
unlawful  
activity or  
offence

(a) a person has been convicted of an unlawful activity or offence and the Attorney-General tenders to the Court a statement as to any matters relevant to—

(i) determining whether the person has benefited from the unlawful activity or offence or from any other unlawful

activity or offence of which the person is convicted in the same proceedings or which is taken into account in determining the person's sentence; or

- (ii) an assessment of the value of the person's benefit from the unlawful activity or offence or any other unlawful activity or offence of which the person is convicted in the same proceedings or which is taken into account in determining the person's sentence; and

- (b) the person accepts to any extent an allegation in the statement,

the Court may, for the purposes of so determining or making that assessment, treat the person's acceptance as conclusive of the matters to which it relates.

(2) Where—

- (a) a statement is tendered under subsection (1)(a); and
- (b) the Court is satisfied that a copy of that statement has been served on the person,

the Court may require the person to indicate to what extent the person accepts each allegation in the statement and, so far as the person does not accept any allegation, to indicate any matters the person proposes to rely on.

(3) Where the person fails in any respect to comply with a requirement under subsection (2), the person may be treated for the purposes of this section as having accepted every allegation in the statement other than—

- (a) an allegation in respect of which the person complied with the requirement; and

- (b) an allegation that the person has benefited from the unlawful activity or offence or that any property or advantage was obtained by the person as a result of or in connection with the commission of the unlawful activity or offence.
- (4) Where—
- (a) the person tenders to the Court a statement as to any matters relevant to determining the amount that might be realised at the time the pecuniary penalty order is made; and
  - (b) the Attorney-General accepts to any extent any allegation in the statement,

the Court may, for the purposes of that determination, treat the acceptance of the Attorney-General as conclusive of the matters to which it relates.

(5) An allegation may be accepted or a matter indicated for the purposes of this section, either

- (a) orally before the Court; or
- (b) in writing, in accordance with the rules of court.

(6) An acceptance by a person under this section that the person received any benefit from the commission of an unlawful activity or offence is admissible in any proceedings for any offence.

**41.(1)** Subject to subsection (2), the amount to be recovered from a person under a pecuniary penalty order shall be the amount which the Court assesses to be the value of the person's benefit from the unlawful activity or offence, or if more than one all the unlawful activities or offences in respect of which the order may be made.

Amount  
recovered  
under  
pecuniary  
penalty order

(2) Where the Court is satisfied as to any matter relevant for determining the amount which might be realised at the time the pecuniary penalty order is made, whether by acceptance or otherwise, the Court may issue a certificate giving the Court's opinion as to the matters concerned, and shall do so if satisfied that the amount that might be realised at the time the pecuniary penalty order is made is less than the amount that the Court assesses to be the value of the person's benefit from the offence, or if more than one, all the offences in respect of which the pecuniary penalty order may be made.

42. Where—

- (a) the Court makes a pecuniary penalty order against a person in relation to an unlawful activity or offence,
- (b) in calculating the amount of the pecuniary penalty order, the Court took into account a forfeiture order of the property or a proposed forfeiture order in respect of property; and
- (c) an appeal against forfeiture or a forfeiture order is allowed, or the proceedings from the proposed forfeiture order terminate without the proposed forfeiture order being made,

Variation of  
pecuniary  
penalty order

the Attorney-General may apply to the Court for a variation of the pecuniary penalty order to increase the amount of the order by the value of the property not so forfeited and the Court may, if it considers it appropriate to do so, vary the order accordingly.

43.(1) In assessing the value of benefits derived by a person from the commission of an unlawful activity or an offence of money laundering or of financing of terrorism, the Court may treat as property of the person any property that, in the opinion of the Court, is subject to the effective control of the person, whether or not the person has—

Lifting the  
corporate veil

- (a) any legal or equitable interest in the property;  
or
  - (b) any right, power or privilege in connection with the property.
- (2) Without prejudice to the generality of subsection (1), the Court may have regard to—
- (a) shareholdings in, debentures over or directorships in any company that has an interest, whether direct or indirect, in the property, and for this purpose the Court may order the investigation and inspection of the books of a named company;
  - (b) any trust that has any relationship to the property;
  - (c) any relationship whatsoever between the persons having an interest in the property or in companies of the kind referred to in paragraph (a) or trusts of the kind referred to in paragraph (b), and any other persons.
- (3) Where the Court for the purpose of making a pecuniary penalty order against a person treats particular property as the person's property pursuant to subsection (1), the Court may, on an application made by the Attorney-General make an order declaring that the property is available to satisfy the order.
- (4) Where the Court declares that property is available to satisfy a pecuniary penalty order—
- (a) the order may be enforced against the property as if the property were the property of the person against whom the order is made; and

- (b) a restraining order may be made in respect of the property as if the property were the property of the person against whom the order is made.

(5) Where the Attorney-General makes an application for an order under subsection (3) that property is available to satisfy a pecuniary penalty order against a person —

- (a) the Attorney-General shall give written notice of the application to the person and to any person who the Attorney-General has reason to believe may have an interest in the property; and
- (b) the person and any other person who claims an interest in the property may appear and produce evidence at the hearing.

44. Where the Court orders a person to pay an amount under a pecuniary penalty order, the provisions of section 29(1) shall apply with such modifications as the Court may determine for the purpose of empowering the Court to impose a term of imprisonment on a person in default of compliance by the person with the pecuniary penalty order.

Enforcement  
of pecuniary  
penalty order

45. A pecuniary penalty order is discharged —

- (a) if the conviction of the unlawful activity or offence in reliance on which the order was made is or is taken to be quashed and no conviction for the unlawful activity or offence is substituted;
- (b) if the order is quashed; or
- (c) on the satisfaction of the order by payment of the amount due under the order.

Discharge of  
pecuniary  
penalty order

## PART 6 - OFFENCES AND PENALTIES

Failure to  
establish  
identity etc.

**46.** A reporting entity that performs any act to give effect to a business relationship or transaction in contravention of section 4(1), (2), (3) or (4) is guilty of an offence.

Failure to  
maintain records

**47.** A reporting entity that fails to —

- (a) keep records of information in accordance with section 6(1); or
- (b) keep such records in accordance with section 6(2); or
- (c) comply with the provisions of section 6(3),

is guilty of an offence.

Failure to  
maintain account  
in true name

**48.** A reporting entity that fails to comply with the provisions of section 7(1) or (2) is guilty of an offence.

Failure to report  
suspicious  
transactions

**49.(1)** A reporting entity that fails to report to the FIU information in accordance with section 10(1) or (3) is guilty of an offence.

(2) A reporting entity that fails to comply with a direction by the FIU in terms of section 10(4) is guilty of an offence.

Making false or  
misleading  
statements

**50.** A person who in making a report under section 10 or 11 makes any statement that the person knows is false or misleading in a material particular or omits from any statement any matter or thing without which the person knows the statement would be false or misleading in a material particular is guilty of an offence.

Unauthorised  
disclosure of  
reports and other  
information

**51.** Any person referred to in section 12(1) who discloses a fact or information contemplated in that section,

other than in the circumstances or for the purposes authorised in that section, is guilty of an offence.

**52.** A reporting entity that fails to formulate and implement internal rules in accordance with section 15(1)(c) is guilty of an offence.

Failure to implement internal rules

**53.** A reporting entity that fails to —

- (a) appoint the person referred to in section 15(1)(a); or
- (b) provide training to its employees in accordance with section 15(1)(d),

Failure to appoint compliance officer or provide training

is guilty of an offence.

**54.** Any person who wilfully obstructs, hinders or threatens an officer or representative of the FIU in the performance of his or her duties or the exercise of his or her powers under this Act is guilty of an offence.

Obstructing of officer etc.

**55.** A person who fails to comply with an order of Court in accordance with section 26 is guilty of an offence.

Failure to comply with restraining order

**56.** A person who knowingly opens, operates or authorises the opening or the operation of, an account with a reporting entity in a fictitious, false or incorrect name is guilty of an offence.

Opening account in fictitious, false or incorrect name

**57.(1)** A person convicted of an offence under section 3 is liable on conviction —

Penalties

- (a) in the case of an individual, to imprisonment for 15 years or to a fine of R3,000,000 or both; and
- (b) in the case of a body corporate to a fine of



R5,000,000 or revocation of business licence or both.

(2) A person convicted of an offence mentioned in sections 46, 47, 48, 49, 52, 53, or 56 is liable on conviction—

- (a) in the case of an individual, to imprisonment for 5 years or to a fine of R250,000; and
- (b) in the case of a body corporate to a fine of R500,000.

(3) A person convicted of an offence mentioned in sections 50, 51, 54 or 55 is liable on conviction—

- (a) in the case of an individual, to imprisonment for 5 years or to a fine of R250,000; and
- (b) in the case of a body corporate to a fine of R500,000.

## PART 7 - MISCELLANEOUS

Overriding of confidentiality

**58.** A reporting entity shall comply with the requirements of this Act notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by any written law or otherwise.

Account in fictitious, false or incorrect name

**59.(1)** Where a person is commonly known by two or more different names, the person shall not use one of those names in opening an account with a reporting entity unless the person has previously disclosed the other name or names to the reporting entity.

(2) Where a person using a particular name in his or her dealings with a reporting entity discloses to it a different name or names by which he or she is commonly known, the reporting entity shall make a record of the disclosure and shall, at the request of the FIU give the FIU a copy of that record.

- (3) For the purposes of this section—
- (a) a person opens an account in a false name if the person in opening the account or becoming a signatory to the account uses a name other than the name by which the person is commonly known;
  - (b) a person operates an account in a false name if the person does any act or thing in relation to the account, whether by way of making a deposit or withdrawal or by way of communication with the reporting entity concerned or otherwise, and in doing so, uses a name other than the name by which the person is commonly known; and
  - (c) an account is in a false name if it was opened in a false name, whether before or after the coming into operation of this Act.

**60.** Any act done or omission made by a person as an employee or agent shall, for the purposes of this Act, be treated as done or made by that person's employer or principal if it was done or made with the knowledge or approval of the employer or principal or without such knowledge or approval if it was the result of lack of supervision, provided, in the case of an agent, that he or she acted within the terms of his or her agency or contract.

Liability of  
employers and  
principals

**61.** Where any body corporate is convicted of an offence under this Act or any regulations made under this Act, every person being the director, controller or officer concerned in the management of the body corporate shall be guilty of the offence where it is proved that the act or omission that constituted the offence took place with that person's knowledge, authority, permission or consent.

Liabilities of  
Directors etc.

Money  
laundering an  
extraditable  
offence

**62.** The offence of money laundering shall be an extraditable offence for the purpose of the Extradition Act.

Regulations

**63.** The Minister may make regulations consistent with this Act—

(a) for or with respect to any matter that by this Act is required or permitted to be prescribed; or

(b) that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Repeal of Act 8  
of 1996

**64.** The Anti-Money Laundering Act, 1996 (Cap 9A) is hereby repealed.

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 11th April, 2006.



Sheila Banks  
Clerk to the National Assembly