

ANTI MONEY LAUNDERING ACT, 1996
(Act 8 of 1996)

An Act to criminalise money laundering, to require financial institutions to maintain identification procedures and record keeping procedures, to make orders in relation to proceeds of crime and properties of offenders, to designate money laundering an extraditable offence and for matters connected therewith.

ENACTED BY the President and the National Assembly

1. This Act may be cited as the Anti Money Laundering Act, 1996 and shall come into operation on such date, as the Minister may, by notice published in the Gazette, appoint.

2. In this Act -

"business relationship" means any arrangement between a person and a financial institution where -

(a) the purpose or effect of the arrangement is to facilitate a frequent, habitual or regular course of dealing between the person and the financial institution; and

(b) the total amount of any payment to be made by any person to any other in the course of that arrangement is not known or capable of being ascertained at the time the arrangement is made.

"financial institution" means a financial institution in terms of the Financial Institutions Act;

"police officer" means a police officer above the rank of an inspector;

"proceeds of a crime" means any money or property that is derived or realised, directly or indirectly, by any person from -

(a) the commission of an offence punishable by imprisonment for life or for a period exceeding 12 months;

(b) an act or omission committed or done outside Seychelles, which if it were committed or done in Seychelles, would constitute an offence referred to in paragraph (a);

"unlawful activity" means an act or omission

Short title and commencement

Interpretation

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which -

- (a) if committed or done in Seychelles would constitute an offence in Seychelles;
- (b) if committed or done in any country outside Seychelles would be an offence in that country.

3. (1) A person who -

- (a) engages, directly or indirectly, in a transaction that involves money, or other property, that is proceeds of a crime;
- (b) receives, possesses, conceals, disposes of or brings into Seychelles any money, or other property, that is proceeds of a crime,

knowing or having reasonable grounds for knowing that the money or the other property is derived or realised, directly or indirectly, from any unlawful activity, commits the offence of money laundering.

(2) A person who -

- (a) aids, abets, counsels, incites procures or conspires with another person to commit the offence of money laundering;
- (b) does or omits to do any act for the purpose of enabling another person to commit the offence of money laundering; or
- (c) attempts to commit or does any act preparatory to or in furtherance of the commission of the offence of money laundering,

commits the offence of money laundering.

(3) A person who is guilty of an offence of money laundering is liable on conviction to -

- (a) where the person is an individual, a fine of R3,000,000 and imprisonment for 15 years;
- (b) where the person is a corporate body to a fine of R5,000,000.

(4) Where any person is convicted of an offence of money laundering, the money or property that is the proceeds of the crime in relation to which the offence of money laundering is committed shall become forfeited to the Republic.

(5) Where it is necessary for the purpose of an offence of money laundering 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 of the director, officer, employer or agent, had that state of mind.

4. (1) Every financial institution shall maintain -

- (a) such identification procedures; and
- (b) such record keeping procedures,

in respect of a business relationship formed with, or a transaction carried out by, that institution in the course of its business, as may be required by the Central Bank.

(2) A financial institution which contravenes subsection (1) is guilty of an offence and liable on conviction to a fine of R50,000.

(3) Every financial institution shall take appropriate measures from time to time for the purpose of making its employees whose duties relate to a business relationship or a transaction referred to in subsection (1) aware of the identification procedures and the record keeping procedures referred to in that subsection.

Information
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(4) In this section, section 5 and section 7 "transaction" means any transaction carried out by a financial institution, other than a transaction carried out in the course of a business relationship.

(5) This section shall be without prejudice to any powers vested in the Central Bank by any other written law.

5. (1) Where a financial institution has reasonable grounds to believe that any business relationship formed or proposed to be formed with that institution or any transaction carried out or proposed to be carried out by that institution constitutes or is likely to constitute an offence of money laundering, the financial institution shall forthwith notify in writing the fact to the Central Bank and furnish the Central Bank the full particulars thereof known to the financial institution.

Obligations of
financial
institutions

(2) Where any person, not being a financial institution, carrying on in the course of business of that person an activity set out in the Schedule has reasonable grounds to believe that any activity carried out or proposed to be carried out with that person constitutes or is likely to constitute an offence of money laundering, the person shall forthwith notify in writing the fact to the

Central Bank and furnish the Central Bank the full particulars thereof known to that person.

(3) Where on a consideration of a notification made under subsection (1) or subsection (2) the Central Bank is of the opinion that the information contained in the notification indicates that any person has or may have been engaged or is about to engage in money laundering, the Central Bank shall, as soon as is reasonably practicable, disclose that information to the Commissioner of Police.

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(4) Any disclosure made under subsection (3) shall not be treated as a breach of any restriction imposed by section 12 of the Central Bank of Seychelles Act or section 38A of the Financial Institutions Act or any other written law or otherwise.

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Access to
books or
documents

(5) A financial institution referred to in subsection (1) which or a person referred to in subsection (2) who, without reasonable excuse, fails to comply with subsection (1) or subsection (2), as the case may be, is guilty of an offence and liable on conviction to a fine of R100,000.

6. (1) For the purpose of considering any information furnished under section 5, an officer authorised by the Central Bank may apply to a magistrate, in accordance with subsection (2), for an order of inspection of any books or documents relevant to such information in the custody or control of the person furnishing the information.

(2) An application under subsection (1) shall be made ex parte and shall be in writing and be accompanied by an affidavit.

(3) A magistrate shall make an order under this section where the magistrate is satisfied that there are reasonable grounds for making the order.

(4) An order made under this section shall authorise the officer referred to in the order to have access to the books or documents and to take extracts from or make copies of the books or documents.

(5) A compliance with an order made under this section by a financial institution referred to in section 5(1) or a person referred to in section 5(2) shall not be treated as a breach of any restriction or obligation, imposed by any written law or otherwise, of the financial institution or the person.

(6) Any person who fails to grant access to any books or documents or permit the taking of extracts or making of copies thereof authorised by an order made under this section is guilty of an offence and liable on conviction -

- (a) where the person is an individual, to a fine of R25,000 and imprisonment for one year;
- (b) where the person is a body corporate to a fine of R50,000.

7. (1) Where a police officer has reasonable grounds for suspecting that a person has committed or is about to commit an offence of money laundering and that person or any other person has possession or control of -

- (a) a document relevant to identifying, locating or quantifying money or other property of the person who has committed or is about to commit the offence; or
- (b) a document relevant to identifying or locating a document necessary for the transfer of money or property of the person who has committed or is about to commit the offence,

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the police officer may apply to a magistrate in accordance with subsection (2) for an order requiring that person or the other person -

- (a) to produce to the police officer the document; or
- (b) make available to the police officer for inspection the document.

(2) An application under subsection (1) shall be made ex parte and shall be in writing and be accompanied by an affidavit.

(3) A magistrate shall make an order under this section where the magistrate is satisfied on the averments in the affidavit that there are reasonable grounds for making the order.

(4) An order made under this section shall specify the time when and the place where the document is to be produced or made available.

(5) Where a document is produced to a police officer pursuant to an order under subsection (3), the police officer may-

- (a) inspect the document;
- (b) take extracts from the document;
- (c) make copies of the document; or
- (d) retain the document if, and for so long as, retention of the document is reasonably necessary for the purposes of this Act.

(6) Where a document is made available to a police officer pursuant to an order under subsection (3) the police officer may-

- (a) inspect the document;
- (b) take extracts from the document; or
- (c) make copies of the document.

(7) Where a police officer retains a document under subsection (5)(d) the police officer shall give the person who produced the document a copy of the document certified by the police officer to be a true copy of the document.

(8) A person is not excused from producing or making available a document when required to do so by an order under subsection (3) on the ground that -

- (a) the production or making available the document might tend to incriminate the person; or
- (b) the production or making available the document would be in breach of an obligation, whether imposed by written law or otherwise, of the person not to disclose the existence or contents of the document.

(9) The production or making available a document in compliance with an order under subsection (3) shall not be treated as a breach of any restriction or obligation, imposed by any written law or otherwise, on the person producing or making available the document.

(10) A person who fails to comply with an order under subsection (3) is guilty of an offence and liable on conviction -

- (a) where the person is an individual to a fine of R25,000 and imprisonment for 1 year;
- (b) where the person is a body corporate to a fine of R50,000.

8. (1) Where a police officer investigating an offence of money laundering has reasonable grounds to believe that -

- (a) a financial institution has information relating to any business relationship formed with, or transaction carried out; or
- (b) any person carrying on in the course of business of that person any activity set out in the Schedule has information relating to an activity carried out or proposed to be carried with that person,

by a person in respect of whom the investigation is being conducted, the police officer may apply to a magistrate in accordance with subsection (2) for an order requiring the financial institution or the

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person carrying on an activity set out in the Schedule to furnish the police officer that information.

(2) An application under subsection (1) shall be made ex parte and shall be in writing and be accompanied by an affidavit.

(3) A magistrate shall make an order under this section where the magistrate is satisfied that there are reasonable grounds for making the order.

(4) A financial institution or a person carrying on an activity set out in the Schedule is not excused from complying with an order under this section on the ground that the furnishing of the information would be in breach of any restriction or obligation, whether imposed by a written law or otherwise, of the institution or the person not to disclose

the information.

(5) A compliance with an order under subsection (3) shall not be treated as a breach of any restriction or obligation, imposed by any written law or otherwise, of the person complying with the order.

(6) A financial institution which, or a person carrying out an activity set out in the Schedule who, fails to comply with an order under this section is guilty of an offence and liable on conviction to a fine of R50,000.

9. (1) Any person who knows or has reasonable grounds for knowing that an investigation into an offence of money laundering has been, is being or is about to be made shall not -

- (a) divulge that fact or other information relating to such investigation whereby such investigation is likely to be prejudiced; or
- (b) falsify, conceal, destroy or otherwise dispose of or cause or permit the falsification, concealment, destruction or disposal of any document or thing which is or is likely to be relevant to the investigation.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable on conviction to a fine of R50,000 and imprisonment for 2 years.

10. (1) Where a police officer investigating an offence of money laundering has reasonable grounds to believe that any money or property relating to such offence is held or is under the control of any person the police officer may apply to a magistrate in accordance with subsection (2) for a restraining order prohibiting the person from

disposing or otherwise dealing with that money or property except in such manner as may be specified in the order.

(2) An application under subsection (1) shall be made ex parte, and shall be in writing and be accompanied by an affidavit.

(3) A magistrate shall make an order under this section where the magistrate is satisfied that there are reasonable grounds for making the order.

(4) In making an order under this section in respect of money held or under the control of a person, the magistrate may make provision for the payment out of that money of the -

(a) reasonable living expenses of the person in respect of whom the investigation is being made, including that of the person's dependants;

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(b) reasonable expenses of that person in defending any criminal charge or any other proceedings under this Act.

(5) A compliance with an order under this section shall not be treated as a breach of any restriction or obligation, imposed by any written law or otherwise, of the person complying with the order.

(6) A person who fails to comply with an order under this section is guilty of an offence and liable on conviction to a fine of R100,000.

Forfeiture order

11. (1) Where a person is convicted of an offence of money laundering and the court is satisfied that the person has derived, obtained or realised, directly or indirectly, property from the commission of the offence, the court may, on the application of the Attorney-General or a person authorised by the Attorney-General made not more than 90 days after the conviction of the person, make an order of forfeiture in respect of that property

Restraining orders

(2) Where an application under subregulation (1) is accompanied by a statement of the property which is alleged to be derived, obtained or realised from the commission of the offence of money laundering, the court shall unless the person convicted objects to the statement and, within 7 days thereafter, tenders before the court a statement in answer, treat each allegation contained in the statement submitted with the application as having been accepted by the person convicted.

(3) In making an order under subsection (1) the court shall have regard to any claim of interest made by any person, other than the

person convicted.

(4) 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 -

- (a) for sufficient consideration; and
- (b) without knowing and in circumstances such as not to arouse a reasonable suspicion, that the property was, at the time of its acquisition, property derived, obtained or realised from the commission of the offence.

(5) 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 declaring the nature, extent and value of the claimant's interest and -

- (c) directing the Republic to transfer the property to the claimant; or
- (d) declaring that there is payable to the claimant by the Republic an amount equal in value to the value of the claimant's interest declared under this section.

(6) 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 declaring the nature, extent and value of the claimant's interest and -

- (c) directing the Republic to transfer the property to the claimant; or
- (d) declaring that there is payable to the claimant by the Republic an amount equal in value to the value of the claimant's interest declared under this subsection.

(7) 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 Attorney-General shall, as soon as is practicable after the quashing of the conviction, give notice to any person the Attorney-General has reason to believe may have 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.

(8) When making an order of forfeiture under this section, the court -

- (a) shall, in the order, declare the nature, extent and value of the property which is to be forfeited;
- (b) may give any direction or make any other order necessary or convenient for giving effect to the order.

(9) An order of forfeiture under this section shall vest the property absolutely and free of any encumbrances in the Republic and the order shall be sufficient authority for any person holding the property or administering any office which deals with the record of ownership of property to enter the name of the Republic as owner of the property.

(10) A person who makes an application under subsection (5) or subsection (6) shall give notice to the Attorney-General and the Attorney-General 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 ensuring the 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 prohibition order under the Land Registration Act or a restraining order;
- (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) Compliance with an order or direction under subsection (11) shall not be treated as a breach of any restriction or obligation,

imposed by any written law or otherwise, of the person complying with the order.

(13) A person who fails to comply with an order or direction of the court made under this section is guilty of an offence and is liable to imprisonment for 5 years.

(14) For the purpose of an order of forfeiture under this section, it shall be presumed that -

- (a) 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),

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is property derived, obtained or realised from the commission of the offence of money laundering.

(15) In this section -

"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 immovable or movable property of every description, whether tangible or intangible, and includes an interest in any

movable or immovable property;

"restraining order" means an order directing that any property named in the order is not to be disposed of or otherwise dealt with or directing a person named in the order to take custody and control of the property subject to direction of the court.

12. Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any

director, officer, employee or agent of the body corporate or any person who was purporting to act in any such capacity, the director, officer, employee, agent or the person as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly.

13. (1) Where for the investigation or prosecution of a money laundering offence or for the making or execution of any orders or directions made under this Act in respect of that offence any assistance is required from a foreign country, the Central Authority established under section 5 of the Mutual Assistance in Criminal Matters Act, 1995 may in accordance with that Act request mutual assistance from that foreign country as if such investigation, prosecution, making or execution is a criminal matter within the meaning of that Act.

(2) Where a request is made by a foreign country in the investigation or prosecution of a money laundering offence in that country or for the making or execution of any order or direction made in that country in respect of such an offence, the Central Authority referred to in subsection (1) may in accordance with the Mutual Assistance in Criminal Matters Act, 1995 provide such assistance as if such investigation, prosecution, making or execution is a criminal matter within the meaning of that Act.

(3) In this section "foreign country" has the same meaning as in the Mutual Assistance for Criminal Matters Act, 1995.

14. The First Schedule of the Extradition Act is hereby amended by inserting after item 29, the following item -

Offences by
corporate
bodies

"30 Money Laundering."

SCHEDULE

ACTIVITY

1. Lending (including personal credits, mortgage credits, factoring with or without recourse, financial or commercial transaction including forfeiting);
2. Finance leasing;
3. Venture risk capital;
4. Money transmission services;
5. Issuing and administering means of payment (e.g. credit cards, travellers' cheques and bankers' drafts);
6. Guarantees and commitments;
7. Trading for own account for account of customers in:-

Mutual
Assistance

- (a) money marked instruments (cheques, bills, Certificates of deposits etc.);
 - (b) foreign exchange;
 - (c) financial futures and options;
 - (d) exchange and interest rate instruments;
 - (e) transferable instruments
8. Underwriting share issues and the participation in such issues;
 9. Money broking;
 10. Investment business;
 11. Deposit taking;
 12. Insurance business transactions;
 13. Real property business transactions;
 14. Any other activity declared by the Minister by notice published in the Gazette.