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REPUBLIC OF THE GAMBIA

**ANTI - MONEY LAUNDERING
AND COMBATING
OF
TERRORIST FINANCING ACT, 2012.**

ANTI-MONEY LAUNDERING AND COMBATING OF TERRORIST FINANCING ACT, 2012.

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Anti-Money Laundering and Combating
of Terrorist Financing Act, 2012



THE GAMBIA
NO. 04 OF 2012

Assented to by The President,
this 17th day of August, 2012



LS

YAHYA A. J. J. JAMMEH
President

AN ACT to make provision for the prevention of money laundering, financing of terrorism, anti-money laundering supervision, punishment of money laundering and other related offences and for connected matters.

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ENACTED by the President and the National Assembly.

PART I - PRELIMINARY

1. Short title

This Act may be cited as the Anti- Money laundering and Combating of Terrorist Financing Act, 2012.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

"Attorney-General" means the Attorney-General and Minister for Justice;

"authorised officer" means—

- (a) a Police Officer;
- (b) an Officer of the National Drugs Enforcement Agency;
- (c) a Customs Officer; or
- (d) any other authorised officer of The Gambia security services;

"Bank" means the Central Bank of The Gambia;

"bearer negotiable instrument" includes monetary instruments in bearer form such as—

- (a) travellers cheques, negotiable instruments, cheques, promissory notes and money orders, that are either in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery; and
- (b) incomplete instruments, including cheques, promissory notes and money orders, signed, but with the payee's name omitted;

"beneficial owner" means

- (a) the natural person who ultimately owns or controls a customer or the person on whose behalf a transaction is being conducted; or
- (b) a person who exercises ultimate effective control over a legal person or arrangement;

"Board" means the governing body of the Financial Intelligence Unit;

"business relationship" means any arrangement between a person and a reporting entity where the—

- (a) purpose or effect of the arrangement is to facilitate an occasional, frequent, habitual or regular course of dealing between the person and the institution; and
- (b) total amount of any payment to be made by a 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;

"business transaction record" includes, where relevant to a business transaction—

- (a) the identification records of all the parties to that transaction,
- (b) a description of that transaction sufficient to identify its purpose and method of execution,
- (c) the details of any account used for that transaction, including bank branch and sort code, and
- (d) the total value of that transaction;

"Competent Authority" means the—

- (a) Attorney-General,
- (b) Director General of the National Drug Enforcement Agency,
- (c) the Inspector General of Police,
- (d) the Governor of the Central Bank of The Gambia, or
- (e) any person exercising powers on behalf of the foregoing authorities as provided in this Act;

"Court" means the High Court;

"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 control an account, or
- (e) such other person as may be prescribed;

"conduct" includes initiation, conclusion and participation in the initiation or conclusion of a transaction.

"confiscation" means the permanent deprivation or forfeiture of funds or other assets by order of a competent authority or a court;

"criminal conduct" means-

- (a) any crime which is punishable by imprisonment for a period of not less than six months; or
- (b) any crime committed outside The Gambia, which if it were committed or done in The Gambia, would constitute an offence referred to in paragraph (a).

"data" means representation in any form of information or concepts;

"document" means any record of information, and includes-

- (a) anything on which there is writing,
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them,
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of

anything else, or

- (d) a map, plan, drawing or photograph;

"financial institution" means any entity which conducts as a business for or on behalf of a customer-

- (a) one or more of the activities or operations specified in Part 1 of the First Schedule, or
- (b) any other activity specified by the Supervision Authority by Order published in the Gazette.

"Financial Intelligence Unit" means the Financial Intelligence Unit established under section 3;

"freezing" means to prohibit the transfer, conversion, disposition or movement of funds or other assets on the basis of and for the duration of the validity of an action initiated by a competent authority or as a result of a court order;

"funds" includes financial assets, property of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to or interest in such funds or other assets, including but not limited to bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, or letters of credit, and any interest, dividends or other income on or value accruing from or generated by such funds or other assets;

"Government" means the Government of the Republic of The Gambia;

"identification record" means-

- (a) where the person, including a nominee, agent, beneficiary or principal in relation to a business transaction, is a corporate body, the details of-
 - (i) the certificate of incorporation or the notorised certificate of incorporation, where the corporate body is incorporated abroad,
 - (ii) the most recent annual return to the Registrar of companies pursuant to the

companies Act, or notorised copies of such returns where the corporate body is incorporated abroad,

(iii) any officer of the corporation as required in this definition, or

(b) sufficient documentary evidence to prove to the satisfaction of a financial institution that the person is who that person claims to be;

"Minister" means the Minister responsible for Finance;

"money laundering" means-

- (a) the conversion or transfer of property knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the proceeds or helping any person who is involved in the commission of the predicate offences to evade the legal consequences of his or her action;
- (b) the concealment or disguise of the true nature, source, location, disposition, movement or ownership of rights in respect of property knowing that such property is the proceeds of crime;
- (c) the acquisition, possession or use of property knowing at the time of receipt that such property is the proceeds of crime; or
- (d) participation in, association with or conspiracy to commit, aiding and abetting, facilitating or counseling the commission of any of the above offences.

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

"originator" means the account holder or where there is no account, the person that places the order with a financial institution to perform a wire transfer;

"person" means any natural or legal person and including a body of persons;

"persons, groups and entities involved in terrorist acts" means-

- (a) persons who commit or attempt to commit terrorist acts or who participate in or facilitate the commission of terrorist acts, or
- (b) groups and entities owned or controlled directly or indirectly by, acting on behalf of, or under the direction of such persons and associated persons, groups and entities;

"police" means The Gambian Police Force;

"politically-exposed person" means-

- (a) a person who is or has been entrusted with a prominent public function domestically or in a foreign country, such as a Head of State or of government, a senior political party official, a senior Government official, judicial or military officer,
- (b) a person who is or has been an executive in a foreign country of a state-owned company, or
- (c) a person who is or has been a senior political party official in a foreign country, or
- (d) any immediate family member or close associate of the persons mentioned in paragraphs (a) to (c);

"predicate offence" means any offence listed in schedule II to this Act;

"proceeds of a crime" means any money or property that is derived, obtained or realised, directly or indirectly, by any person as a result of a criminal conduct;

"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 asset of every kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible, 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 credit, travelers cheque, bank cheque, money order, shares, securities, bond, draft, letter of credit, whether situated in The Gambia or elsewhere and includes any legal or equitable interest in any such property;

"record" means any material on which information is recorded or marked and which is capable of being read or understood by a person or by an electronic system or other device;

"reporting entity" means any person who or entity which conducts as a business, for or on behalf of a customer, one or more of the activities or operations specified in-

- (a) Part I of Schedule I,
- (b) Part II of Schedule I, and
- (c) any other activity specified by the Supervisory Authority by Order published in the Gazette;

"requesting state" means any foreign country or State which makes a request for mutual legal assistance;

"self regulatory organisation" means a body that represents a profession, including, lawyers, notaries, other independent professionals or accountants and which-

- (a) is made up of member professionals,
- (b) has a role in regulating the persons that are qualified to enter and who practice in the profession,
- (c) enforces rules to ensure that high ethical and moral standards are maintained by those practising the profession, and
- (d) performs certain supervisory or monitoring type functions;

"structured group" means a group that is not randomly formed or need to have immediate commission of a terrorist act and that does not have formally defined roles for its members, authority of its membership or a developed structure;

"Supervisory Authority" means the Central Bank of The Gambia or any other authority having oversight over a reporting entity;

"terrorist" means a person who-

- (a) commits, or attempts to commit, a terrorist act by any means, directly or indirectly, unlawfully and willfully,
- (b) participates as an accomplice in or facilitates the commission of a terrorist act or conspires to do so,
- (c) organises or directs others to commit terrorist acts, or
- (d) contributes to the commission of a terrorist act by a group of persons, acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act;

"terrorist act" means-

- (a) an act or omission in or outside The Gambia which constitutes an offence within the scope of the Anti-Terrorism Act or a counter terrorism Convention;
[cap 13.01]
- (b) an act or threat of action in or outside The Gambia which-
 - (i) involves serious bodily harm to a person,
 - (ii) involves serious damage to property,
 - (iii) endangers a person's life,

- (iv) creates a serious risk to the health or safety of the public or a section of the public,
- (v) involves the use of firearms or explosives,
- (vi) involves releasing into the environment or any part thereof or distributing or exposing the public to any dangerous, hazardous, radioactive or harmful substance, toxic chemical or any microbial or other biological agent or toxin,
- (vii) is designed or intended to disrupt any computer system or the provision of services directly related to communications infrastructure, banking or financial services, utilities, transportation or other essential infrastructure,
- (viii) is designed or intended to disrupt the provision of essential emergency services such as security of medical services,
- (ix) involves prejudice to national security or public safety,
- (x) involves participating in the activities of a terrorist group, including by supplying information or material resources, or by funding its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities of the group, and is intended, or by its nature and context, may reasonably be regarded as being intended to-
 - (aa) intimidate the public or a section of the public,
 - (ab) compel a government or an international organisation to do, or refrain from doing any act,
 - (ac) seriously destabilise or destroy the fundamental political, constitutional, economic or social structures of a

- country or an international organisation;
- (xi) is made for the purpose of advancing a political, ideological, or religious cause, or
- (xii) disrupts any services;

"terrorist group" means a structured group or organisation of more than two persons, established over a period of time and acting in concert to commit terrorist acts;

"terrorist property" means the property of a terrorist or any other property, consisting of funds that is intended to be used to finance or otherwise assist the commission of a terrorist act, or used to finance or otherwise assist the commission of a terrorist act;

"trusts and company service providers" means all persons or businesses which, as a business, provide any or all of the following services to third parties-

- (a) acting as formation agents of local persons,
- (b) 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, or
- (c) providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership, or any other legal person or arrangement;

"wire transfer" means any transaction carried out on behalf of an originator through a financial institution, including an institution that originates the wire transfer and an intermediary institution that participates in completion of the transfer, by electronic means with a view to making an amount of money available to a beneficiary person at another financial institution.

(2) An act committed in pursuance of a protest, demonstration or stoppage of work is not considered to be a terrorist act within the meaning of this Act if the act is not intended to result

in any act referred to in the definition of "terrorist act".

PART II – THE FINANCIAL INTELLIGENCE UNIT

3. Establishment of the Financial Intelligence Unit

There is established by this Act a body known as the Financial Intelligence Unit.

4. Objects of the Financial Intelligence Unit

The objects of the Financial Intelligence Unit are to-

- (a) assist in the identification of proceeds of criminal conduct and the combat of money laundering and terrorist financing activities;
- (b) make information available to investigating authorities, the intelligence agencies and the revenue agencies to facilitate the administration and enforcement of the laws of this country; and
- (c) exchange information with similar bodies in other countries as regards money laundering, financing of terrorism and other criminal conduct.

5. Functions and powers of the Financial Intelligence Unit

To achieve its objects, the Financial Intelligence Unit-

- (a) shall receive reports and information provided to it by reporting entities, an agency of another country, the competent authority, a government institution and any other information voluntarily provided to it about suspicion of a criminal conduct, a money laundering activity or the offence of financing of terrorism;
- (b) shall collect any information that it considers relevant to a criminal conduct, money laundering activity or financing of terrorism that is publicly available, including commercially available data-bases 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, self-regulatory organisation and any law enforcement agency for purposes of this Act;
- (d) shall analyse and assess all reports and information;
- (e) shall carry out examinations of reporting entities;
- (f) shall disseminate information derived from reports or other information it receives to the appropriate law enforcement agency, supervisory authority or self-regulatory organisation if on the basis of its analysis and assessment, it has reasonable grounds to suspect that the transaction is suspicious;
- (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 it, to enforce compliance with this Act or to facilitate any investigation anticipated by it;
- (h) shall compile statistics and records and may disseminate information within The Gambia or elsewhere, as well as make recommendations arising out of any information received;
- (i) in consultation with supervisory authorities, shall 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, reporting obligations and the identification of suspicious transactions;

- (l) shall periodically provide feedback to reporting entities and other relevant agencies regarding outcomes relating to the reports or information given under this Act;
- (m) shall conduct research into trends and developments in the area of money laundering and financing of terrorism and ways of detecting, preventing and deterring money laundering and the financing of terrorist activities;
- (n) shall educate the public and create awareness on matters relating to money laundering and financing of terrorism;
- (o) may disclose any report, 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 with similar powers and duties if on the basis of its analysis and assessment, it has reasonable grounds to suspect that report or information would be relevant to investigating or prosecuting a money laundering offence or a terrorist financing offence; and
- (p) may enter into any agreements or arrangements with any Government institution or agency regarding the exchange of information.

6. Governing body of the Financial Intelligence Unit

- (1) The Financial Intelligence Unit shall be governed by a Board consisting of -
- (a) a representative of the Central Bank, who shall be the Chairperson;
 - (b) the permanent secretary in the Ministry responsible for Finance;
 - (c) the permanent secretary in the Ministry responsible for the Interior;

- (c) one senior police officer not below the rank of Commissioner appointed by the Minister for the Interior;
- (e) the Director of the Financial Intelligence Unit;
- (f) the Commissioner General of the Gambia Revenue Authority; and
- (g) the Solicitor General and Legal Secretary.

(2) The Board shall formulate and ensure the implementation of policies necessary for the achievement of the objects of the Financial Intelligence Unit.

7. Meetings of the Board

- (1) The Board shall meet at least once every six months for the dispatch of business at the times and in the places determined by the Chairperson of the Board.
- (2) The Director of the Financial Intelligence Unit shall at the request of not less than three of the members of the Board convene an extraordinary meeting of the Board at the place and time determined by the Chairperson of the Board.
- (3) The quorum at a meeting of the Board is three.
- (4) The Chairperson of the Board shall preside at meetings of the Board and in his or her absence; a member of the Board elected by the members from among their number shall preside.
- (5) Matters before the Board shall be decided by a majority of the members present and voting; and in the event of equality of votes, the person presiding shall have a casting vote.
- (6) The Board may co-opt a person to attend a Board meeting but that person shall not vote on a matter for decision at the meeting.
- (7) The proceedings of the Board shall not be invalidated by reason of a vacancy among the members or a defect in the appointment or qualification of a member.

(8) Subject to this section, the Board may determine the procedure for its meetings.

8. Disclosure of interest

A member of the Board who has a personal interest in a matter for consideration by the Board shall disclose in writing the nature of that interest and is disqualified from participating in the deliberations of the Board in respect of that matter.

9. Allowances

Members of the Board and members of a committee of the Board shall be paid allowances approved by the Minister.

10. Appointment of Director

(1) The Director of the Financial Intelligence Unit shall be appointed by the President after consultation with the Board and the Public Service Commission.

(2) The Director of the Financial Intelligence Unit shall hold office for a period of five years and is eligible for re-appointment, but shall not be appointed for more than two terms.

(3) The Director shall hold office on the terms and conditions specified in the letter of appointment.

11. Functions of the Director

(1) The Director is responsible for the day to day administration of the Financial Intelligence Unit and is answerable to the Board in the performance of his or her functions under this Act.

(2) The Director may delegate a function to an officer of the Financial Intelligence Unit but the Director shall not be relieved of the ultimate responsibility for the performance of the delegated function.

12. Appointment of other staff

(1) The Board in consultation with the Director, shall appoint other staff of the Financial Intelligence Unit that are necessary for the proper and effective performance of the functions of the Unit.

(2) Other public officers may be transferred or seconded to the Financial Intelligence Unit or may otherwise give assistance to the Unit.

(3) The Financial Intelligence Unit may engage the services of consultants where necessary.

(4) The Director and staff of the Financial Intelligence Unit shall be subject to security screening before assuming office.

13. Power to examine

(1) The Financial Intelligence Unit or any person authorised by it may during or after business hours, enter the premises of a reporting entity in which the Financial Intelligence Unit believes, on reasonable grounds, that there are records relevant to ensuring compliance with this Act in order to-

- (a) examine the records and inquire into the business and affairs of the reporting entity;
- (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 the 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 or control of the premises referred to in sub-section (1) and every person found on the premises shall give the Financial Intelligence Unit 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 this Act or the regulations made under it.

(3) The Financial Intelligence Unit may transmit any information derived from such examination to the appropriate domestic or foreign law enforcement authorities, if it has reasonable grounds to believe that the information is suspicious or is relevant to an investigation for non-compliance with this Act, a criminal conduct, a money laundering or financing of terrorism offence.

14. Power to enforce compliance

(1) Officers and employees of a reporting entity shall take all reasonable steps to ensure the compliance by that reporting entity with its obligations under this Act.

(2) The Financial Intelligence Unit may direct any reporting entity that has without reasonable excuse failed to comply in whole or in part with any obligations in this Act, to implement any action plan to ensure compliance with its obligations.

(3) Where a reporting entity fails to comply with a directive under sub-section (2), the Financial Intelligence Unit upon application to Court and satisfying the court that a reporting entity has failed without reasonable excuse to comply in whole or in part with any obligations under this Act may obtain an order to compel any or all of the officers or employees of that reporting entity to comply with such obligation.

(4) In granting the order pursuant to sub-section (3), the court may order that where the reporting entity or any officer or employee of that institution fails without reasonable excuse to comply with all or any of the provisions of that injunction such reporting entity, officer or employee shall pay a fine not exceeding twenty million dalasis.

(5) The Court may in furtherance of sub-section (4)-

- (a) order the reporting entity to furnish the Financial Intelligence Unit with regular reports from the entity on the measures it is taking to comply with the directives,
- (b) request a supervisory authority or self-regulatory organisation to bar specified individuals from employment within that sector,

(c) replace or restrict the powers of managers, directors, or controlling owners of the reporting entity.

(d) appoint a manager or receiver to manage the reporting entity, or

(e) request the supervisory authority or self-regulatory organisation to suspend or withdraw the license of the reporting entity.

15. Immunity

An action or a legal proceedings shall not be brought against the Director, any officer, employee or agent of the Financial Intelligence Unit or any person acting under the direction of the Director for anything done in good faith in the administration or lawful discharge of any powers, duties or functions under this Act.

16. Disclosure of information

(1) The Director, an officer, employee, agent or other person that may be assigned duties by the Financial Intelligence Unit, shall not disclose any information or matter which he or she obtains or which come to his or her knowledge in the performance of functions or the discharge of duties under this Act except for the-

- (a) performance of functions or the discharge of duties of the Financial Intelligence Unit under this Act or when lawfully required to do so by any court;
- (b) detection, investigation or prosecution of a criminal conduct, a money laundering offence or an offence of financing of terrorism; or
- (c) enforcement of this Act.

(2) Sub-section (1) applies after the persons specified cease to hold office, perform functions or discharge duties under this Act except otherwise provided by this Act or by order of court.

(3) The Director shall not disclose any information that would directly or indirectly identify an individual who provided a report

or information to the Financial Intelligence Unit, or a person or an entity about whom a report or information was provided under this Act.

17. Disclosure to foreign institutions and agencies

(1) The Financial Intelligence Unit may disclose any report or information it obtains or generates under this Act to an institution or agency of a foreign state or an International Organisation with similar powers and duties on such terms and conditions as are set out in the agreement or arrangement between the Financial Intelligence Unit and that foreign state or International Organisation regarding the exchange of such information.

(2) Where such an agreement or arrangement has not been entered into between the Financial Intelligence Unit and that foreign state or International Organisation, such terms and conditions as may be agreed upon shall include the -

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

18. Agreements and arrangements by the Financial Intelligence Unit

(1) The Financial Intelligence Unit may enter into an agreement or arrangement in writing with the Government of a foreign state or an International Organisation regarding the exchange of information between the Financial Intelligence Unit and any institution or agency of that state or organisation with similar powers and duties.

(2) Information exchanged under agreements or arrangements entered into pursuant to sub-section (1) shall be information

the Financial Intelligence Unit, or the foreign institution or agency has reasonable grounds to believe would be relevant to the investigation or prosecution of a criminal conduct, a money laundering or a financing of terrorism offence.

(3) Agreements or arrangements entered into under sub-section (1) or (2) shall include the following-

- (a) restriction on the use of information to purposes relevant to the investigation or prosecution of a money laundering offence or an offence of the 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 Financial Intelligence Unit.

PART III - FINANCIAL PROVISIONS

19. Funds of the Financial Intelligence Unit

The funds of the Financial Intelligence Unit shall consist of-

- (a) moneys appropriated to it by the National Assembly;
- (b) donations and grants provided that the terms and conditions attached to any grant or gift are not inconsistent with the functions of the Unit; and
- (c) such other sums as may accrue to the Unit from any other lawful source.

20. Estimates, Accounts and audit

(1) The Financial Intelligence Unit shall, not later than three months before the end of each financial year, prepare and submit to the Minister for approval, estimates of the income and expenditure of the Unit for the ensuing year.

(2) The Unit shall keep proper records and books of accounts of its income, expenditure and transfers.

(3) The Unit shall, within three months of the end of each financial year, prepare and submit its statement of accounts to the Auditor General for audit.

(4) The audited accounts of the Unit and the Auditor General's report on those accounts shall form part of the Auditor General's overall report to the National Assembly.

21. Annual report and other reports

(1) The Financial Intelligence Unit shall, not later than two months after the end of each financial year, submit to the Minister, in respect of the financial year, an annual report on the financial position and performance of the Unit.

(2) The report under sub-section (1) shall include-

- (a) a statement on the income, source of income and application to the moneys of the Unit;
- (b) information with regard to the operation and performance of the Unit; and
- (c) such other information as the Minister may request.

(3) The Minister shall, not later than three months after the end of the financial year, cause the annual report to be laid before the National Assembly.

(4) The Director shall also, from time to time, provide the Minister with such information relating to the affairs of the Unit as the Minister may request.

PART IV - MEASURES TO COMBAT MONEY LAUNDERING AND FINANCING OF TERRORISM

22. Offence of Money laundering

A person who is involved in money laundering commits an offence and is liable in the case of-

- (a) an individual, including a director, employee or agent of a reporting entity, to imprisonment for a term of not less than ten years; or

- (b) a body corporate a fine of not less than ten million dalasis or an order for the revocation of the licence of the corporate body or both.

23. Offence of Financing of Terrorism

A person who directly or indirectly -

- (a) provides, whether by giving, lending or otherwise making available, or collects funds or property with the intention that they should be used, or having reasonable grounds to believe that they are to be used, in full or in part, in order to carry out a terrorist act;
- (b) organises or directs others to commit, attempts to commit or conspires to commit an offence under this section,

commits the offence of financing of terrorism and is liable in the case of-

- (i) an individual, including a director, employee or agent of a reporting entity, to imprisonment for a term of not less than ten years; or
- (ii) a body corporate to a fine of not less than ten million dalasis

24. Post conviction powers of the court

(1) After convicting a corporate body, the court may make an order for the revocation of the licence of the corporate body or organisation.

(2) Notwithstanding sub-section (1), a supervisory authority or self regulatory organisation of a corporate body convicted of money laundering or financing of terrorism may initiate civil or administrative proceedings against that corporate body and its employees.

(3) In furtherance of sub-section (2), a supervisory body or self regulatory organisation may revoke the licence or cancel the professional membership of the corporate entity or employee.

(4) In determining whether a person has committed the offence of money laundering or financing of terrorism, knowledge, intent or purpose required as an element of the offence may be inferred from objective factual circumstances.

(5) Where it is necessary for the purpose of an offence of money laundering or financing of terrorism 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 maybe, had that state of mind.

PART V - OBLIGATION TO VERIFY IDENTITY AND KEEP RECORDS

25. Duty to verify identity of customers and transactions

(1) A reporting entity shall identify, within a reasonable time or before entering into a business relationship with a customer, the identity of the customer using any official or other identifying document and verify the identity of the customer using reliable and independent source documents, data or information or other evidence as is reasonably capable of verifying the identity of the customer when a reporting entity -

- (a) enters into a continuing business relationship or conducts any transaction;
- (b) carries out an electronic funds transfer;
- (c) is suspicious that a money laundering or the financing of terrorism is involved; or
- (d) 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 sub-section (1), a reporting entity shall-

- (a) when establishing a business relationship, obtain information on the intended purpose and nature

of the business relationship;

- (b) if the transaction is conducted by a natural person, adequately identify and verify the person's identity including information relating to-
 - (i) the person's name, address and occupation, and
 - (ii) a valid photo bearing national identity card, drivers' licence, passport or other official identification document;
- (c) if the transaction is conducted by a legal entity, adequately identify and verify its legal existence and structure, including information relating to-
 - (i) its certificate of incorporation, address and names of its directors,
 - (ii) the principal owners, beneficiaries and control structure,
 - (iii) provisions regulating the power to bind the entity, and
 - (iv) whether any person purporting to act on behalf of the entity is so authorised;
- (d) if the customer is a politically exposed person, adequately identify and verify the customer's identity and -
 - (i) obtain the approval of the reporting entity's senior management before establishing a business relationship with the customer,
 - (ii) take reasonable measures to establish the source of any wealth and property involved, and
 - (iii) conduct regular enhanced monitoring of the business relationship;
- (e) if the customer is a casual customer, identify and

verify him or her –

- (i) in the same way as in paragraph (b) for any transaction involving a sum greater than two hundred thousand dalasis, and
- (ii) where the transaction is carried out in more than one transaction which seem to be connected and the amount is unknown at the start of the transaction, as soon as the amount is greater than two hundred thousand dalasis.

(3) Where 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 a third party, then, in addition to the requirements in sub-sections (1) and (2), the reporting entity shall identify and verify the identity of the third party for whom, or for whose ultimate benefit the transaction is being conducted.

(4) A reporting entity shall take reasonable measures to ascertain the purpose, origin and ultimate destination of any cash transaction which involves more than ten thousand United States dollars or its equivalent in Gambian dalasis..

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

- (a) adequately identify and verify the person with whom it enters into such a business relationship;
- (b) gather sufficient information about the nature of the business of the person;
- (c) determine from publicly available information the reputation of the person and the quality of supervision to which the person is subject to;
- (d) assess the person's anti-money laundering and terrorist financing controls;
- (e) obtain approval from senior management before establishing a new correspondent relationship; and

- (f) document the responsibilities of the reporting entity and the person.

(6) Where the relationship is a payable through an account, a reporting entity shall ensure that the person with whom it has established the relationship-

- (a) has verified the identity of and performed on-going due diligence on that person's customers that have direct access to accounts of the reporting entity; and
- (b) is able to provide the relevant customer identification data upon request to the reporting entity.

(7) Where a reporting entity relies on an intermediary or third party to undertake its obligations under sub-sections (1), (2) or (3) or to introduce business to it, it shall-

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

(7) Sub-sections (1) (2) and (4) do 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 suspicious or unusual;
- (b) if the transaction is an occasional transaction not exceeding thirty million dalasis, unless the reporting entity has reason to suspect that the

transaction is suspicious or unusual; or
(c) in such other circumstances as may be prescribed by the Minister.

(8) The Minister may prescribe-

- (a) the official identifying document or the reliable and independent sources, data or information or other evidence that is required for identification or verification of any particular customer or class of customers, and
- (d) the threshold for, or the circumstances in which, the provisions of this section shall apply in relation to any particular customer or class of customers.

26. Inability to conclude identification of customer

(1) Where a reporting entity is unable to obtain satisfactory evidence of the identity of a customer, the reporting entity shall not establish an account for or maintain a business relationship with the customer.

(2) The reporting entity may in furtherance of sub-section (1), make a report of the attempted transaction to the Financial Intelligence Unit in accordance with this Act for further directions.

27. Duty to maintain records

(1) A reporting entity shall establish and maintain records of-

- (a) a person's identity obtained in accordance with this Act;
- (b) transactions carried out by it and correspondence relating to the transactions as is necessary to enable the transaction to be readily reconstructed at any time by Financial Intelligence Unit or competent authority, and shall contain particulars sufficient to identify the-
 - (i) nature and date of the transaction,
 - (ii) 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) reports made to the Financial Intelligence Unit under this Act; and

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

(2) The records mentioned in sub-section (1) shall be kept for a minimum period of five years from the date-

(a) the evidence of a person's identity was obtained;

(b) of any transaction or correspondence;

(c) the account is closed or business relationship ceases, whichever is the later.

(3) The records established and maintained for purposes of sub-section 2 (b) shall be-

(a) sufficient to enable the transaction to be readily reconstructed at any time by the Financial Intelligence Unit or Competent Authority to provide, if necessary, evidence for prosecution of an offence; and

(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 Financial Intelligence Unit.

(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 for example by the electronic signature of the person who keeps the record is retained.

(5) The reporting entity shall make the records maintained under sub-section (1) available to the Financial Intelligence Unit or competent authority upon request for purposes of ensuring compliance with this Act and for purposes of an investigation and prosecution of a criminal conduct.

28. Duty to maintain account in true name

(1) A reporting entity shall maintain an account for or on behalf of a customer, in the true name of the account holder.

(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.

29. Requirement for originator information

(1) A reporting entity or person that conducts business in The Gambia as a financial institution or a money transfer service provider shall include accurate originator information and other related messages on wire transfers.

(2) Sub-section (1) does not apply to -

(a) a money transfer effected from the use of a credit or debit card as means of payments that results from a transaction carried out using a credit or debit card, provided that the credit or debit card

number is included in the information accompanying such a transfer; and

(b) transfers and settlements between financial institutions where the originator and beneficiary of the funds transfer are acting on their own behalf.

30. Special monitoring of certain transactions

(1) A reporting entity shall pay special attention to-

(a) complex, unusual or large transactions, any unusual patterns of transactions that have no apparent or visible economic or lawful purpose;

(b) 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; and

(c) wire transfers that do not contain complete originator information.

(2) A reporting entity shall, in relation to sub-section (1)-

(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 such findings available to the Financial Intelligence Unit or to a competent authority, to assist the Financial Intelligence Unit or the competent authority in any investigation relating to a criminal conduct, a money laundering offence or an offence of financing of terrorism.

(2) A reporting entity shall monitor its business relationships and the transactions undertaken throughout the course of the relationship to ensure that its obligations under this Act 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.

(3) Where the reporting entity has reasonable grounds for believing that the business transaction referred to in sub-

section (1) could constitute or be related to money laundering or financing of terrorism, the reporting entity shall promptly report the matter to the Financial Intelligence Unit.

31. Unauthorised disclosure of suspicious transaction reports and other information

(1) A person who discloses a fact or information contemplated by this Act otherwise than in the circumstances or for the purposes authorised in that section commits an offence and is liable on conviction to a fine not exceeding ten thousand dalasis or imprisonment not exceeding two years or to both the fine and imprisonment..

(3) A person who with intent to prejudice an investigation of a criminal conduct, money laundering offence or an offence of financing of terrorism or for the purpose of obtaining directly or indirectly an advantage or a pecuniary gain for himself or herself or any other person commits an offence and is liable on conviction to a fine not exceeding ten thousand dalasis or imprisonment not exceeding two years or to both the fine and imprisonment.

32. Opening account in fictitious, false or incorrect name

A person who opens, operates or authorises the opening or the operation of an account with a reporting entity in a fictitious, false or incorrect name commits an offence and is liable on conviction to a fine not exceeding ten thousand dalasis or imprisonment not exceeding two years or to both the fine and imprisonment.

PART VI - OBLIGATION TO REPORT SUSPICIOUS TRANSACTIONS

33. Report of suspicious transactions

1) Where a reporting entity, the supervisory authority, a self-regulatory authority or compliance officer has-

- (a) reasonable grounds to suspect that any transaction or attempted transaction may be related to the commission of a criminal conduct, a money laundering or financing of terrorism offence;

(b) information that may be relevant to-

- (i) an act preparatory to an offence of the financing of terrorism, or

- (ii) an investigation or prosecution of any person or for a criminal conduct, a money laundering or financing of terrorism offence; or may otherwise be of assistance in the enforcement of this Act;

it shall, as soon as practicable after forming that suspicion or receiving the information, but no later than three working days, make a report of the transaction or attempted transaction or the information to the Financial Intelligence Unit.

(2) A report under sub-section (1) shall-

- (a) be in writing and may be given by mail or telephone to be followed up by writing, fax or electronic mail or such other manner as may be prescribed by the Financial Intelligence Unit;

- (b) be in such form and contain such details as may be prescribed by the Financial Intelligence Unit;

- (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 Financial Intelligence Unit shall give the Financial Intelligence Unit or Competent Authority that is carrying out an investigation arising from it or relating to the information contained in the report, any further information that it has about the transaction or attempted transaction or the parties to the transaction if requested to do so by the Financial Intelligence Unit.

(4) If the Financial Intelligence Unit, after consulting a reporting entity required to make a report under sub-section (1), has reasonable grounds to suspect that a transaction or a proposed transaction may involve an offence of financing of terrorism, the proceeds of a criminal conduct or a money

laundering offence, it may direct the reporting entity in writing not to proceed with the carrying out of that transaction or proposed transaction or any other transaction in respect of the funds involved in that transaction or proposed transaction for a period determined by the Financial Intelligence Unit, which shall not be more than ten working days, in order to allow the Unit-

- (a) to make necessary inquiries concerning the transaction; and
- (b) to inform and advise the competent authority.

(5) Nothing in this section requires a lawyer to disclose a privileged communication.

(6) For the purposes of this section, communication is privileged if it is-

- (a) a confidential communication, whether oral or in writing, passing between a lawyer in his or her professional capacity and another lawyer in such capacity;
- (b) obtained from a client for the purpose of ascertaining the legal position of the client;
- (c) obtained from a client in performing the task of defending or representing that client in judicial, administrative, arbitration or mediation proceedings; or
- (d) not made or brought into existence for the purpose committing or furthering the commission of some illegal or wrongful act.

(7) Where the information consists wholly or partly of, or relates wholly or partly to receipts, payments, income, expenditure, or financial transactions of a specified person (whether a lawyer, his or her client, or any other person), it shall not be a privileged communication if it is contained in or comprises the whole or part of, any book, account, statement or other record prepared or kept by the lawyer in connection with a trust account of the lawyer.

34. Prohibition of disclosure of suspicious

transaction reports

(1) A person shall not disclose-

- (a) that a report has been or may be made or further information has been provided to the Financial Intelligence Unit;
- (b) that the reporting entity has formed a suspicion in relation to a transaction; 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) Sub-section (1) does not apply to disclosures made to-

- (a) an officer, employee or agent of a reporting entity for any purpose connected with the discharge of his or her duties;
- (b) a lawyer for the purpose of obtaining legal advice or representation in relation to the matter; or
- (c) a supervisory authority of the reporting entity, for the purposes of carrying out the supervisory authority's functions.

(3) A person referred to in sub-section (2)(b) shall not disclose the information he or she receives except to another person of the kind referred to in that sub-section, for the purpose of-

- (a) the discharge of the first-mentioned person's duties; or
- (b) obtaining legal advice or representation in relation to the matter.

(4) A person referred to in sub-section 2(c) shall not disclose the information he or she receives except to a person referred to in that sub-section for the purpose of giving legal advice or making representations in relation to the matter.

(5) Subject to this Act, nothing in sub-sections (1) to (4) shall prevent a court from ordering a disclosure of information on the

application of a Competent Authority and on proof to the satisfaction of the court that the information is rightly required for the purposes of any inquiry or trial into or relating to a criminal conduct or money laundering or financing of terrorism.

(6) A person who discloses information contrary to sub-sections (1) and (4) commits an offence and is liable on conviction to a fine not exceeding ten thousand dalasis or imprisonment not exceeding two years or to both the fine and imprisonment.

35. Protection of information and identity of persons in relation to suspicious transaction reports

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

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

except for the purposes of investigation or prosecution of a person for a criminal conduct, a money laundering offence or an offence of financing of terrorism or for the enforcement of this Act.

(2) A person shall not be required to disclose any information to which this section applies in any judicial proceedings unless the court is satisfied that the disclosure of the information is necessary in the interest of justice.

36. Confidentiality overridden

Subject to the provisions of the Constitution, the duty of disclosure under this Act shall have effect notwithstanding any obligation as to secrecy or other restriction on the disclosure of information imposed by any other law.

37. Protection against civil or criminal liability

(1) A reporting entity, its directors, officers, partners or employees who submit reports or provide information in accordance with this Act and in good faith shall not be liable to criminal, civil, disciplinary or administrative proceedings for breach of any restriction on disclosure of information imposed by contract or any legislative, regulatory or administrative provision, regardless of the result of the report.

(2) Sub-section (1) shall not apply in respect of proceedings for a breach of section 33, 34, 35 or 36.

38. Test of reasonableness of belief

In a matter involving the determination of reasonableness of a decision made or action taken under this Act, the court shall determine the matter objectively having regard to the factual and surrounding circumstances of the decision or action.

39. Duty to establish preventive measures and internal control procedures

A reporting entity shall-

- (a) designate an individual as a compliance officer who shall be responsible for ensuring the reporting entity's compliance with the requirements of this Act;
- (b) establish and maintain procedures and systems to-
 - (i) implement the customer identification requirements under this Act,
 - (ii) implement record keeping and retention requirements under this Act,
 - (iii) implement the reporting requirements under this Act,
 - (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; or
 - (vi) screen persons before hiring them as employees or assigning them duties under this Act;
 - (c) train its officers, employees and agents to identify suspicious transactions, trends in money laundering and financing of terrorism activities and money laundering and financing of terrorism risks within reporting entities' products, services and operations;
 - (d) perform independent audits to test the compliance of its anti-money laundering and financing of terrorism procedures and systems with the Act; and
 - (e) implement policies and procedures to prevent the misuse of technological developments including those related to electronic means of storing and transferring funds or value.
- (2) The compliance officer appointed pursuant to sub-section (1) shall -
- (a) be an officer at senior management level with the relevant qualifications and experience to enable the compliance officer respond sufficiently to matters relating to the reporting entity and the conduct of its business;
 - (b) be responsible for establishing and maintaining a manual of compliance procedures in relation to the business of the reporting entity as the supervisory authority or the Financial Intelligence Unit may from time to time require;
 - (c) be responsible for ensuring compliance by staff of the reporting entity 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

(d) act as the liaison officer between the reporting entity, the supervisory authority and the Financial Intelligence Unit in matters relating to compliance with the provisions of this Act and any other law or directive relating to money laundering or financing of terrorism.

(3) The compliance officer shall have ready access to all books, records and employees of the reporting entity necessary to fulfill his responsibilities.

(4) For purposes of this Act, an individual who in the course of carrying on business, does not employ or act in association with any other person is the compliance officer for that individual's business.

(5) The duty of a reporting entity to establish compliance measures applies to their foreign branches and subsidiaries located outside their headquarters.

40. Over-the-counter exchange dealings

(1) Subject to sub-section (3), a person whose usual business is to provide over-the-counter exchange transactions services shall -

- (a) before the commencement of business, submit a declaration of activity to the Bank and the purpose of obtaining the requisite operating licence, in which he or she shall furnish proof of the lawful origin of the capital required to set up the business;
- (b) prior to the conduct of any transaction involving a sum exceeding ten million dalasis or its equivalent in foreign exchange, identify the customer by requiring him to fill up a standard data form and take a copy of his or her valid international passport, driving licence, national identity card or such other official document bearing his or her photograph as may be prescribed; and
- (c) record in chronological order, all transactions under this section, indicating each customer's surname, forename, address and the serial number of the official document submitted, in a register numbered and initialed by an officer authorised for that

purpose by the Bank.

(2) A register kept under sub-section (1) (c) shall be preserved for at least five years after the last transaction recorded therein.

(3) For the purpose of this section, an over-the-counter exchange transaction is constituted by the immediate exchange of bank notes or coin in different currencies or the handing over of cash against settlement by a different means of payment in a different currency.

(4) A person who contravenes sub-section (1) or (2) commits an offence and is liable on conviction to a fine not exceeding ten thousand dalasis or imprisonment not exceeding two years or to both the fine and imprisonment.

41. Reporting requirements for designated non financial entities

Where a reporting entity other than a financial institution enters into a transaction with a client, it shall report to the financial intelligence unit if the transaction, in the case of –

(a) a casino, involves an amount equal to or above three thousand United States dollars or its equivalent in Gambian dalasis;

(b) a real estate agent, relates to the buying or selling of real estate for a client under suspicious circumstances;

(c) dealers in precious metals or stones, involves an amount equal to or above fifteen thousand united states dollars or its equivalent in Gambian dalasis;

(d) trust or company service provider, involves preparing or carrying out a transaction on behalf of a client in relation to the following-

(i) acting as a formation agent of legal persons,

(ii) acting as a director or secretary of a company, partner in a partnership or a similar position in relation to other legal persons,

(iii) providing a registered office, business address or accommodation, or correspondence or administrative address for a company, partnership or any other legal person or arrangement,

(iv) acting or arranging for another person to act as a trustee of an express trust, or

(v) acting or arranging for another to act as a nominee shareholder for another person;

(e) accountants, lawyers, notary publics or other independent legal professionals, relates to-

(i) buying and selling of real estate,

(ii) managing client money,

(iii) managing bank savings or securities accounts,

(iv) the organisation of contributions for the creation, operation or management of companies or the buying and selling of business entities,

(v) acting as or arranging for another person to act as a director or secretary of a company, a partner in a partnership or in a similar position in relation to other legal persons,

(vi) providing a registered business office address or accommodation, or a correspondence or administrative address for a legal person, or

(vii) acting as or arranging for another person to act as a Trustee of an express trust or nominee shareholder for another person.

42. Duty of operators of casinos and gambling establishment

(1) The supervisory authority for casinos and gambling establishments shall not issue or renew a licence for the operation of a casino or gambling establishment unless the applicant provides proof of the lawful origin of the capital for

the intended operation or in the case of a renewal, the origin of its additional capital, if any, to the supervisory authority.

(2) An operator of a casino or gambling establishment shall-

- (a) verify the identity of a person who buys or exchanges chips or tokens for a sum exceeding ten thousand dalasis, by requesting the person to present an authentic document bearing the picture, name and address of the person;
- (b) keep records of gambling transactions in chronological order in a register indicating-
 - (i) the nature and amount of currency involved in each transaction, and
 - (ii) the full name and address of the person in a register in a form prescribed by the Financial Intelligence Unit; and
- (c) preserve the records for at least five years after the last recorded transaction in the register.

(2) A person who contravenes sub-section (2) commits an offence and is liable on conviction to a fine not exceeding ten thousand dalasis or imprisonment not exceeding two years or to both the fine and imprisonment.

43. Duties of a reporting entity

A reporting entity shall-

- (a) keep a business transaction record of any new unrelated business transaction involving an amount which exceeds five thousand dalasis for a period of five years after the termination of the business transaction so recorded;
- (b) report to the Financial Intelligence Unit about any business transaction where the identity of the person involved, the transaction or any other circumstances concerning that business transaction gives any officer or employee of the reporting entity reasonable grounds to believe that the transaction involves the proceeds of crime;

(c) comply with any instruction issued to by the Financial Intelligence Unit;

(d) permit any person authorised in that behalf by the Financial Intelligence Unit, upon request, to enter into any premises of the reporting entity during normal working hours and inspect the records kept under paragraph (a) and to take any notes or copies of the whole or any part of any such records or to answer any questions of the Financial Intelligence Unit in relation to such records; and

(e) comply with the guidelines and training requirement issued or, as the case may be, provided by the Financial Intelligence Unit in accordance with this Act.

44. Power to obtain search warrant

The Financial Intelligence Unit may on an ex-parte application and after satisfying the Court that-

- (a) there are reasonable grounds for believing that a reporting entity has failed to keep a business transaction record as required by this Act ;
- (b) a reporting entity has failed to report any suspicious business transaction; and
- (c) an officer or employee of a reporting entity is committing, has committed or is about to commit the offence of money laundering or terrorist financing;

obtain a warrant to enter any premises belonging to, in the possession or control of the entity or any officer or employee of such entity and to search the premises and remove any document, material or other article therein as ordered by the Court and specified in the warrant.

45. Power to obtain property tracking and monitoring order

The Financial Intelligence Unit or competent authority may, on an ex parte application and after satisfying the Court that there

are reasonable grounds for believing that a person is committing, has committed or is about to commit a money laundering or terrorist financing offence obtain an order that -

- (a) any document relevant to identifying, locating or quantifying any property any document necessary for the transfer of any property belonging to, or in the possession or under the control of that person be delivered forthwith to the Financial Intelligence Unit or the competent authority, as the case may be; and
- (b) a reporting entity forthwith produce to the Financial Intelligence Unit all information obtained by the institution about any business transaction conducted by or for that person with the reporting entity during such period before or after the date of the order as the Court directs.

46. Mandatory injunction to enforce compliance

- (1) All officers and employees of a reporting entity shall take all reasonable steps to ensure the compliance by that financial institution with its obligation under this Part.
- (2) The Financial Intelligence Unit or competent authority, may upon application to a court and satisfying the court that a reporting entity has failed without reasonable excuse to comply in whole or in part with any obligation imposed by this Act, obtain a mandatory injunction against any or all of the officers or employees of that reporting entity on such terms as the Court deems necessary to enforce compliance with such obligation.
- (3) In granting an injunction under sub-section (2), the Court may order that, should the reporting entity or any officer or employee of that reporting entity fail without reasonable excuse to comply with all or any of the requirements of that injunction, such reporting entity, officer or employee shall pay a financial penalty of not more than twenty million dalasis or to imprisonment for a term of not less than five years or to both such fine and imprisonment.

47. Interference with investigation

A person who knows or ought to know that an investigation into money laundering, terrorist financing or any other conduct has been, is being or is about to be conducted, or that an order has been or may be made requiring the delivery or production of any document shall not-

- (a) divulge that fact or other information to another person, whereby the investigation is likely to be prejudiced; or
- (b) falsify, conceal, destroy or otherwise dispose of, or cause or permit another person to falsify, conceal, destroy or dispose of, material which is or is likely to be relevant to the investigation.

A person who contravenes sub-section (1) commits an offence and is liable on conviction to a fine not exceeding twenty million dalasis or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

PART VII - CURRENCY REPORTING REQUIREMENTS

A. Currency disclosure

A person who leaves or arrives in The Gambia with-

- (a) more than seven thousand, five hundred United States dollars or its equivalent in Gambian dalasis; or
- (b) an amount prescribed by the Bank,

cash or bearer negotiable instruments on his or her person or in his or her luggage shall disclose the cash or bearer negotiable instrument to a customs officer at the point of arrival or departure.

A person who contravenes sub-section (1) commits an offence and is liable on conviction to a fine of not less than ten thousand dalasis;

For purposes of this section, point of entry means-

- (a) the airport;
- (b) sea port; and

(c) land border posts.

(4) Where a person is -

- (a) is about to leave or arrives in, The Gambia; or
- (b) is about to board or leave, or has boarded or left, any ship, aircraft or motor vehicle,

and a customs officer has reasonable grounds to suspect that an offence under sub-section (1) may have been or is being committed, the customs officer may, with such assistance as is reasonable and necessary, and with the use of such force as is necessary, search the person and examine any article which the person has with him or her or in his or her luggage to determine whether the person has in his or her possession, any cash or bearer negotiable instruments in respect of which a disclosure under sub-section (1) is required.

(5) A customs officer and any person assisting such officer, may stop, board and search any ship, aircraft or means of conveyance for the purposes of exercising the powers conferred by sub-section (3) and (4).

(6) Where a customs officer has reasonable grounds to believe that cash or bearer negotiable instruments found in the course of an examination or search conducted pursuant to sub-section (3) or (4) may afford evidence of the commission of an offence under this section, a criminal conduct, a money laundering offence or an offence of financing of terrorism, the officer may seize the cash or bearer negotiable instruments.

(7) A customs officer who seizes cash and bearer negotiable instrument under sub-section (6) shall immediately report such seizure to the Financial Intelligence Unit.

49. Seizure of cash or bearer negotiable instruments

An authorised officer may seize and detain any cash or bearer negotiable instrument being imported into or exported from The Gambia in any form or manner if the authorised officer has reasonable grounds to suspect that it is-

- (a) derived from a criminal conduct, a money laundering offence or an offence of financing of terrorism; or

(b) intended by any person for use in the commission of a criminal conduct or a money laundering offence or an offence of financing of terrorism.

50. Retention and release of seized cash or bearer negotiable instruments

(1) Cash or negotiable bearer instruments seized under section 49 shall not be detained for more than ten working days after seizure, unless the Court grants an order of continued detention for a period not exceeding three months from the date of seizure, upon being satisfied that-

- (a) there are reasonable grounds to suspect that it was derived from a criminal conduct, a money laundering offence or an offence of financing of terrorism, or is intended by any person for use in the commission of such an offence; and
- (b) its continued detention is justified while its origin or derivation is further investigated.

(2) The court may after a hearing with notice to all parties concerned, order the continued detention of the cash or negotiable bearer instruments if satisfied of the matters mentioned in sub-section (1), for total period not exceeding two years from the date of the order.

(3) Subject to sub-section (5), cash and negotiable bearer instruments detained under this section shall be released in whole or in part to the person from whom it was seized or to other persons claiming an interest in the cash or negotiable bearer instrument-

- (a) by order of a Court that its continued detention is no longer justified, upon application by or on behalf of that person and after considering any views of the competent authority to the contrary; or
- (b) by an authorised officer, if satisfied that its continued detention is no longer justified.

(4) Where the seized cash or bearer negotiable instruments have not been claimed by any person within two years of it

being seized or detained, an authorised officer may make an application to the Court that such cash or bearer negotiable instrument be forfeited to the State.

(5) Cash or bearer negotiable instruments detained under this section shall not be released where-

- (a) an application is made under this Act for the forfeiture of the whole or any part of the currency, pending the determination of its liability to forfeiture; or
- (b) proceedings are instituted in The Gambia or elsewhere against any person for an offence with which the currency is connected.

unless the proceedings relating to the relevant application or the proceedings for the offence as the case may be, have been concluded.

PART VIII - RESTRAINT, SEIZURE AND FOR-FEITURE OF ASSETS IN RELATION TO MONEY LAUNDERING AND FINANCING OF TERRORISM

51. Restraint of property

(1) Where a competent authority investigating a criminal conduct, a money laundering offence or a financing of terrorism offence has reasonable grounds to believe that any money or property relating to the criminal conduct, money laundering offence or financing of terrorism offence is held or is under the control of any person, the competent authority may apply to the court in accordance with sub-section (2) for a restraint order prohibiting the person from disposing or otherwise dealing with that property except in such manner as may be specified in the order.

(2) The application under sub-section (1) shall be made *ex-parte*, in writing and accompanied by an affidavit.

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

(4) The court may, in granting an order under sub-section (3) give directions as to-

- (a) the effective period of the order,
- (b) the appointment of a trustee or receiver for the proper administration of the money or property during the effective period of the order, and
- (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 or payment of the just debts incurred by the person affected by the restraint order prior to the order.

(5) The power of administration under sub-section 4(b) includes-

- (a) in the case of perishable or rapidly depreciating property, the power to sell that property including stocks and bonds; and
- (b) a requirement that the person affected by the restraint order under sub-sections (1) and (3) shall apply to Court for a disposal order before that person disposes of any property referred to under this section.

(6) In making an order in respect of money or property held 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 conducted, including that of the person's dependants; and
- (b) reasonable expenses of that person in defending any criminal charge or any other proceedings under this Act.

(7) 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.

(8) An order made under sub-section (3) shall cease to have

effect at the end of six months following the time the order was made if the person against whom such order was made has not been charged with a criminal conduct, money laundering or financing of terrorism offence within the period.

(9) The Government is not liable for any damages or costs arising directly or indirectly from the making of an order under sub-section (3) unless it can be proved that the application for the order was not made in good faith.

52. Service of restraining order

A copy of a restraining order shall be served on a person affected by the order in such manner as the Court directs or as may be prescribed by rules of court.

53. Registration of restraining order

(1) A copy of a restraining order which affects land shall be registered with the Registrar General's office.

(2) A restraining order shall be of no effect with respect to registered land unless it is registered as a charge.

(3) Where particulars of a restraining order are registered, a person who subsequently deals with the property shall be deemed to have notice of the order at the time of the dealing.

54. Contravention of restraining order

(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 and is liable on conviction to-

- (a) a fine equivalent to the value of the property;
- (b) imprisonment for a period of two years or both, in the case of a natural person; and
- (b) revocation of licence 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 disposal or dealing was not for sufficient consideration or not in favour of a person who acted in good faith and without notice, the competent authority may apply to the Court that made the restraining order for an order that the disposal or dealing be set aside.

(3) Where the competent authority makes an application under sub-section (2) in relation to a disposal or dealing, the Court may set aside the disposal or dealing as from the day-

- (a) on which the disposal or dealing took place; or
- (b) of the order and declare the rights of any person who acquired interests in the property on or after the day on which the disposal or dealing took place, and before the day of the order under this sub-section.

55. Extension of restraining orders

(1) A competent authority may apply to the Court for an extension of the period of the operation of the order.

(2) Where the competent authority makes an application under sub-section (1), the Court may extend the operation of a restraining order for a specified period if it is satisfied that a confiscation order may be made in respect of the property or part thereof or that a pecuniary penalty order may be made against the person.

56. Seizure of property subject to a restraining order

(1) In order to prevent property subject to a restraining order from being disposed of or removed contrary to that order, any police officer or authorised officer of a competent authority may seize such property if he or she has reasonable grounds to believe that such property is likely to be so disposed of or removed.

(2) Property seized under sub-section (1) shall be dealt with in accordance with the directions of the court which made the relevant restraining order.

57. Forfeiture or confiscation of property

(1) Where a person is convicted of a criminal conduct, a money

laundering or financing of terrorism offence, and the court is satisfied that the person derived, obtained or realised property directly or indirectly from the commission of such offence, the court may, on the application of the competent authority or a person authorised by the competent authority, make an order for the forfeiture or confiscation of that property.

(2) Property subject to a forfeiture or confiscation order under sub-section (1) include -

- (a) the assets laundered or terrorist property;
- (b) the proceeds, income, and gains from such assets;
- (c) the assets intended to be laundered;
- (d) assets used to facilitate or commit the criminal conduct; and
- (e) instruments used or intended to be used in the commission of the offence, money laundering or financing of terrorism.

(3) Where the Court is satisfied that a forfeiture or confiscation order should be made in respect of the property of a person convicted of a criminal conduct, money laundering or financing of terrorism but the specified property, instrument 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 good faith under a lawful transaction;
- (c) is located outside the country;
- (d) has been substantially diminished in value or rendered worthless; or
- (e) has been co-mingled with other property that cannot be divided without difficulty,

the Court may order the person to pay to the State an amount equal to the value of the property, part of or interest in the

property.

(4) Where property subject to forfeiture or confiscation has been co-mingled with property acquired legitimately, the court shall in the forfeiture or confiscation order, declare the nature, extent and value of the property which is to be forfeited in connection with the criminal conduct, money laundering or financing of terrorism.

(5) The Court shall not make an order of forfeiture or confiscation under this section in respect of any property where the Court is satisfied that the person, other than the person who was convicted, who is in possession of the property or purports to be its owner acquired the property-

- (a) in good faith; and
- (b) for sufficient consideration,

without knowing and in circumstances that do not arouse reasonable suspicion that the property was, at the time of its acquisition, derived, obtained or realised from the commission of the criminal conduct, money laundering or financing of terrorism offence.

(6) A person who claims an interest in any property in respect of which an application for forfeiture or confiscation has been made may-

- (a) before the court makes an order for forfeiture or confiscation; or
- (b) within thirty days after the court has made an order of forfeiture or confiscation,

apply to the court against the granting of the order or for a declaration of the nature, extent and value of his or her interest.

(7) A person who makes an application under sub-section (5) or (6) shall give notice to a competent authority and the competent authority shall be a party to a proceedings.

(8) Where an application has been made under sub-section (1), the court may for the purpose of tracing the property or preventing the circumvention of an order of forfeiture or

confiscation 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 or restraining order;
- (b) a production order;
- (c) an order that property be transferred to and held by a named person pending the determination of the application.

(9) If the Court is satisfied that a person referred to in sub-section (5)-

- (a) has an interest in the property which is the subject of the application;
- (b) has exercised reasonable care to ensure that the property is not the proceeds of the 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 person's interest shall not be affected by the order and declare the nature and extent of the interest of that person.

(10) An order of forfeiture or confiscation shall cease to have effect where -

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

(11) The competent authority shall, as soon as is practicable after the quashing of the conviction, give notice to any person the competent authority has reason to believe may have an interest in any money or property in respect of which the order of forfeiture or confiscation was made immediately before the order was made or to any other person or class of persons whom the court considers appropriate.

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

- (a) 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 sub-section (1); or
- (b) 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 sub-section (1),

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

(13) In determining whether or not any property is derived from a criminal conduct, money laundering or financing of terrorism offence, the court shall apply the standard of proof required in civil proceedings.

(14) The powers contained in this section are exercisable in relation to any property whether or not any proceedings have been brought for an offence committed in connection with the property.

58. Effect of forfeiture or confiscation order

(1) Subject to sub-section (2), where a Court makes a forfeiture or confiscation order against any property, the property vests absolutely in the State by virtue of the order.

(2) Where property ordered to be forfeited or confiscated is registrable property-

- (a) the property vests in the State in equity but not in law until the registration requirements have been complied with;
- (b) the State is entitled to be registered as owner of the property; and

- (c) a competent authority has power on behalf of the State to do or authorise the doing of anything necessary or convenient to obtain the registration of the State as owner, including the execution of any instrument to be executed by a person transferring an interest in property of that kind.

(3) Where the Court makes a forfeiture or confiscation order against property, 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 State, before the relevant appeal date.

(4) 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 in accordance with the direction of the competent authority.

(5) Where the competent authority applies under this section for a forfeiture or confiscation order against any property that is the proceeds of criminal conduct, 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 Gambia containing such particulars and for the period the Court may require.

(6) For purposes of this section-

"registrable property" means property, the title to which is passed by registration in accordance with the law;

"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 or confiscation order expires without an appeal

- having been lodged, whichever is the later; and
- (b) where an appeal against a person's conviction or against a forfeiture or confiscation 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.

59. **Forfeiture or confiscation where a person dies or absconds**

(1) A competent authority shall apply to the Court for a forfeiture or confiscation order in respect of proceeds of crime or instruments intended for or used in the commission of an offence if the person from whom the property was seized dies or absconds and-

- (a) there is information alleging a criminal conduct, money laundering or financing of terrorism by the person, and
- (b) a warrant for the arrest of that person is issued in furtherance of that information.

(2) A person is considered to have absconded if reasonable attempts to arrest that person pursuant to the warrant are unsuccessful six months after the date of issue of the warrant.

(3) Where the competent authority applies for a forfeiture or confiscation order against property or instruments under this section, the Court shall, before hearing the application for the forfeiture or confiscation -

- (a) require notice of the application to be given to the person who appears in the opinion of the Court to have an interest in the property; and
- (b) direct notice of the application to be published in the *Gazette* or a newspaper of national circulation containing the particulars in three publications within three months.

(4) The provision on protection of third party interests under this Act applies in relation to forfeiture or confiscation of tainted property of a deceased accused person.

60. Voidable transfers

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

61. Competent authority to obtain property tracking or monitoring order

(1) For the purpose of determining whether any property belongs to, is in the possession of or under the control of any person, the court may on application by a competent authority and if satisfied that there are reasonable grounds for so doing, order that—

- (a) any document relevant to identify, locate or quantify property of that person or necessary to identify the transfer of property to that person be delivered forthwith to the competent authority; and
- (b) a reporting entity produce to the competent authority all information obtained by the institution about any business transaction conducted by or for that person with the institution during such period before or after the date of the order as the court directs;

(2) On being satisfied that any person has failed to comply with, is delaying or is otherwise obstructing an order made in accordance with sub-section (1), the competent authority may enter the premises of that person, search the premises and remove any material document or article for the purposes of executing the order.

(3) Where a person produces or delivers a document pursuant to an order under this section the production or delivery of the document or any information, document or article obtained as a direct or indirect consequence of the production or delivery of the document, is not admissible against the person in any proceedings except a proceeding for an offence of failing to comply with an order of a court.

62. Offences in relation to property tracking

A person commits an offence if he or she—

- (a) falsifies, conceals, destroys, disposes of, or causes or permits the falsification, concealment, destruction or disposal of any document or material which is or is likely to be relevant to the execution of any order made in accordance with section 57; and
- (b) discloses the existence or operation of the order to any person except an officer of a law enforcement authority named in the order, for the purposes of ensuring that the order is complied with or a legal practitioner, for the purpose of obtaining legal advice or representation in relation to the order.

63. Limitation on forfeiture and confiscation of property

The provisions on forfeiture and confiscation of property shall apply only to property coming into the possession or under the control of a person after the commencement of this Act.

64. Appeals

Nothing in this Part shall prevent the operation of an appeal normally available against orders made by the Court.

PART IX - PECUNIARY PENALTY ORDERS

65. Pecuniary penalty order on conviction

(1) Subject to sub-section (2), where a competent authority applies to the Court for a pecuniary penalty order against a person in respect of that person's conviction for a criminal conduct, the Court shall, if it is satisfied that the person has benefited from that criminal conduct, order him or her to pay to the State an amount equal to the value of the benefit from the criminal conduct or such lesser amount as the Court certifies in accordance with section 69 to be the amount that might be realized at the time the pecuniary penalty order is made.

(2) 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 conviction has expired without such appeal having been lodged; and

- (b) where an appeal against conviction has been lodged, until the appeal lapses in accordance with the rules of court or is finally determined, whichever is the later date.

66. Rules for determining benefit and assessing value

(1) Where a person obtains property as a result of or in connection with a criminal conduct or the commission of an offence, that 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 a criminal conduct or the commission of an offence, his or her reward or advantage shall be deemed to be a sum of money equal to the value of the reward or advantage so derived.

(3) In determining whether a person has benefited from a criminal conduct or the commission of an offence or from that offence taken together with other offences, the court shall unless the contrary is proved, deem -

- (a) all property appearing to be held by the person on the day on which the application is made and held by the person at any time-
 - (i) within the period between the day the criminal conduct or offence, or the earliest criminal conduct or offence was committed and the day on which the application is made, or
 - (ii) within the period of six 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 criminal conduct 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 that person as a result of or in connection with, the commission of that criminal conduct or offence or money laundering or terrorist financing 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 criminal conduct or the commission by the person of money laundering or financing of terrorism offences as property received by that person free of any interest.

(4) Where a pecuniary penalty order has been previously made against a person, in assessing the value of any benefit derived by that person from the commission of the criminal conduct or offence, the Court shall omit 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 criminal conduct or commission of the offence exceeded the value of the person's property before the criminal conduct or commission of the offence, then the Court shall, subject to sub-section (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 sub-section (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 criminal conduct or offence, sub-section (5) does not apply to the excess or, as the case may be, that part.

67. Statements relating to benefits from commission of criminal conduct or offence

(1) Where-

- (a) a person has been convicted of a criminal conduct, money laundering or financing of terrorism offence and a competent authority tenders to the Court a statement as to any matter relevant to-

- (i) determining whether the person has benefited from the criminal conduct or offence or from any other criminal conduct or offence of which that person is convicted in the same proceedings or which is taken into account in determining that person's sentence, or
- (ii) an assessment of the value of the person's benefit from the criminal conduct or offence or any other criminal conduct or offence of which the person is convicted in the same proceedings or which is taken into account; and

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

the Court may, for the purposes of 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 sub-section (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 he or she accepts each allegation in the statement and, so far as the person does not accept any allegation, to indicate any matters he or she proposes to reply on.

(3) Where the person fails in any respect to comply with a requirement under sub-section (2), he or she may be treated for the purposes of this section as having accepted every allegation in the statement except-

- (a) an allegation in respect of which the person complied with the requirement; and
- (b) an allegation that the person has benefited from the criminal conduct or offence or that any

property or advantage was obtained by him or her as a result of or in connection with the commission of the criminal conduct or offence.

(4) Where-

- (a) the person tenders to the Court a statement on any matters relevant to determining the amount that might be realized at the time the pecuniary penalty order is made; and
- (b) the competent authority accepts to any extent any allegation in the statement,

the Court may, for the purposes of that determination, treat the acceptance of the competent authority as conclusive of the matters to which it relates.

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

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

(6) An acceptance by a person under this section that he or she received any benefits as a result of a criminal conduct or the commission of an offence is admissible in any proceedings for any offence.

68. Amount recovered under pecuniary penalty order

(1) Subject to sub-section (2), the amount to be recovered in a person's case under a pecuniary penalty order shall be the amount which the Court assesses to be the value of the person's benefit from the criminal conduct or offence, or if more than one, all the criminal conduct or offences in respect of which the order may be made.

(2) Where the Court is satisfied as to any matter relevant for determining the amount which might be realized at the time the pecuniary penalty order is made, whether by acceptance under section 67 or otherwise, the Court -

- (a) may issue a certificate giving the Court's opinion as to the matters concerned; and

(b) 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.

69. Variation of pecuniary penalty order

Where-

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

a competent authority 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 or confiscated and the Court may, if it considers it appropriate to do so, vary the order accordingly.

70. Enforcement of pecuniary penalty orders

Where the Court orders a person to pay an amount under a pecuniary penalty order and he or she fails to comply with the pecuniary penalty order, he or she is liable to imprisonment for a term of two years.

71. Discharge of pecuniary penalty orders

Any property confiscated as a result of an investigation or conviction for a money laundering or financing of terrorism

offence shall be vested in the State subject to the following-

- (a) the State may decide to allocate part of the assets confiscated to any agency engaged in the fight against money laundering or the financing of terrorism; and
- (b) where asset has been forfeited or confiscated as a result of joint investigation with a foreign investigation agency, the asset shall be shared on a mutually agreed basis with the foreign investigating agency.

PART X – MUTUAL ASSISTANCE IN RELATION TO MONEY LAUNDERING AND FINANCING OF TERRORISM

72. Mutual legal assistance

(1) Where for the purpose of investigation or prosecution of a criminal conduct, money laundering or financing of terrorism offence or for the making or execution of any orders or directions made under this Act in respect of these offences, any assistance is required from a foreign country, the Attorney-General may request mutual legal assistance from that foreign country as if such investigation, prosecution, or order is a criminal matter under the laws in The Gambia.

(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 Gambia may provide such assistance as if such investigation, prosecution, making or execution is a criminal matter under the laws of The Gambia.

(3) For purposes of this section "foreign country" has the same meaning as "requesting state".

73. Power to obtain search warrant

A competent authority, upon application and production to the Court of a request, may obtain a search warrant-

- (a) to enter any premises belonging to or in the possession or control of any person named in the warrant and to search the premises;

- (b) to search the person of any person named in the warrant; and
- (c) remove any document material or other item for the purpose of executing the request as directed in the warrant.

74. Property tracking for foreign state

A competent authority, upon application and production to the Court of a request, may obtain an order that-

- (a) the document relevant to identify, locate or quantify any property or identify a document necessary for the transfer of any property belonging to, in the possession or under the control of any person named in the request be delivered to the competent authority; and
- (b) a reporting entity delivers to the competent authority all information obtained by the reporting entity about a business transaction conducted by or for a person named in the request with the reporting entity during such period before or after the date of the order as the court may direct.

75. Freezing and forfeiture of property in international cooperation

(1) A competent authority may on application to the Court for the freezing or forfeiture of property in the possession or under the control of a person named in the request obtain an order-

- (a) freezing the property belonging to or in the possession or the control of the person named in the request for such period as is indicated in the order; and
- (b) giving directions as to the disposal of the property for the purpose of-
 - (i) determining any dispute as to the ownership

- (ii) of, or other interest in the property or any part of the property,
- (ii) its proper administration during that period of freezing,
- (iii) the payment of debts, incurred in good faith, due to creditors prior to the request,
- (iv) the payment of moneys to that person and his or her family,
- (v) the payment of costs and other expense to defend any criminal proceeding referred to in the request, or
- (vi) forfeiting the property of or in the possession or under the control of any person named in the request.

(2) This section shall apply only to property coming into the possession or under the control of a person after the commencement of this Act.

76. Request to be accompanied by evidence order

(1) A competent authority may upon application to the Court and upon production of a request accompanied by an order issued by a Court of the requesting State directed to any person within the jurisdiction of the Court to deliver himself or herself or any document or material in his possession to the jurisdiction of the Court of the requesting State for the purpose of giving evidence in specified proceedings in that Court, obtain an order directed to that person on the same terms as in the order accompanying the request.

(2) Upon being served with an order issued in accordance with sub-section (1), the person served shall, for the purposes of the order surrender himself or herself to the jurisdiction of the Court or the jurisdiction of the Court of the requesting State, in accordance with the directions in the order.

(3) If a person served with an order issued in accordance with sub-section (1) elects to deliver himself or herself to the jurisdiction of the Court of the requesting State and fails to comply with any direction in the order, he or she shall be

deemed immediately to have delivered himself or herself to the jurisdiction of the Court as provided in sub-section (2).

(4) The Court shall conduct such proceedings as are necessary to take the evidence of any person delivering himself or herself to the jurisdiction of the Court pursuant to sub-section (2) and the evidence shall subsequently be transmitted by the competent authority to the foreign state.

77. Limitations on compliance with request

A competent authority may refuse to comply with a request if-

- (a) the action sought by the request is contrary to the Constitution of The Gambia; or
- (b) the execution of the request is likely to be prejudicial to the national interest of The Gambia; and
- (c) under the law of the requesting State, the grounds for refusing to comply with a request from another State is substantially different from paragraph (a) or (b).

78. Request to other states

A competent authority may issue to a foreign state a request accompanied by an order issued in accordance with this Act.

79. Evidence against a foreign resident

A competent authority upon application to the Court may, in respect of any proceedings relating to money laundering, terrorist financing or other criminal conduct, apply for an order directed to any foreign person resident in a foreign State to deliver himself or herself or any document or material in his or her possession to the Court or, subject to the approval of the foreign state, to the jurisdiction of the Court of the foreign state for the purpose of giving evidence in relation to those proceedings.

80. Evidence pursuant to request

Evidence taken pursuant to a request in any proceedings in a

Court of a foreign state shall be received as *prima facie* evidence in any request proceedings to which such evidence request relates.

81. Form of requests

A request shall be in writing, dated and signed by or on behalf of the person making request.

82. Contents of requests

A request shall-

- (a) confirm either that an investigation or prosecution is being conducted into or for a suspected money laundering, financing of terrorism or other criminal conduct or that a person has been convicted of any of these offences;
- (b) state the grounds on which any person is being investigated or prosecuted for an offence referred to in paragraph (a) or give details of the conviction of the person referred to in paragraph (a);
- (c) give particulars sufficient to identify any person referred to in paragraph (b);
- (d) give particulars sufficient to identify any reporting entity or other person believed to have information, documents or materials relevant to the investigation or prosecution referred to in paragraph (a);
- (e) request the competent authority to whom the request is addressed to obtain from a reporting entity or other person referred to in paragraph (d) all and any information, documents or material relevant to the investigation or prosecution referred to in paragraph (a);
- (f) specify the manner in which and to whom any information, documents or materials obtained, pursuant to the request is to be delivered;
- (g) state whether or not a freezing or forfeiture order is required and identify the property to be the subject of such an order; and

- (h) contain such other information as may assist the execution of the request.

83. Requests for forfeiture

A request for forfeiture shall have attached to it, a copy of the forfeiture order, the final order to the Court and a statement signed by a Judge of that Court to the effect that no further appeal against such order can be made.

84. Requests not to be invalidated

A request shall not be invalidated for the purpose of any legal proceedings by virtue of any failure to comply with section 82 if a competent authority is satisfied that the request is sufficient to enable it properly execute the request.

85. Interference with mutual legal assistance

(1) A person who knows or has reasonable grounds for believing that a document or material is or is likely to be relevant to the execution of any order made in accordance with this Part shall not falsify, conceal, destroy or otherwise dispose of or cause or permit the falsification, concealment, destruction or disposal of that document or material.

(2) A person who knows or has reasonable grounds for believing that an investigation into money laundering, financing of terrorism or a criminal conduct has been, is being or is about to be made, or that an order has been made or may be made requiring the delivery or production of any document under this Part, shall not divulge that fact or other information to another whereby the investigation is likely to be prejudiced.

(3) A person who contravenes sub-section (1) or (2) commits an offence and is liable on conviction to a fine not exceeding twenty million dalasis or to imprisonment of not less than five years or to both the fine and imprisonment.

86. Asset sharing

Where the Minister considers it appropriate either because an international arrangement so requires or permits or in the interest of comity, he or she may order that the whole or any part of any property forfeited under this Part, or the value

thereof be given or remitted to the requesting state.

PART XI - MISCELLANEOUS PROVISIONS

87. Extradition

For purposes of this Act, money laundering and financing of terrorism are extraditable offences.

88. Offence by body of persons

(1) Where an offence under this Act is committed by a body of persons and-

(a) the body of persons is a body corporate, every director or officer of that body shall be deemed to have committed that offence; or

(b) the body of persons is a partnership firm, every partner of that firm shall be deemed to have committed that offence.

(2) A person referred to in sub-section (1) shall not be deemed to have committed an offence under this Act if he or she proves that the offence was committed without his or her knowledge or that he or she exercised all due diligence to prevent the commission of the offence.

(3) A person who contravenes or fails to comply with any requirement of this Act for which no penalty is provided shall be punishable by a fine not exceeding twenty million dalasis or by imprisonment for a term not exceeding five years or by both such fine and imprisonment.

(4) The Court may, in addition to any other penalty, ban any person convicted of an offence under this Act from providing the service, pursuing the business or profession which provided the opportunity for the commission of the offence, permanently or for a minimum period of five years.

89. Liability of employers and principals

Any act done or omitted by a person, an employee or agent shall, for the purposes of this Act, be treated as done or omitted by that person's employer or principal, if it was done or

not done 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 agent acted within the terms of the agent's agency or contract.

90. Liability of directors, controllers or officers of bodies corporate

Where a body corporate is convicted of an offence under this Act or any regulations made under this Act, every director, controller or officer concerned in the management of the body corporate shall be deemed to have committed the offence if it is proved that the act or omission that constituted the offence took place with that person's knowledge, authority, permission, or consent.

91. The National Co-ordinating Committee

(1) A National Co-ordinating Committee consisting of anti-money laundering and combating the financing of terrorism experts is hereby established.

(2) The Committee consists of the-

- (a) Permanent Secretary of the Ministry of Finance and Economic Affairs;
- (b) Solicitor General and Legal Secretary;
- (c) Permanent Secretary of the Ministry of the Interior;
- (d) First Deputy Governor of the Central Bank of The Gambia;
- (e) Director General of the National Drug Enforcement Agency;
- (f) Inspector General of Police;
- (g) Commissioner of Customs;
- (h) Director General of Immigration;
- (i) Director General of the National Intelligent Agency;

- (j) representative of self regulatory organizations; and
- (k) representative of Designated Non Financial Businesses and Professions.

(3) The Minister shall appoint the Chairperson and members of the Committee.

(4) The Committee shall be responsible for co-ordinating and fostering cooperation among key stakeholders on all aspects related to the implementation of this Act.

92. Regulations

The Minister may make Regulations -

- (a) for or with respect to any matter that is required or permitted to be prescribed by this Act; and
- (b) necessary for the effective implementation of this Act.

93. Repeal and savings

(1) The Money Laundering Act is repealed.
[cap. 13.03]

(2) Notwithstanding sub-section(1), all orders, directions, notifications, decisions and other executive or administrative actions made, given or done under the repealed Act shall continue in force until amended or repealed in accordance with this Act.

SCHEDULE I (Section 2)

PART I - ACTIVITIES OF FINANCIAL INSTITUTIONS

-Banking business as defined in the Banking law applicable in The Gambia;

-Financial institutions include entities that provide the following services-

- (a) acceptance of deposits and other repayable funds from the public, lending, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions;
- (b) financial leasing;
- (c) money transfer services;
- (d) issuing and administering means of payment (such as credit cards, travellers' cheques and bankers' drafts and electronic money and any other means of payment as approved by the authority);
- (e) financial guarantees and commitments;
- (f) participation in securities issues and the provision of services related to such issues;
- (g) money-brokering;
- (h) safekeeping and administration of cash or liquid securities on behalf of other persons;

- (i) safe custody services;
- (j) investing, administering or managing funds or money on behalf of other persons
- (k) underwriting and placement of life insurance and other investment related insurance;
- (l) foreign exchange business; and
- (m) financial advisory service.

PART II - REPORTING ENTITIES

Reporting entities include financial institutions and the following-

- (a) casinos (including internet casinos);
- (b) lawyers, notaries and other independent legal professionals;
- (c) accountants when they prepare for or carry out transactions for their client concerning the-
 - (i) buying and selling of real estate,
 - (ii) managing 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, or
 - (v) creation, operation or management of legal persons or arrangements, and buying and selling of business entities;
- (d) real estate agents;
- (e) dealers in precious metals;

- (f) dealers in precious stones; and
- (g) trust and company service providers.


Schedule II (section 2)

PREDICATE OFFENCES

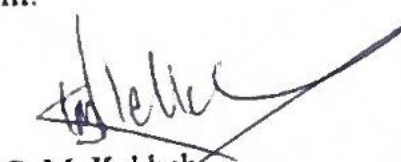
1. participation in an organised criminal group and racketeering;
2. terrorism and terrorist financing;
3. trafficking in humans and migrant smuggling;
4. sexual exploitation;
5. illicit trafficking in narcotic drugs and psychotropic substances;
6. illicit arms trafficking;
7. illicit trafficking in stolen goods;
8. corruption and bribery;
9. fraud;
10. currency counterfeiting;
11. counterfeiting and piracy of products;
12. environmental crime;
13. murder and grievous bodily harm;
14. kidnapping, illegal restraint and hostage taking;

15. robbery or theft;
16. smuggling;
17. extortion;
18. forgery;
19. piracy; or
20. insider trading and market manipulation.

PASSED in the National Assembly this 27th day of June
in the year of Our Lord Two Thousand and Twelve.


D. C. M. Kebbeh
Clerk of the National Assembly

THIS PRINTED IMPRESSION has been carefully compared by me
with the Bill which has passed in the National Assembly, and found
by me to be a true and correct copy of the said Bill.


D. C. M. Kebbeh
Clerk of the National Assembly