

(ACT NO. 6 of 2010)

MONEY LAUNDERING AND PROCEEDS OF CRIME (AMENDMENT) BILL 2010

(NAME OF BILL)

(BILL NO. 8 OF 2010)

CONTENTS:

Bill
Objects and Reasons
Notice of Presentation
Covering letter from Minister to Clerk to Parliament
(Authorisation from Minister of Finance under s.60 of Constitution)

FROM:

Attorney General's Chambers

[Signature] 9/04/10

TO:

Minister

[Signature]
(for signing Objects & Reasons, Notice of Presentation and covering letter to Clerk)

TO:

Minister of Finance

(for signing of letter to Clerk signifying Cabinet approval under s.60 of Constitution)

TO:

Clerk to National Parliament
(for certificate by Speaker)

[Signature]
9/04/10

TO:

Attorney General's Chambers
(for printing)

[Signature]
9/04/10

TO:

Clerk to National Parliament
(for reference during 1st, 2nd and 3rd Readings)
(Date passed... 15/4/10.... Act No. 6/10.)

[Signature] 15/4
15/4

TO:

Attorney General's Chambers
(for checking before Assent)

[Signature]
9/04/10

TO:

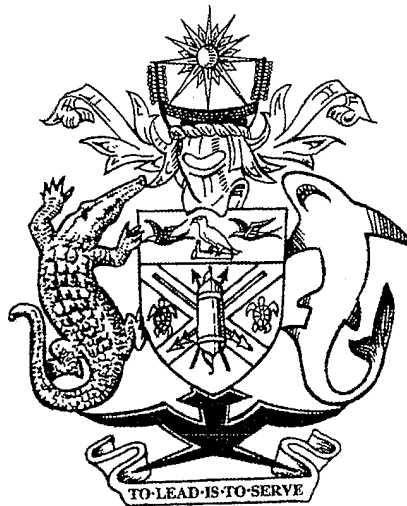
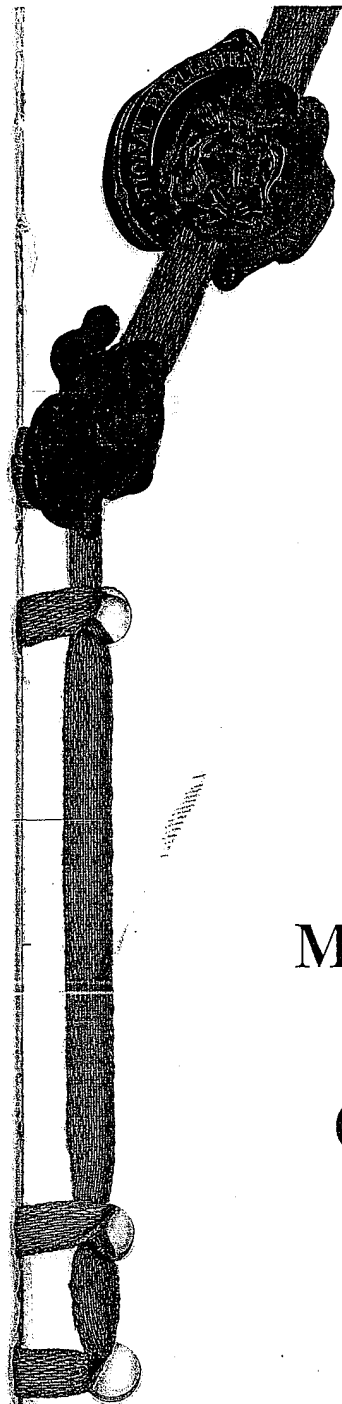
Governor-General
(for Assent)

F.O. Kabui
21/4/10.

TO:

Clerk to National Parliament
(for distribution:

[Signature] 22/4/10
1 copy Attorney General's Chambers
1 copy Ministry
1 copy Parliament Office



**MONEY LAUNDERING AND
PROCEEDS OF CRIME
(AMENDMENT) ACT 2010**

(NO. 6 OF 2010)



MONEY LAUNDERING AND PROCEEDS OF CRIME (AMENDMENT) ACT 2010

(BILL NO. 6 OF 2010)

PASSED by the National Parliament this 15th day of April 2010.

(This printed impression has been carefully compared by me with the Bill passed by Parliament and found by me to be a true copy of the Bill)

Taeasi Sanga

Taeasi Sanga (Mrs)

CLERK TO NATIONAL PARLIAMENT

ASSENTED to in Her Majesty's name and on Her Majesty's behalf this 21st day of April 2010.

F. O. Kabui

Sir Frank Utu Ofagioro Kabui

GOVERNOR-GENERAL

Date of Commencement: (See section 1)

AN ACT TO AMEND THE MONEY LAUNDERING AND PROCEEDS OF CRIME ACT 2002

ENACTED by the National Parliament of Solomon Islands.

ARRANGEMENT OF SECTIONS

1. Short title and commencement
2. Section 2 of the principal Act repealed and substituted
3. Insertion of new Part IA and repealing sections 11 and 11A and new sections added
4. Replacing of the heading of Part II and repealing section 12 and new sections added
5. Repeal of section 13 and new sections added
6. Repeal of section 14 and new sections added
7. Section 17 repealed and substituted
8. Section 18 amended
9. Section 19 repealed
10. Section 20 amended
11. Section 21 amended
12. Section 22 amended
13. Section 24 amended
14. Section 28 amended
15. Section 28A added
16. Section 32 amended
17. Section 33 amended
18. Section 39 amended
19. Section 40 amended
20. Section 49 amended
21. Section 50 amended
22. Section 51 amended

23. Sections 53 and 54 amended
24. Section 55 amended
25. Section 56 amended
26. Section 61 amended
27. Section 62 amended
28. Section 70 amended
29. Section 71 repealed
30. Section 72 amended
31. Section 72A added
32. Section 77 amended
33. Section 78 amended
34. Section 80 added

MONEY LAUNDERING AND PROCEEDS OF CRIME (AMENDMENT) ACT 2010

Short title and
commencement

1. This Act may be cited as the Money Laundering and Proceeds of Crime (Amendment) Act 2010 and commences on a date appointed by the Minister, by notice in the *Gazette*.

Section 2 of the
principal Act
repealed and
substituted

2. Section 2 of the principal Act is repealed and the following section 2 is substituted –

"Interpretation

2. (1) In this Act, unless the context otherwise requires –

"account" means any facility or arrangement by which a financial institution does any of the following –

- (a) accepts deposits of currency;
- (b) allows withdrawals of currency;
- (c) pays cheques or payment orders drawn on the financial institution, or collects cheques or payment orders on behalf of a person other than the financial institution;
- (d) provides a safety deposit box or any other form of safe deposit;

"appeal" includes proceedings by way of discharging or setting aside a judgment, and an application for a new trial or for stay of execution;

"authorised officer" means a person designated by the Minister as an authorised officer for the purposes of this Act;

"cash" means any coin or paper money that is designated as legal tender in the country of issue and includes any bearer bond, traveller's cheque, postal note or money order;

"cash dealer" means –

- (a) a casino, gambling house or lottery operator (including a person who carries on such a business

through the internet), when its customers engage in financial transactions equal to or above the minimum prescribed amount;

- (b) a real estate agent, when involved in transactions for its client relating to the buying and selling of real estate;
- (c) a dealer in precious metals or in precious stones, when the dealer engages in any cash transaction with a customer equal to or above the minimum prescribed amount;
- (d) an accountant when preparing or carrying out transactions for the client relating to the following activities –
 - (i) buying or selling real estate or businesses;
 - (ii) managing money, securities or other assets;
 - (iii) managing bank, savings or securities accounts;
 - (iv) organising contributions for the creation, operation or management of companies;
 - (v) creating, operating or managing a legal entity or an arrangement;
- (e) a trust or company service provider, which as a business, provides any of the following services—
 - (i) formation or management of a legal entity or an arrangement;
 - (ii) acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership or a similar position in relation to any other legal entity or arrangement;
 - (iii) providing a registered office, business address or accommodation, correspondence or administrative address for a legal entity or arrangement;

- (iv) acting as (or arranging for another person to act as) a trustee of an express trust;
- (v) acting as (or arranging for another person to act as) a nominee shareholder for another person;

“Commission” means the Anti-Money Laundering Commission established by section 11;

“correspondent bank” means a financial institution by which correspondent banking services are provided;

“correspondent banking services” means banking services provided by one financial institution to another financial institution;

“cross-border correspondent banking services” means correspondent banking services provided by a financial institution in one country to a financial institution in another country;

“currency” means the following –

- (a) the coin and paper money of Solomon Islands or of another country that is designated as legal tender and which is customarily used and accepted as a medium of exchange in Solomon Islands or the country of issue;
- (b) monetary instruments that may be exchanged for money, including cheques, travellers’ cheques, money orders, and negotiable instruments in a form in which title passes on delivery;
- (c) precious metals, precious stones, pearls or jewellery;
- (d) currency in electronic form;
- (e) any other prescribed kind of monetary instrument which is found at any place in Solomon Islands;

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

- (a) the person in whose name a transaction or account is arranged, opened or undertaken;
- (b) a signatory to a transaction or account;

- (c) any person to whom a transaction has been assigned or transferred;
- (d) any person who is authorised to conduct a transaction; or
- (e) any other prescribed person;

"data" means any form of representations, in any form, of information or concepts;

"defendant" –

- (a) means a person that is under investigation for a serious offence or has been charged with a serious offence, whether or not the defendant has been convicted of the offence; and
- (b) includes, in the case of proceedings for a restraining order under section 55, a person who is being investigated for or about to be charged with, a serious offence;

"Director" means the Director of the Unit;

"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 meaning for persons qualified to interpret them;
- (c) anything from which sounds, images or writings can be produced, with or without the aid of anything else;
- (d) a map, plan, drawing, photograph or similar thing; or
- (e) an electronic document;

"financial institution" means any entity or person who conducts one or more of the following business activities or operations for or on behalf of a customer –

- (a) banking as defined in the Financial Institutions Act 1998, including acceptance of deposits and other repayable funds from the public;
- (b) lending, including consumer credit, mortgage credit, factoring and financing of commercial transactions;
- (c) financial leasing;
- (d) money transmission services, including—
 - (i) collecting, holding, exchanging or remitting funds or the value of money; or
 - (ii) delivering funds;
- (e) issuing and managing means of payment (such as credit cards, travellers' cheques and bankers' drafts);
- (f) issuing financial guarantees and commitments;
- (g) trading for its own account or for account of customers in money market instruments (such as cheques, bills, certificates of deposit), foreign exchange, financial futures and options, exchange and interest rate and index instruments, commodity futures trading and transferable securities;
- (h) participating in securities issues and the provision of financial services related to such issues;
- (i) money-broking;
- (j) individual and collective portfolio management;
- (k) investing, administering or managing funds or money on behalf of other persons over the minimum prescribed amount;
- (l) safekeeping and administration of cash or liquid securities on behalf of other persons over the minimum prescribed amount;
- (m) safe custody services of currency over the minimum prescribed amount;

- (n) insurance, insurance intermediation, securities dealing or futures broking;
- (o) trustee administration or investment management of a superannuation or provident fund scheme;
- (p) any other business that the Minister may prescribe taking into consideration the interest of the national economy;

and "financial institution" includes the following –

- (aa) the Central Bank of Solomon Islands;
- (bb) a credit institution, as defined under the Financial Institutions Act 1998;

"financing of terrorism offence" means the offence of financing terrorism prescribed under the Counter-Terrorism Act 2009;

"gift" includes any transfer of property by a person ("first person") to another person ("transferee") directly or indirectly –

- (a) after the commission of a serious offence by the first person;
- (b) for a consideration the value of which is significantly less than the value of the consideration provided by the first person; and
- (c) to the extent of the difference between the market value of the property transferred and the consideration provided by the transferee;

"interest", in relation to property, means –

- (a) a legal or equitable estate or interest in the property; or
- (b) a right, power or privilege in connection with the property;

"legal practitioner" means a notary public, attorney, barrister or solicitor when preparing or carrying out transactions for the client relating to the following activities –

- (a) buying or selling real estate or businesses;

- (b) managing money, securities or other assets;
- (c) managing bank, savings or securities accounts;
- (d) organising contributions for the creation, operation or management of companies;
- (e) creating, operating or managing a legal entity or an arrangement;

“minimum prescribed amount” means the amount prescribed under the Currency Declaration Act 2009;

“Minister” means the Minister responsible for this Act;

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

“offence of money laundering” means an offence of money laundering set out in section 17, and “money laundering offence” has the same meaning;

“politically exposed person” means an individual who is or has been entrusted with a prominent public function in Solomon Islands or another country such as Head of State or of government, Minister, judge, a member of legislature, the head of a government department or statutory body and any other prescribed person and includes any spouse, child, brother or sister or parent, brother-in-law, sister-in-law or parent-in-law) or close associate of such person;

“proceeds of crime” –

- (a) means any property or economic advantage derived or realised, directly or indirectly, as a result of or in connection with the commission of an offence irrespective of the identity of the offender and irrespective of whether committed before or after the commencement of this Act; and
- (b) includes, on a proportional basis, property into which any property derived or realised directly or indirectly from the offence was later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived or realised directly or indirectly from such property at any time since the offence;

“property” means –

- (a) currency;
- (b) any kind of asset whether corporeal or incorporeal, moveable or immovable, tangible or intangible, whether situated in Solomon Islands or another country, including any legal document or instrument, including electronic or digital, evidencing title to, or legal or equitable interest in such assets; or
- (c) bank credit, traveller’s cheque, bank cheque, money order, share, securities, bond, draft, letter of credit or other similar property, whether situated in Solomon Islands or another country, including any legal or equitable interest in any such property;

“realisable property” means –

- (a) any property held by a defendant; or
- (b) any property held by a person to whom a defendant has directly or indirectly made a gift;

“record” means any material on which data is recorded or marked and which is capable of being read or understood by a person, computer system or other device;

“serious offence” means an offence against a provision of –

- (a) any law in Solomon Islands relating to proceeds of crime or unlawful activity, for which the maximum penalty is imprisonment or other deprivation of liberty for a period of not less than twelve months; or
- (b) a law of another country, in relation to acts relating to proceeds of crime or unlawful activity, which if the acts had occurred in Solomon Islands the acts would have constituted an offence for which the maximum penalty is imprisonment or other deprivation of liberty of not less than twelve months;

“supervisory authority” means the Central Bank of Solomon Islands, the Unit or any other prescribed authority;

“suspicious transaction” means a transaction referred to in section 14, 14A or 14B;

“sworn statement”, includes an affidavit;

“tainted property” means property determined to be tainted property under section 33;

“terrorist” has the meaning given to it in the Counter-Terrorism Act 2009;

“terrorist financing offence” means the terrorist financing offence set out under the Counter-Terrorism Act 2009;

“terrorist organisation” has the meaning given to it in the Counter-Terrorism Act 2009;

“transaction”, in relation to property, includes –

- (a) opening of an account;
- (b) any deposit, withdrawal, exchange or transfer of funds in any currency whether in cash or by cheque, payment order or other instrument or by electronic or other non-physical means;
- (c) the use of a safety deposit box or any other form of safe deposit;
- (d) entering into any fiduciary relationship;
- (e) any payment made in satisfaction, in whole or in part, of any contractual or other legal obligation; or
- (f) any other prescribed transaction;

“Unit” means the Solomon Islands Financial Intelligence Unit established by section 11D.

(2) A reference in this Act to the law of another country includes a reference to any law of, or in force in, that country or part of that country.

3. The principal Act is amended –

- (a) by inserting the following new Part immediately after section 10 –

“PART IA – ESTABLISHMENT, FUNCTIONS
AND POWERS OF THE ANTI-MONEY
LAUNDERING COMMISSION AND THE
SOLOMON ISLANDS FINANCIAL
INTELLIGENCE UNIT”; and

- (b) by repealing sections 11 and 11A and substituting the following new sections –

^{“Establishment of} 11. (1) The Commission established
^{the Commission} under the repealed section 11 is hereby re-
established and continues under this section as
the Anti-Money Laundering Commission
consisting of the following members –

- (a) the Attorney General or a representative of the Attorney General, as the Chairperson;
- (b) the Governor of the Central Bank of Solomon Islands or a representative of the Governor, as the Deputy Chairperson;
- (c) the Commissioner of Police or a representative of the Commissioner;
- (d) the Permanent Secretary for Finance or a representative of the Permanent Secretary;
- (e) the Comptroller of Customs, or a representative of the Comptroller.

(2) The Director of the Unit or a representative of the Director shall be the secretary to the Commission.

(3) The Commissioner may invite any technical expert or any other person to advise the Commission on any matter relating to this Act.

(4) The Commission may regulate its own procedures.

(5) The members of the Commission are entitled to allowances and other expenses as are prescribed.

Functions of the
Commission

11A. The functions of the Commission are –

- (a) to provide overall management, control and supervision of the operations of the Unit and the Director;
- (b) to formulate, implement, monitor and review policies in relation to this Act;
- (c) to receive monthly reports from the Director in relation to the functions, powers operations and other responsibilities of the Unit;
- (d) to submit annual reports of its operations and of the Unit to the Minister for laying in Parliament;
- (e) to perform other functions conferred on it under this Act or any other written law.

Powers of the
Commission

11B. The powers of the Commission are –

- (a) to appoint a suitably qualified person as the Director;
- (b) to appoint other suitably qualified officers, employees, consultants or agents of the Unit as are necessary for the administration and operation of this Act;
- (c) to determine the remuneration and other terms and conditions of employment of persons appointed under paragraphs (a) and (b) or of persons seconded to the Unit, including their promotion, transfer, suspension, discipline and dismissal;
- (d) to authorise in writing any person subject to any terms and conditions that the Commission may specify, to carry out any power, duty or function conferred on the Director under this Act; and

- (e) to exercise other powers conferred on it by this Act or under any other written law.

Funds of the Commission 11C. The funds of the Commission and the Unit comprise

- (a) moneys appropriated by Parliament; and
- (b) moneys from other sources (other than public funds) received by or on behalf of the Commission or Unit.

Establishment of the Unit 11D. (1) The Unit established under the repealed section 11A(4) is hereby re-established and continues under this section as the Solomon Islands Financial Intelligence Unit.

- (2) The Unit shall be charged with the administration of the provisions of this Act, subject to the supervision and control of the Commission.

Director of the Unit 11E. (1) This section establishes the position of the Director of the Unit who shall be appointed under section 11B.

- (2) A person is not entitled to be appointed as the Director if the person—

- (a) is, or has been a member of Parliament, provincial assembly or local authority at any time during the immediately last four years;
- (b) is or has been a director, officer or employee of or holds any shares in any financial institution or cash dealer; or
- (c) is a financial institution or cash dealer.

- (3) The Director shall not hold any other office or be employed in any other occupation or capacity except with the prior approval of the Commission.

Powers and functions of the Director 11F. (1) The Director shall exercise all the powers, duties and functions of the Unit under this Act or any other written law.

(2) The Director shall report to the Commission on any exercise of the Director's or Unit's powers, duties and functions under this Act.

(3) The functions of the Director are—

- (a) to be responsible for the organisation and operation of the Unit, including preparing the annual reports of the Commission and the Unit and submit it to the Commission;
- (b) to be responsible for the training of officers, employees, agents of the Unit or any other person on matters relating to this Act;
- (c) to ensure that officers, employees, consultants, agents of the Unit or any other person acting on behalf of the Unit, take the prescribed oath of confidentiality and are issued with a certificate of identity as the authority to act on behalf of the Unit;
- (d) to obtain, with prior consultation with the Commission, technical assistance from another country or international organisation, including but not limited to, the temporary employment of law enforcement and intelligence consultants from another country.

(4) The Director shall not disclose any information, except in accordance with this Act, that would directly or indirectly identify an individual who provided a report or information to the Unit, or a person or an entity about whom a report or information was provided under this Act.

Delegation of
powers

11G. (1) The Director may, by notice in the *Gazette*, delegate to any officer, employee, consultant or agent of the Unit any power in this Part, except any power delegated by the Commission to the Director.

(2) The exercise of any delegated power has the same effect as if it had been conferred directly to the person by this section and not by delegation.

(3) If the person appointed as the Director ceases to hold office, any delegation made by the person shall continue to have effect as if the delegation were made by the person for the time being holding office as Director.

(4) Any delegation made under this section is revocable at will and no delegation prevents the exercise of the delegated power by the Director.

Functions and
powers of the
Unit in relation to
information and
reports

11H. (1) The functions of the Unit are—

- (a) to receive information or report in terms of the provisions of or for the purposes this Act, including information or report from another country, and to analyse, review and assess such information or report;
- (b) to forward any information or report to the appropriate law enforcement agency, if the Director has reasonable grounds to suspect that such information or report may involve an offence of money laundering, a terrorist financing offence, the proceeds of crime or any other offence under this Act;
- (c) to compile statistics and records, and disseminate information within Solomon Islands or to another country and make recommendations arising out of any information or report received;
- (d) to issue guidelines on customer identification, record keeping and reporting, and the identification of suspicious transactions;

- (e) where appropriate, to periodically provide feedback to a financial institution or cash dealer, legal practitioner or any relevant department, office, agency or institution of the Government or provincial government on the outcomes relating to any report or information provided under this Act;
 - (f) to destroy a suspicious transaction report received or collected on the expiry of six years from the date of receiving the report if there has been no further activity or information relating to the report or the person named in the report, or six years from the date of the last activity relating to the person or report.
- (2) The powers of the Unit are –
- (a) to request information or report from any financial institution, cash dealer or legal practitioner required under the provisions of this Act;
 - (b) to make any enquiries from a financial institution, cash dealer or legal practitioner on whether or not a suspicious transaction has been reported;
 - (c) to require a financial institution or cash dealer to disclose records in its possession, custody or control that pertain to any transaction or transfer relating to a particular account or person, within a particular period;
 - (d) with a warrant issued under section 11K or on upon written request and with the consent of the financial institution, cash dealer or legal practitioner, to enter the premises or place of any financial institution, cash dealer or legal practitioner during ordinary business hours for the purpose of inspecting any record kept for the purposes of this Act, ask any question of any officer or employee of the financial institution, cash dealer or legal practitioner relating to such record, and make notes and take copies of the record, and for such purpose –

- (i) to use or cause to be used any computer system or data processing system in the premises or place to examine any data contained in or available to the system;
 - (ii) to reproduce any record, or cause it to be reproduced from the data, in the form of a print out or other intelligible output and remove the print out or other output for examination or copying; and to use or cause to be used any copying equipment in the premises or place to make copies of any record;
- (e) to collect any information that the Unit considers relevant to any proceeds of crime, offence of money laundering, financing of terrorism offence or any other offence under this Act, whether or not publicly available, including commercially available databases, or information that is collected or maintained, including information that is stored in databases maintained by a Government department or agency;
- (f) to obtain from a Government department or agency the records of a person under investigation for committing, or attempting to commit a serious offence, offence of money laundering, financing of terrorism offence or an offence under this Act or obtain such records to trace proceeds of crime;
- (g) to obtain from any telecommunication company or authority established in Solomon Islands, the record of any telephone call of the person under investigation for committing, or attempting to commit a serious offence, offence of money laundering, financing of terrorism offence or an offence under this Act or to obtain such records to trace proceeds of crime;

- (h) to act on behalf of Solomon Islands in seeking information from any government agency, law enforcement agency, supervisory authority or auditing authority of another country for purposes of this Act;
- (i) to refer any report, and information pertaining to that report, to the Police if, on the basis of the Unit's analysis and assessment based the Director has reasonable grounds to suspect that a transaction or any other activity would be relevant to the investigation or prosecution of the offence of money laundering, terrorist financing offence or any other offence which may be relevant to trace the proceeds of crime and in that regard, send a copy of the report or information to the relevant supervisory authority and the Commission;
- (j) to instruct any financial institution, cash dealer or legal practitioner to take such steps as may be appropriate in relation to any information or report received by the Unit, to enforce compliance with this Act or to facilitate any investigation by the Unit or the Police;
- (k) where the Director has reasonable grounds to suspect that a transaction or attempted transaction may involve a serious offence, offence of money laundering, terrorist financing offence, or proceeds of crime, to direct orally or in writing that the financial institution cash dealer or legal practitioner either to proceed or refrain from proceeding with the transaction or attempted transaction, for a period to be determined by the Unit, except that—
 - (i) any direction shall not exceed five working days if the direction is in writing, unless extended by the order of a Judge before the five days expire;

- (ii) any direction given orally shall not exceed twenty-four hours and shall be recorded in writing within twenty-four hours of giving such direction;
- (l) to ask any question or obtain further information on any person or transaction referred to in a report made pursuant to this Act;
- (m) to provide or conduct training programmes for financial institutions, cash dealers or legal practitioners in relation to customer identification, keeping of record, reporting obligation, identification of suspicious transaction or any other obligation of financial institutions, cash dealers or legal practitioners under this Act;
- (n) to conduct research into trends and developments in the area of money laundering and the financing of terrorism and improved ways of detecting, preventing and deterring money laundering and financing of terrorist activities;
- (o) to conduct public education and awareness on matters relating to prevention, detection or deterrent of money laundering and financing of terrorism;
- (p) to disclose any report or information derived from such report to any Government department or agency, subject to the confidentiality requirements under this Act;
- (q) to disclose any report or information derived from such report under this Act to any government department or agency of another country or any international organisation;
- (r) to liaise and to enter into any agreement or arrangement regarding the exchange of information under this Act with any government department or agency of another country or any international organisation;

- (s) to provide a written monthly report to the Commission on its activities; and
- (t) to provide to the Commission prior to the end of each financial year a written report on the Unit's expected activities and outcomes for the following year, without disclosing confidential information or information that may jeopardise any ongoing investigation or prosecution.

Disclosure of
information and
report to foreign
agencies

11I. (1) The Commission has the power to authorise the disclosure of any report or information to the government department or agency of another country or an international organisation, that has powers, functions and duties similar to those of the Unit –

- (a) on such terms and conditions as are set out in an agreement or arrangement entered into under subsection (2); or
- (b) where such an agreement or arrangement has not been entered into, on such terms and conditions as may be agreed upon by the Unit and the government department or agency of another country or international organisation at the time of disclosure.

(2) The Unit, with the approval of the Commission, has the power to enter into a written agreement or arrangement with the government department or agency of another country or international organisation, with powers, functions and duties similar to the Unit regarding the exchange of information between the Unit and that institution, agency or organisation.

(3) Any report or information exchanged under subsection (1) shall be limited to reporting or disclosing the report or information that the Unit, the government department or agency of another country or the international organisation has reasonable grounds to suspect would be relevant to the investigation or prosecution of a serious offence, a money laundering offence, financing of terrorism offence or an offence that is substantially similar to such offence.

(4) Any agreement or arrangement entered into under subsection (2) shall include the following terms –

- (a) a restriction on the use of the report or information only for purposes relevant to investigating or prosecuting a serious offence, offence of money laundering, financing of terrorism offence or an offence that is substantially similar to such offences; and
- (b) a condition that the report or information be treated in a confidential manner and not be further disclosed without the prior written consent of the Unit.

Exemption
from liability

11J. Section 25 applies to the Commission, the Director, an authorised officer, an employee, a consultant or an agent of the Unit.

Examination of
records

11K. (1) The Director may apply to a Principal Magistrate for a search warrant to enter and search for any document, record or thing in the premises or place of a financial institution, cash dealer or legal practitioner or of its director, officer, employee, consultant or agent whom the Director has reasonable grounds to suspect has contravened this Act.

(2) A search warrant issued under this section may authorise the seizure and removal of such document, record or thing on the premises.

(3) The owner or occupier of the premises or place referred to in subsection (1), and any person found in the premises or place, shall –

- (a) give the Director or any authorised person all reasonable assistance to enable the Director or authorised person to carry out the search;
- (b) provide any information that may reasonably be required relating to the administration of this Act, or any regulations or guidelines made under it; or

- (c) permit the taking of any document, record or thing which the Director may consider relevant to the investigation.

(4) Any person who willfully obstructs, hinders, or fails to cooperate with a person conducting a search pursuant to this section or harms or threatens to harm a person conducting such a search, commits an offence.

Investigation
powers

11L. The Director may, with or without the assistance of the Police, conduct investigations and enquiries on behalf of a financial intelligence unit from or a law enforcement agency of another country.

Non-
disclosure

11M. (1) This section applies to any current or former Director, officer, employee, consultant or agent of the Unit.

(2) A person referred to in subsection (1) shall not disclose any information or matter the person has knowledge of or obtained in the performance of the duties, functions or powers under this Act, except—

- (a) for the purposes of performing his duties, functions or powers under this Act;
- (b) if required by an order of the court;
- (c) for the detection, investigation or prosecution of a serious offence, money laundering offence or financing of terrorism offence;
- (d) for the purposes of tracing the proceeds of crime; or
- (e) for purposes of enforcing the provisions of this Act.

(3) Any person who wilfully discloses information or matter in contravention of subsection (2) commits an offence.

4. The principal Act is amended by –

- (a) by deleting the heading of Part II and substituting immediately before section 12 the following heading “PART II – FINANCIAL TRANSACTIONS REPORTING AND MONEY LAUNDERING”; and
- (b) by repealing section 12 and substituting the following sections –

“Financial
institution, cash
dealer or legal
practitioner to
verify customer’s
identity

12. (1) A financial institution, cash dealer or legal practitioner shall identify and verify the identity of the person, when the person –

- (a) opens an account with the financial institution, cash dealer or legal practitioner;
- (b) engages the services of the financial institution, cash dealer or legal practitioner for the purposes of providing one or more of the services set out in the definition of “financial institution”, “cash dealer” or “legal practitioner”;
- (c) enters into a business relationship with the financial institution, cash dealer or legal practitioner; or
- (d) conducts or attempts to conduct a transaction.

(2) In addition to complying with subsection (1), the financial institution, cash dealer or legal practitioner shall identify and verify the identity of the other person for whom, or for whose ultimate benefit, the transaction is being conducted –

- (a) when a person conducts or attempts to conduct a transaction through or by using the financial institution, cash dealer or legal practitioner; and
- (b) the financial institution, cash dealer or legal practitioner has reasonable grounds to believe that the person is undertaking the transaction on behalf of that other person.

(3) A financial institution, cash dealer or legal practitioner that contravenes subsection (1) or (2), without reasonable excuse, commits an offence.

Customer
identification –
other situations

12A. (1) A financial institution or cash dealer shall identify and verify the identity of a customer in accordance with the provisions set out in section 12C or 12F–

- (a) when carrying out a funds transfer for the customer, other than an electronic funds transfer;
- (b) if it reasonably suspects that the customer is involved in a money laundering offence, financing of terrorism offence or serious offence;
or
- (c) if it has doubts about the accuracy or adequacy of the customer identification and verification documentation or information it had previously obtained.

(2) A financial institution or cash dealer that contravenes subsection (1), without reasonable excuse, commits an offence.

Exceptions

12B. Sections 12(1), 12(2), and 12A(1)(a) do not apply to the following–

- (a) to a financial institution or cash dealer that is subject to regulation and supervision of a supervisory authority;
- (b) to any transaction that is part of an established business relationship with a person and the person has already produced satisfactory evidence of identity, unless the financial institution, cash dealer or legal practitioner suspects the transaction is suspicious or unusual;
- (c) to any transaction that is an occasional transaction not exceeding the minimum prescribed amount, other than an electronic funds transfer, unless the financial institution or cash dealer suspects the transaction is suspicious or unusual.

Identification
details

12C. (1) Without limiting section 12A or 12B, a financial institution, cash dealer or legal practitioner shall –

- (a) if the customer is an individual, adequately identify and verify the customer's identity, including obtaining information relating to the following –
 - (i) the individual's name, address and occupation;
 - (ii) passport, driver's licence, national or official identifying document or any other document prescribed under subsection (3);
- (b) if the customer is a legal entity, adequately verify its legal existence and structure, including obtaining information relating to the following –
 - (i) the customer's name, legal form, address and the directors;
 - (ii) the principal owners, beneficiaries and control structure;
 - (iii) provisions regulating the power to bind the entity;
 - (iv) the authorisation of any person purporting to act on behalf of the customer, and identify the person;
- (c) when entering into a business relationship, obtain information on the purpose and intended nature of the business relationship; and
- (d) have risk management systems capable of determining whether a customer is a politically-exposed person, and where the customer is determined to be such a person shall –
 - (i) take reasonable measures to establish the source of property;

- (ii) obtain the approval of a senior manager of the financial institution or cash dealer or legal practice before establishing a business relationship with the customer; and
- (iii) conduct regular and ongoing enhanced monitoring of the business relationship.

(2) When verifying the identity of a customer, a financial institution, cash dealer or legal practitioner shall use –

- (a) official or other document prescribed under subsection (3); or
- (b) reliable and independent source document, data or information or such other evidence as is reasonably capable of verifying the identity of the customer.

(3) The regulations may prescribe all or any of the following –

- (a) any official or identifying document, or reliable and independent source document, data or information or any other evidence that is required for identification or verification of any particular customer or class of customers;
- (b) the timing of the identification and verification requirements of any particular customer or class of customers;
- (c) the threshold for or the circumstances in which the provisions of this Act apply in relation to any particular customer or class of customers.

(4) A financial institution, cash dealer or legal practitioner that contravenes subsection (1) or (2), without reasonable excuse, commits an offence.

Cross-border
correspondent
banking
services

12D. (1) This section applies to a financial institution if the institution carries out cross-border correspondent banking services or has other similar relationships (in this section referred to as "transaction").

(2) The financial institution shall, in addition to its other obligations under this Act, do all of the following –

- (a) adequately identify and verify the person with whom it conducts the transaction;
- (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 the person is subject to;
- (d) assess the person's anti-money laundering and terrorist financing controls;
- (e) obtain the approval of a senior manager of the financial institution before establishing a new transaction;
- (f) document the responsibilities of the financial institution and the person.

(3) If the financial institution allows a person with whom it carries such transaction to establish accounts in the financial institution for use by that person's customers, the financial institution shall, in addition to its other obligations under this Act, be satisfied that the person –

- (a) has verified the identity of and is performing on-going due diligence on that person's customers that have direct access to accounts of the financial institution; and

- (b) may be able to provide to the financial institution the customer identification data of the customers referred to in this subsection upon request.

Intermediaries or
third parties

12E. (1) If a financial institution, cash dealer or legal practitioner relies on an intermediary or a third party to undertake its obligations under any provision of this Act, or to introduce business to it, the financial institution, cash dealer or legal practitioner shall –

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

- (2) A financial institution, cash dealer or legal practitioner that contravenes subsection (1), without reasonable excuse, commits an offence.

Necessity of
identification to
conduct
transaction

12F. (1) If satisfactory evidence of the identity of a person is not produced to or obtained by a financial institution, cash dealer or legal practitioner under this Act, the financial institution, cash dealer or legal practitioner shall –

- (a) prepare a suspicious transaction report on any transaction attempted to be conducted by the person; and
- (b) give it to the Unit as if the transaction were a suspicious transaction.

(2) The financial institution, cash dealer or legal practitioner shall not proceed any further with the transaction unless the Unit gives written permission to proceed with the transaction.

(3) A financial institution, cash dealer or legal practitioner that contravenes subsection (1) or (2), without reasonable excuse, commits an offence.

Financial institution, cash dealer or legal practitioner to maintain account in true name

12G. (1) A financial institution, cash dealer or legal practitioner shall maintain an account in the true name of the account holder.

(2) A financial institution, cash dealer or legal practitioner shall not open, operate or maintain any anonymous account or any account which is in a fictitious, false or incorrect name.

(3) A financial institution, cash dealer or legal practitioner that contravenes subsection (1) or (2) commits an offence.

Financial institution, cash dealer or legal practitioner to retain customers' records

12H. (1) A financial institution, cash dealer or legal practitioner shall retain –

- (a) if evidence of a person's identity ("the identified person") is obtained under this Act, a record that indicates the kind of evidence that was obtained, and comprises either a copy of the evidence or information that enables a copy of it to be obtained; and
- (b) a record of any correspondence between the identified person and the financial institution, cash dealer or legal practitioner.

(2) The records mentioned in subsection (1) shall be retained for six years from the date the evidence was obtained or the date of the correspondence.

(3) A financial institution, cash dealer or legal practitioner that contravenes subsection (1) or (2) commits an offence.

Due diligence and
monitoring
transactions

12I. (1) A financial institution, cash dealer or legal practitioner shall –

- (a) conduct ongoing due diligence on its relationship with each of its customers, in accordance with the guidelines issued by the Unit; and
- (b) conduct ongoing scrutiny of any transaction undertaken by each of its customers to ensure that the transaction being conducted is consistent with –
 - (i) the financial institution's, cash dealer's knowledge or legal practitioner's knowledge of the customer;
 - (ii) the customer's business and risk profile; and
 - (iii) where necessary, the source of funds.

(2) A financial institution, cash dealer or legal practitioner shall pay special attention to the following –

- (a) any business relation or transaction with any person in another country, which has been specified in writing by the Unit, that does not have any adequate system or law in place to detect, prevent or deter money laundering or the financing of terrorism;
- (b) any electronic fund transfer, other than an electronic funds transfer referred to in this Act, that does not contain complete originator information.

(3) For the purpose of subsections (1) and (2), a financial institution, cash dealer or legal practitioner shall –

- (a) examine as far as practicable the background and purpose of any transaction, business relation or transfer and record its findings in writing; and
- (b) upon a request in writing by the Unit, make available such findings to the Unit or any person authorised by the Unit, to assist the Unit or such authorised person in any investigation relating to a money laundering offence, financing of terrorism offence or any other serious offence.

(4) A financial institution, cash dealer or legal practitioner that fails to comply with a request under subsection (3)(b), without reasonable excuse, commits an offence.

Opening accounts in false name, etc 12J. (1) A person shall not open or operate an account with a financial institution, cash dealer or legal practitioner in a false, fictitious or incorrect name.

(2) If a person is commonly known by two or more different names, the person shall not use one of those names in opening an account with a financial institution, cash dealer or legal practitioner unless the person has previously disclosed the other name or names to the financial institution, cash dealer or legal practitioner.

(3) If a person using a particular name in any dealing with a financial institution, cash dealer or legal practitioner discloses a different name or names by which that person is commonly known, the financial institution, cash dealer or legal practitioner shall –

- (a) make a record of the disclosure; and
- (b) give the Unit a copy of that record, upon requested in writing by the Unit.

(4) For the purposes of this section, a person opens an account in a false name if –

- (a) the person, in opening the account, or becoming a signatory to the account, uses a name other than a name by which the person is commonly known; or
- (b) the person does any act or thing in relation to the account (whether by way of making a deposit or withdrawal or by way of communication with the financial institution, cash dealer or legal practitioner concerned) and, in doing so, uses a name other than a name by which the person is commonly known.

(5) A person who contravenes subsection (1) or (2), without reasonable excuse, commits an offence.”.

Repeal of section
13 and new sections
added

5. The principal Act is amended by repealing section 13 and substituting the following sections –

“Financial
institutions, cash
dealers or legal
practitioners to
keep records

13. (1) A financial institution, cash dealer or legal practitioner shall keep records of every transaction it conducts, as are reasonably necessary, to enable the transaction to be readily reconstructed at any time by the Unit.

(2) Without limiting subsection (1), such records shall contain the following information –

- (a) the nature of the transaction;
- (b) the amount of the transaction and the currency in which it was denominated;
- (c) the date on which the transaction was conducted;
- (d) the name, address and occupation, business or principal activity, as the case may be, of each person –
 - (i) conducting the transaction;
 - and

- (ii) for whom, or for whose ultimate benefit, the transaction is being conducted, if the financial institution, cash dealer or legal practitioner has reasonable grounds to believe that the person is undertaking the transaction on behalf of any other person;
- (e) the type and identifying number of any account with the financial institution, cash dealer or legal practitioner involved in the transaction;
- (f) if the transaction involves a negotiable instrument other than cash
 -
 - (i) the drawer of the instrument;
 - (ii) the name of the entity on which it is drawn;
 - (iii) the name of any payee;
 - (iv) the amount and date of the instrument; and
 - (v) the number (if any) of the instrument and details of any endorsements appearing on the instrument;
- (g) the name and address of the financial institution, cash dealer or legal practitioner, and of each officer, employee or agent of the financial institution, cash dealer or legal practitioner who prepared the relevant record or a part of the record;
- (h) any other prescribed information.

(3) A financial institution, cash dealer or legal practitioner shall keep the records for six years after the completion of the transaction.

- (4) A financial institution, cash dealer or legal practitioner that contravenes subsection (1) or (3), without reasonable excuse, commits an offence.

Records in
relation to reports
and certain
enquiries

13A. (1) In addition to the requirements under section 13, a financial institution, cash dealer or legal practitioner shall keep –

- (a) a record of any suspicious transaction report or other report made by the financial institution, cash dealer or legal practitioner to the Unit; and
- (b) a record of any enquiry relating to money laundering or the financing of terrorism made by the financial institution, cash dealer or legal practitioner to the Unit.

(2) A financial institution, cash dealer or legal practitioner shall keep the records referred to in subsection (1) for six years from the date on which the report or the enquiry was made.

(3) A financial institution, cash dealer or legal practitioner that contravenes subsection (1) or (2), without reasonable excuse, commits an offence.

Originator
information

13B. (1) A financial institution or cash dealer shall include accurate originator information on an electronic funds transfer and on any other form of funds transfer, and such information is to continue to remain part of the transfer.

(2) Subsection (1) does not apply –

- (a) to an electronic funds transfer that results from a transaction carried out using a credit or debit card if the credit or debit card number is included in the information accompanying such a transfer unless for a money transfer effected from the use of a credit or debit card as means of payment; or

- (b) to an electronic funds transfer or settlement between financial institutions or cash dealers where the originator and beneficiary of the funds transfer are financial institutions or cash dealers acting on their own behalf.

- (3) A financial institution or cash dealer that contravenes subsection (1), without reasonable excuse, commits an offence.

Records to be
made available

13C. A financial institution, cash dealer or legal practitioner shall make available any of its records to the Unit if requested to do so in writing by the Unit.”.

6. The principal Act is amended by repealing section 14 and substituting the following sections –

Repeal of section
14 and new
sections added

“Financial
institution to
report suspicious
transactions

14. (1) This section applies if a financial institution, cash dealer or legal practitioner suspects on reasonable grounds that a transaction or activity or attempted transaction or activity is or may be related to one or more of the following –

- (a) the detection, investigation or prosecution of a person for a money laundering offence, financing of terrorism offence or any other serious offence;
- (b) the commission of a money laundering offence, financing of terrorism offence or any other serious offence;
- (c) an act preparatory to a money laundering offence or financing of terrorism offence.

(2) The financial institution, cash dealer or legal practitioner shall –

- (a) prepare a report of such transaction or activity or attempted transaction or activity; and

- (b) send the report to the Unit, as soon as possible, but no later than two working days after forming the suspicion.

(3) A financial institution, cash dealer or legal practitioner that, without reasonable excuse, contravenes subsection (2) commits an offence.

Transactions involving terrorist organisations

14A. Any transaction or attempted transaction by a terrorist organisation shall be deemed to be a suspicious transaction, which shall be reported to the Unit in accordance with the provisions of this Act or the prescribed procedures.

Duty to report certain transactions with no legitimate purpose

14B. (1) This section applies where a transaction or attempted transaction –

- (a) is complex, unusual or large and does not have any apparent or visible economic or lawful purpose; or
- (b) is part of an unusual pattern of transaction that does not have any apparent or visible economic or lawful purpose.

(2) The financial institution, cash dealer or legal practitioner shall –

- (a) prepare a report of the transaction or attempted transaction; and
- (b) give the report to the Unit, as soon as possible, but no later than two working days from the date of forming the suspicion.

(3) A financial institution, cash dealer or legal practitioner that, without reasonable excuse, contravenes subsection (2) commits an offence.

Supervisory body or auditor to report suspicious transactions

14C. (1) This section applies if a supervisory authority or the auditor of a financial institution, cash dealer or legal practitioner has reasonable grounds to suspect that a transaction, an attempted transaction or information that it has in its possession concerning any transaction or attempted transaction, is or may be related to one or more of the following–

- (a) the detection, investigation or prosecution of a person for a money laundering offence, financing of terrorism offence or serious offence;
- (b) the commission of a money laundering offence, financing of terrorism offence or serious offence;
- (c) an act preparatory to money laundering offence or a financing of terrorism offence.

(2) The supervisory authority, the auditor of the financial institution, a cash dealer or a legal practitioner shall report the transaction or attempted transaction or the information to the Unit, as soon as possible but no later than two working days from the date of forming the suspicion.

(3) A supervisory authority, auditor of the financial institution, cash dealer or legal practitioner who contravenes subsection (2), without reasonable excuse, commits an offence.

Financial institution, cash dealer or legal practitioner to report financial transaction

14D. (1) A financial institution, cash dealer or legal practitioner shall report to the Unit the following –

- (a) any single cash transaction exceeding the minimum prescribed amount unless the originator and beneficiary of the transaction are financial institutions or cash dealers carrying on the business set out in the definition of “financial institution” or “cash dealer” and acting on their own behalf;
- (b) any electronic or other funds transfer of an amount exceeding the minimum prescribed amount, in the course of a single transaction sent from Solomon Islands to another country; or
- (c) any electronic or other funds transfer of an amount exceeding the minimum prescribed amount, in the course of a single transaction received in Solomon Islands from another country.

(2) Subsection (1)(b) does not apply if the financial institution or cash dealer sends an electronic or other funds transfer to a person in Solomon Islands, even if the final recipient of the fund is outside Solomon Islands.

(3) Subsection (1)(c) does not apply if the financial institution or cash dealer receives an electronic or other funds transfer from a person in Solomon Islands, even if the initial sender of the fund was outside Solomon Islands.

(4) The report shall be given –

- (a) for any transaction or transfer in Solomon Islands currency, within fifteen days after the date the transaction or transfer was made; or
- (b) for any transaction or transfer in a foreign currency, within two days after the date the transaction or transfer was made.

(5) A financial institution, cash dealer or legal practitioner that contravenes subsection (1) or (4) commits an offence.

(6) The Central Bank of Solomon Islands, or the Unit may, on the application of a financial institution, cash dealer or legal practitioner, exempt in writing the reporting of transactions referred to in subsection (1)(a) relating to deposit or withdrawal by its established customers using their accounts with the financial institution, cash dealer or legal practitioner.

Avoidance of
section 14D

14E. (1) This section applies to a person who conducts two or more transactions or electronic or other funds transfers that are of an amount below the minimum prescribed amount.

(2) A person commits an offence if the person conducts any transaction or transfer for the sole or dominant purpose of ensuring, or attempting to ensure, that a report in relation to the transactions or transfers will not be made under section 14D(1).

(3) The court may take into account the following when deciding whether or not a person has committed an offence under subsection (2) –

- (a) the manner or form in which the transaction or transfer was conducted;
- (b) the value of the currency involved in each transaction or transfer;
- (c) the aggregate value of the currency involved in the transaction or transfer;
- (d) the period of time over which the transaction or transfer occurred;
- (e) the interval of time between the transaction and transfer;
- (f) the location at which the transaction or transfer was initiated or conducted;
- (g) any explanation made by the person concerned as to the manner or form in which the transaction or transfer was conducted.

Form and
content of
reports

14F. (1) A report under section 14, 14A, 14B, 14C or 14D shall –

- (a) subject to subsection (2), be in a form approved by the Commission and may be given by way of facsimile transmission or electronic mail or other means;
- (b) contain a statement of the grounds on which the person making the report –
 - (i) for a report under section 14, 14A, 14B or 14C, holds the suspicion; or
 - (ii) for a report under section 14D, became aware of the transaction; and

- (c) be signed or otherwise authenticated by the person making the report.

(2) A report under a section mentioned in subsection (1) may be made orally, including by telephone, but a written report shall be prepared in accordance with subsection (1) within twenty-four hours after the oral report is made.

(3) A person who, without reasonable excuse, contravenes subsection (1) or (2) commits an offence.

Additional
information"

14G. (1) This section applies where a person has made a report or provided information about a transaction or attempted transaction under this Act to the Unit.

(2) A person shall give to the Unit any further information that the person has about the transaction or attempted transaction, or the parties to the transaction or attempted transaction if requested to do so by the Unit.

(3) A person who fails to comply with subsection (2), without reasonable excuse, commits an offence.

Disclosure of
reports and other
information

14H. (1) A person shall not disclose to any other person –

- (a) the fact that a financial institution or cash dealer, legal practitioner, supervisory authority or the auditor of a financial institution or cash dealer, has formed a suspicion in relation to a transaction or an attempted transaction;
- (b) any report made or likely to be made under this Act to the Unit;
- (c) any information given or likely to be given under this Act to the Unit;
- (d) any other information from which the person to whom the information is disclosed could reasonably be expected to infer any of the circumstances in paragraph (a), (b) or (c).

(2) Subsection (1) does not apply to a disclosure made to the following –

- (a) any officer, employee, consultant or agent of a person who has made or is required to make a report or provide information under this Act for any purpose connected with the performance of that person's duties;
- (b) a legal practitioner for the purpose of obtaining legal advice or representation in relation to the disclosure;
- (c) the supervisory authority of a financial institution or cash dealer;
- (d) any person authorised to assist the Unit under this Act.

(3) A legal practitioner to whom information to which subsection (1) applies has been disclosed shall not disclose that information except to another legal practitioner, for the purpose of –

- (a) the performance of the first-mentioned legal practitioner's duty; or
- (b) obtaining legal advice or representation in relation to the disclosure.

(4) Nothing in this section prevents the disclosure of any information in connection with, or in the course of, proceedings before a court if the court is satisfied that the disclosure of the information is necessary in the interests of justice.

(5) A person commits an offence if the person –

- (a) discloses any fact, report or information contrary to this section;
- (b) discloses any fact, report or information contrary to this section with intent to prejudice an investigation of a money laundering offence, financing of terrorism offence or any other serious offence; or

- (c) discloses any fact, report or information contrary to this section for the purpose of obtaining directly or indirectly an advantage or a pecuniary gain for himself or any other person.

Protection of
identity of
persons and
information in
suspicious
transaction
and other
reports

14I. (1) Except for the purposes set out in subsection (2), a person shall not disclose any information that identifies or is likely to identify another person who has –

- (a) handled a transaction in respect of which a suspicious transaction report or other report under this Act has been made;
- (b) prepared a suspicious transaction report or other report under this Act; or
- (c) given a suspicious transaction report or other report under this Act, or information under this Act, to the Unit.

(2) In subsection (1), the purposes are –

- (a) the detection, investigation or prosecution of a person for a money laundering offence, financing of terrorism offence or any other serious offence; or
- (b) the enforcement of this Act or any other prescribed Act.

(3) Nothing in this section prevents the disclosure of any information in connection with, or in the course of, proceedings before a court if the court is satisfied that the disclosure of the information is necessary in the interests of justice.

(4) A person who contravenes subsection (1) without reasonable excuse commits an offence.

Protection of
persons reporting
suspicious
transaction

14J. No civil or criminal proceedings shall be taken in relation to any act taken in good faith under this Act or in compliance with any permission, authority or direction given under this Act against –

- (a) a financial institution, cash dealer or legal practitioner or an officer, employee or agent of the financial institution, cash dealer or legal practitioner acting in the course of employment or agency; or
- (b) the auditor or supervisory authority of a financial institution, cash dealer or legal practitioner or the officer, employee or agent of the auditor or supervisory authority acting in the course of employment or agency.

False or
misleading
statements

14K. A person commits an offence if the person, in making a report or providing information required under this Act –

- (a) makes any statement that the person knows is false or misleading in a material particular; or
- (b) omits from any statement any matter or thing without which the person knows that the statement is false or misleading in a material particular.

Legal
professional
privilege

14L. (1) Nothing in this Act requires a legal practitioner to disclose any legal professional privileged communication.

(2) If the information –

- (a) relates to an offence of money laundering or involving proceeds of crime or financing of terrorism offence; and
- (b) such information consists of receipts, payments, income, expenditure or financial transactions of the legal practitioner, client or other person,

such information is not a privileged communication if it is contained in or comprises the whole or part of any financial transaction records, account or document prepared or kept by the legal practitioner in connection with any account held by the legal practitioner.”.

Section 17 repealed
and substituted

7. The principal Act is amended by repealing section 17 and substituting the following section –

“Offence of
money
laundering

17. (1) A person who –

- (a) converts or transfers property;
- (b) conceals or disguises the true nature, origin, location, disposition, movement or ownership of that property; or
- (c) acquires, possesses or uses any property,

knowing or having reasonable grounds to believe or suspect that the property in whole or in part is proceeds of crime or directly or indirectly represents any other person's proceeds of crime commits an offence and is liable on conviction –

- (i) for a natural person, to a fine not exceeding 500,000 penalty units or to imprisonment for a term not exceeding ten years, or both; or
- (ii) for a legal entity, to a fine not exceeding 1,000,000 penalty units.

(2) For the purposes of proving an offence of money laundering, it is not necessary to prove which serious offence has been committed.

(3) Nothing in this Act prevents a person that committed any other offence that generated the proceeds of crime from being convicted of an offence of money laundering in respect of those proceeds of crime.

(4) A person who attempts, facilitates, aids and abets, conspires, counsel and procures or incites any other person to commit an offence of money laundering commits an offence and is liable on conviction to the penalties specified under subsection (1).

(5) For the purposes of this section, when proving that property is the proceeds of crime it is not necessary that the person is convicted of the serious offence that generated the proceeds of crime.”.

8. Section 18 of the principal Act is amended – Section 18
amended
- (a) in subsections (2) and (3), by deleting “an individual” and substituting “a natural person” and by deleting “body corporate” and substituting “legal entity” appearing in those subsections respectively; and
 - (b) by repealing subsections (5) and (6).
9. Section 19 of the principal Act is repealed. Section 19
repealed
10. Section 20 of the principal Act is amended by deleting “The Commission or any” and substituting “Any”. Section 20
amended
11. Section 21 of the principal Act is amended by deleting “the Commission or” wherever it appears in that section. Section 21
amended
12. Section 22(1) of the principal Act is amended – Section 22
amended
- (a) by deleting “The Commission or any” and substituting “Any”; and
 - (b) by deleting “sections 12, 13, 14, 15, or 16” and substituting “Part II”.
13. Section 24 of the principal Act is amended by deleting “section 14(1)” and substituting “Part II”. Section 24
amended
14. Section 28 of the principal Act is amended – Section 28
amended
- (a) in subsection (1), by deleting “six months” and substituting “two years”; and
 - (b) in subsection (1)(a), by adding “or proceeds of crime” after “tainted property”.
15. The principal Act is amended by inserting after section 28, the following section – Section 28A added
- “Standard of proof 28A. The standard of proof for any proceedings under Part III for confiscation orders or pecuniary penalty orders is on the balance of probabilities.”
16. Section 32 of the principal Act is amended by inserting “or proceeds of crime” after “tainted property” or after “property” wherever it appears in subsections (1) and (3). Section 32
amended

Section 33 amended

17. Section 33 of the principal Act is amended –

- (a) in subsections (1) and (2), by inserting “or proceeds of crime” after “tainted property” wherever it appears in subsections (1) and (2);
- (b) in subsection (2)(a), by inserting “or intended for use in” after “was used in”; and
- (c) in subsection (4)(c), by inserting “undue” before “hardship”.

Section 39 amended

18. Section 39 of the principal Act is amended in paragraph (a), by deleting “of two years” and substituting “not exceeding five years”.

Section 40 amended

19. Section 40 of the principal Act is amended by inserting “or proceeds of crime” after “tainted property” or after “property” wherever it appears in subsection (1).

Section 49 amended

20. Section 49 of the principal Act is amended by inserting “or proceeds of crime” after “tainted property” wherever it appears in subsection (1).

Section 50 amended

21. Section 50 of the principal Act is amended –

- (a) by inserting “or proceeds of crime” after “tainted property of a particular kind” or after “tainted property of that kind” wherever it appears in subsection (1) or (2); and
- (b) by inserting “or proceeds of crime” after “tainted property” wherever it appears in subsection (3), (4) or (6).

Section 51 amended

22. Section 51 of the principal Act is amended –

- (a) by inserting “or proceeds of crime” after “tainted property” wherever it appears in subsection (1)(a) or (2)(a); and
- (b) in subsection (2), by inserting “or proceeds of crime” after “seize that property”.

Sections 53 and 54 amended

23. The principal Act is amended by inserting “or proceeds of crime” after “tainted property” wherever it appears in section 53(2)(b) or 54.

24. Section 55 of the principal Act is amended by repealing subsection (2), and substituting the following subsection –

“(2) An application for a restraining order may be made *ex parte* and shall be in writing and be accompanied by a sworn statement stating –

- (a) where the defendant has been convicted of a serious offence –
 - (i) the serious offence for which he was convicted;
 - (ii) the date of the conviction;
 - (iii) the court before which the conviction was obtained and whether an appeal has been lodged against the conviction;
 - (iv) a description of the property in respect of which the restraining order is sought;
 - (v) the name and address of the person who is believed to be in possession of the property;
 - (vi) the grounds for the belief that the property is tainted property, proceeds of crime or property that may be used to satisfy a confiscation order or pecuniary penalty order in relation to the offence;
 - (vii) the grounds for the belief that the defendant derived a benefit directly or indirectly from the commission of the offence; and
 - (viii) where the application seeks a restraining order against property of a person other than the defendant, the grounds for the belief that the property is tainted property or proceeds of crime in relation to the offence or a gift caught by this Act, or is subject to the effective control of the defendant; or
- (b) where the defendant is charged or is about to be charged with a serious offence –
 - (i) the serious offence for which he is charged or about to be charged;

- (ii) the grounds for believing that the defendant committed the offence;
 - (iii) a description of the property in respect of which the restraining order is sought;
 - (iv) the name and address of the person who is believed to be in possession of the property;
 - (v) the grounds for the belief that the property is tainted property or proceeds of crime in relation to the offence or property derived from a serious offence, or property that may be used to satisfy a confiscation order or pecuniary penalty order; and
 - (vi) the grounds for the belief that the defendant derived a benefit directly or indirectly from the commission of the offence; or
- (c) where the application seeks a restraining order against property of a person other than the defendant, the grounds for the belief that the property is tainted property or proceeds of crime or in relation to the offence and is subject to the effective control of the defendant or a gift caught by this Act; or
- (d) the grounds for the belief that a confiscation order or a pecuniary penalty order may be or is likely to be made under this Part in respect of the property.”.

Section 56 amended

25. Section 56 of the principal Act is amended –

- (a) in paragraph (c), by inserting “ or proceeds of crime that may satisfy a confiscation order or pecuniary penalty order” after “tainted property”; and
- (b) in paragraph (d), by inserting “or the proceeds of crime, that may satisfy a confiscation order or pecuniary penalty order” after “tainted property”, and by adding “or proceeds” after “property”.

Section 61 amended

26. Section 61(1) of the principal Act is amended by repealing paragraphs (a) and (b) and substituting the following paragraphs –

- “(a) for a natural person, to a fine not exceeding 500,000 penalty units or to imprisonment for a term not exceeding five years, or both; or

- (b) for a legal entity to a fine not exceeding 1,000,000 penalty units.”.

27. Section 62 of the principal Act is amended by repealing paragraphs (b) and (c) and substituting the following paragraph –

Section 62
amended

- “(b) a confiscation order or pecuniary penalty order made under this Act is paid in full satisfaction of the order.”.

28. Section 70 of the principal Act is amended in subsection (1) by adding “, suspected of having committed” after “charged with”.

Section 70
amended

29. The principal Act is amended by repealing section 71.

Section 71
repealed

30. The principal Act is amended by deleting subparagraphs (i) and (ii) of section 72 and substituting the following subparagraphs –

Section 72
amended

- “(i) for a natural person, to a fine not exceeding 500,000 penalty units or to imprisonment for a term not exceeding five years or both; or
- (ii) for a legal entity, to a fine not exceeding 1,000,000 penalty units.”.

31. The principal Act is amended by adding after section 72 the following section –

Section 72A added

“Non-disclosure
of production
orders

72A. (1) A financial institution or cash dealer that is, or has been subject to a production order shall not disclose the existence or operation of the order to any person except –

- (a) to an officer or agent of the institution for the purpose of ensuring compliance with the order;
- (b) to a legal practitioner for the purpose of obtaining legal advice or representation in respect of the order; or
- (c) to a police officer authorised in writing to receive the information.

(2) A financial institution or cash dealer that contravenes subsection (1) commits an offence.

(3) A person described in subsection (1)(a), (b) or (c) shall not disclose the existence of a production order except to another such person, and may do so only for the purposes of the performance of the person's duties or functions in relation to the execution or processing of the production order.

(4) A person who contravenes subsection (3) commits an offence.

(5) Nothing in this section prevents the disclosure of information concerning a production order for the purpose of or in connection with legal proceedings or in the course of proceedings before a court, provided that nothing in this section shall be construed as requiring a legal practitioner to disclose to any court the existence of a production order.”.

Section 77 amended

32. Section 77 is amended by repealing subparagraphs (i) and (ii) in subsection (5) and substituting the following subparagraphs –

- “(i) for a natural person, to a fine not exceeding 500,000 penalty units or to imprisonment for a term not exceeding five years, or both; or
- (ii) for a legal entity, to a fine not exceeding 1,000,000 penalty units.”.

Section 78 amended

33. Section 78 of the principal Act is amended –

- (a) in subsection (2), by repealing paragraphs (a) and (b) and substituting the following paragraphs –
 - “(a) for a natural person, to a fine not exceeding 500,000 penalty units or imprisonment for a term not exceeding five years, or both; or
 - (b) for a legal entity to a fine not exceeding 1,000,000 penalty units.”.
- (b) by repealing subsection (4) and substituting the following subsection –

“(4) A person who contravenes subsection (3) commits an offence.”.

34. The principal Act is amended by adding after section 79 the following new section –

“General
penalties

80. A person who commits an offence under this Act for which no penalty is provided is liable on conviction –

- (a) for a natural person, to a fine not exceeding 500,000 penalty units or to imprisonment for a term not exceeding five years or both; or
 - (b) for a legal entity to a fine not exceeding 1,000,000 penalty units.”.
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