

CONSOLIDATED TO 31 DECEMBER 2015

LAWS OF SEYCHELLES

CHAPTER 9A

ANTI-MONEY LAUNDERING ACT, 2006

[18th May 2006]

Act 5 of 2006
S.I. 13 of 2006
Act 18 of 2008
S.I. 15 of 2010
Act 24 of 2011

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PART 1 – PRELIMINARY

Short title

1. This Act may be cited as the Anti-Money Laundering Act, 2006.

Interpretation

2. In this Act —

“assets agent” means a person appointed as an assets agent to the FIU under section 18;

“benefit from criminal conduct” means any money or property that is derived, obtained or realised, directly or indirectly, by any person from criminal conduct;

“business relationship” means any arrangement made between a person and a reporting entity where the purpose or effect of the arrangement is to facilitate an occasional, frequent, habitual or regular course of dealing between the person and the reporting entity including an arrangement where, the total amount of any payment to be made by any person to any other person in the course of that arrangement is not known or capable of being ascertained at the time the arrangement is made;

“cash” has the meaning set out in section 34(8);

“Commissioner” means the Commissioner of Police;

“country” includes any state or territorial unit as the context may require;

“Court” means the Supreme Court of Seychelles save where the context otherwise requires;

“Court of Appeal” means the Court of Appeal of Seychelles;

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

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

(b) a signatory to a transaction or account;

(c) any person to whom a transaction has been assigned or transferred;

(d) any person who is authorised to conduct a transaction; or

(e) such other person as may be prescribed;

“criminal conduct” shall have the meaning set out in section 3 and includes the financing of terrorism;

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

“Deputy Director” means the person appointed under section 17(2) save where the context otherwise requires;

“Director” means the person appointed under section 17(1) save where the context otherwise requires;

“Director of the Fund” means the person appointed as such under section 28 of the Social Security Act and includes any person to whom functions under that section have been delegated;

“exported” has the meaning set out in section 34(8);

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

“FIU” means the unit established under section 16;

“FIU Legal Officer” means the person appointed under section 18(2);

“funds” for the purposes of section 10 includes any property that may be received or transferred by a reporting entity to or for any person so as to transfer benefit to that person or any other person and includes cash;

“Inspector of the Fund” means a person appointed as such under section 29 of the Social Security Act;

“law enforcement agency” means the government department under the Commissioner of Police or the Director General of Immigration and includes the Seychelles Revenue Commission;

“legal privilege” means any communication between lawyer and client which comes into existence for the purposes of the obtaining and furnishing of legal advice and/or legal representation in respect of any criminal matter and shall not extend to any conduct of the lawyer or material in the possession or control of the lawyer in the nature of aiding and abetting, assisting, attempting, counselling, conspiring, concealing or procuring the commission of criminal conduct by the client or any other person;

“member of the family”, in relation to an individual who is an assets agent of the FIU, means the spouse, parent, grandparent, step-parent, child (including a step-child or an adopted child), grandchild, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece of the individual or of the individual’s spouse, or any person who is cohabiting or residing with the individual;

“member of the police” means a police officer;

“Minister” means the Minister responsible for Internal Affairs;

“person” includes a body of persons whether it has legal personality or not;

“pecuniary penalty order” means an order under sections 38, 41, 42 or 45;

“prescribed sum” means R50,000 until otherwise prescribed by the Minister under section 37 and thereafter shall be the sum so prescribed from time to time;

“police functions” means any power or duty conferred on any member of the police by or under any Act (including an Act passed after the passing of this Act);

“proceedings” includes any hearing before any court, tribunal, commission or any committee of, or appointed by the Government;

“production order” means an order under section 23;

“property” includes money and all property, real or personal, heritable or moveable, including choses in action and other intangible or incorporeal property and references to property shall be construed as including references to any interest in property, and includes property outside the Republic where by virtue of its domestic jurisdiction generally, in rem or in personam or by virtue of an arrangement with any other country or territory, the Court might be in a position to enforce, and/or secure compliance with any order it might make or where it might otherwise exercise jurisdiction in relation to that property to comply with an arrangement or a request from another country or territory;

“regulated business” means a business for which a regulatory licence is required;

Definition of “regulated business” inserted by s 2(a)(i) of Act 24 of 2011 with effect from 27 December 2011

“regulatory licence” means a licence specified in the First Schedule;

Definition of “regulatory licence” inserted by s 2(a)(i) of Act 24 of 2011 with effect from 27 December 2011

“regulated reporting entity” means a reporting entity who holds a regulatory licence;

Definition of “regulated reporting entity” inserted by s 2(a)(i) of Act 24 of 2011 with effect from 27 December 2011

“reporting entity” means a person specified in the Second Schedule;

Definition of “reporting entity” repealed and substituted by s 2(a)(ii) of Act 24 of 2011 with effect from 27 December 2011

“Republic” means the Republic of Seychelles;

“restraint order” means an order referred to in Part 4;

“revenue” shall have the meaning as defined in section 2(1) of the Seychelles Revenue Commission Act, 2007.

“Revenue Commissioner” means the person appointed as Revenue Commissioner under section 4 of the Seychelles Revenue Commission Act, 2007;

“revenue laws” means all and any law or regulation relating to any tax, including the

revenue laws as described in the schedule to the Seychelles Revenue Commission Act, 2007;

“serious crime” means any act or omission against any law of the Republic punishable by a term of imprisonment exceeding three years and/or by a fine exceeding R50,000, whether committed in the Republic or elsewhere, and where the conduct occurs outside the Republic, would constitute such an offence if it occurred within the Republic and also constitutes an offence under the law of the country or territorial unit in which it occurs;

“Suspicious Transactions Report” means a report made or to be made by a reporting entity under section 10;

“tax” means any tax, duty, levy or charge under the care and management of the Seychelles Revenue Commission including but not limited to business tax, trades tax*, goods and services tax*, contributions to the Social Security Fund, stamp duty and any other levy by way of taxation;

Section 2 repealed and substituted by s 3 of Act 18 of 2008 with effect from 25 August 2008

[*These references pre-date the repeal of the Trades Tax Act (by the Customs Management Act, 2011) and the Goods and Services Tax Act (by the Value Added Tax Act, 2010)]

Offence of Money Laundering

3. (1) A person is guilty of money laundering if, knowing or believing that property is or represents the benefit from criminal conduct or being reckless as to whether the property is or represents such benefit, the person, without lawful authority or excuse (the proof of which shall lie on him) —

(a) converts, transfers or handles the property, or removes it from the Republic;

(b) conceals or disguises the true nature, source, location, disposition, movement or ownership of the property or any rights with respect to it; or

(c) acquires, possesses or uses the property.

(2) Removing property from the Republic shall include references to removing it from another country or territory as referred to in subsection (9)(c), and moving property within the Republic or a country or territory in preparation for or for the purpose of removing it from the Republic or the country or territory in question.

(3) Any person who participates in such conduct as described in subsections (1)(a), (1)(b) or (1)(c) of this section including but not limited to, aiding, abetting, assisting, attempting, counselling, conspiring, concealing or procuring the commission of such conduct commits the offence of money laundering as a principal offender and shall be liable to be tried and punished accordingly.

(4) (a) a person guilty of money laundering is liable on conviction to a fine not exceeding R5,000,000 or to imprisonment for a term not exceeding 15 years or to both;

(b) a person other than a natural person guilty of money laundering is liable on conviction to a fine not exceeding R10,000,000.

(5) Where a person —

(a) converts, transfers, handles or removes from the Republic any property which is or represents the benefit from criminal conduct;

(b) conceals or disguises the true nature, source, location, disposition, movement or ownership of the property or any rights with respect to it; or

(c) acquires, possesses or uses the property,

in such circumstances that it is reasonable to conclude that the person —

(i) knew or believed that the property was or represented the benefit from criminal conduct; or

(ii) was reckless as to whether it was or represented benefit from criminal conduct,

that person shall be taken to have so known or believed or to have been so reckless, unless the court is satisfied having regard to all the evidence that there is a reasonable doubt as to whether the person so knew or believed or was so reckless.

(6) For the purposes of this Act —

(a) a person is reckless if he disregards a substantial risk that the property in question is or represents the benefit from criminal conduct, and for those purposes “substantial risk” means a risk of such a nature and degree that having regard to the circumstances in which the person became involved with the property and the extent of the information then available to him, the disregard of that risk involves culpability of a high degree;

(b) references to converting, transferring, handling or removing property include references to the provision of any advice or assistance in relation to converting, transferring, handling or removing the property.

(7) This section does not apply to a person in respect of anything done by that person in connection with the enforcement of any law.

(8) This Act shall apply whether the criminal conduct in question occurred before or after the commencement of this Act and whether it was or is attributable to the person first mentioned in subsection (1) or another.

(9) In this Act, “criminal conduct” means conduct which —

(a) constitutes any act or omission against any law of the Republic punishable by imprisonment for life or for a term of imprisonment exceeding three years, and/or

by a fine exceeding R50,000 and, without prejudice to the generality of the above, including the financing of terrorism as referred to in the Prevention of Terrorism Act 2004, and for the avoidance of doubt includes the offence of money laundering established by sections 3(1) and 3(3) of this Act and whether committed in the Republic or elsewhere and whether before or after the commencement of the relevant provisions of this Act;

(b) where the conduct occurs outside the Republic, would constitute such an offence if it occurred within the Republic and also constitutes an offence under the law of the country or territorial unit in which it occurs;

(c) shall also include any act or omission against any law of another country or territory punishable by imprisonment for life or for a term of imprisonment exceeding three years, or by a fine exceeding the monetary equivalent of R50,000 whether committed in that other country or territory or elsewhere and whether before or after the commencement of the relevant provisions of this Act, unless the Attorney General shall certify in writing that it would not be in the public interest to take action in the Republic in relation to an act or omission as defined in this subsection; and

(d) includes participation in such conduct, including but not limited to, aiding, abetting, assisting, attempting, counselling, conspiring, concealing or procuring the commission of such conduct.

(10) For the purposes of this Act —

(a) references to believing that any property is or represents the benefit from criminal conduct include references to thinking that the property was probably, or probably represented, such benefit in whole or in part;

(b) references to any property representing the benefit from criminal conduct include references to the property representing that benefit in whole or in part directly or indirectly, and cognate references shall be construed accordingly;

(c) the standard of proof to be applied in deciding whether property is the benefit from criminal conduct shall be the standard of proof applicable in civil proceedings;

(d) in determining whether property is or represents the benefit from criminal conduct a court shall have account of all the surrounding circumstances of the connection of the defendant and any other relevant person with the property including but not limited to the financial ability of the defendant or that other person to have or possess such property, the explanation (if any) given by the defendant or that other person as to his connection with the property and the conduct of the defendant or that other person in relation to the property.

(11) (a) As soon as the Court determines that the evidence adduced in the case gives rise to a reasonable inference that the property is or represents the benefit from criminal conduct the property shall be deemed to be the benefit from criminal conduct unless the defendant by

evidence establishes otherwise to the satisfaction of the Court. The burden of proving that the property is not the benefit from criminal conduct shall be upon the defendant;

(b) It shall not be necessary in any event for the prosecution to prove that the property in question is or represents the benefit of any particular criminal conduct or that any person was convicted of criminal conduct in relation to the property.

(c) Where it is necessary in the case of a money laundering offence alleged to have been committed by a body corporate, to establish the state of mind of the body corporate, it shall be sufficient to show that a director, officer, employee or agent of the body corporate, acting in the course of his directorship, office, employment or agency as the case may be, had the required state of mind to satisfy the element of mens rea required to ground a conviction.

(d) Where a body corporate commits an offence of money laundering (whether convicted of that offence or not) and where the offence is committed with the consent, connivance, or in any other way with the assistance or omission to act of any director, secretary, manager, auditor or accountant of the company or any person directing or person controlling such person, he shall be guilty of the offence and capable of being tried and punished as a principal offender.

(12) For the purposes of this Act —

(a) a person handles property if that person, without a claim of right made in good faith —

(i) receives it;

(ii) undertakes or assists in its retention, removal, disposal or realisation by or for the benefit of another person; or

(iii) arranges to do any of the things specified in subparagraphs (i) or (ii).

(b) (i) a document purporting to be signed by a lawyer practicing in the country or territorial unit in which the criminal conduct concerned is alleged to have occurred and stating that such conduct is an offence under the law of that country or territorial unit; and

(ii) a document purporting to be a translation of a document mentioned in subparagraph (i) and certified as correct by a person appearing to be competent to so certify, shall be admissible in any proceedings, without further proof, as evidence of the matters mentioned in those documents, unless the contrary is shown.

(13) Where a person who has failed to comply with directions of the FIU under section 10(4) in relation to property, is subsequently charged with a money laundering offence or another offence under this Act it shall be presumed —

(a) that the property is the benefit from criminal conduct; and

(b) that the defendant knew or believed that the property was or represented benefit from criminal conduct or was reckless as to whether it was or represented such benefit,

until the defendant proves otherwise to the satisfaction of the Court on the civil standard of proof.

Section 3 repealed and substituted by s 5 of Act 18 of 2008 with effect from 25 August 2008
Section 3(13) amended by s 2(b) of Act 24 of 2011 with effect from 27 December 2011

PART 2 – OBLIGATIONS OF REPORTING ENTITY

Application of customer due diligence measures and ongoing monitoring

4. A reporting entity shall apply customer due diligence measures in respect of customers, business relationships and transactions, and conduct ongoing monitoring of business relationships in the manner as prescribed in regulations.

Section 4 repealed and substituted by s 2(c) of Act 24 of 2011 with effect from 27 December 2011

Requirement to cease transaction

5. (1) Where in relation to any customer, a reporting entity is unable to apply customer due diligence measures in accordance with the regulations prescribed under this Act, the reporting entity shall —

- (a) not carry out a transaction with or for the customer through a bank account;
- (b) not establish a business relationship or carry out a one-off transaction with the customer;
- (c) terminate any existing business relationship with the customer.

(2) Where a reporting entity is unable to undertake ongoing monitoring with respect to a business relationship, it shall terminate the business relationship.

(3) Where subsections (1) or (2) applies in relation to any customer, the reporting entity shall make a suspicious transaction report under section 10 of this Act or a disclosure under section 34 or 35 of the Prevention of Terrorism Act 2004, as applicable.

(4) Subsections (1) and (2) shall not apply to —

- (a) a lawyer in the course of ascertaining the legal position of his client or in defending or representing the client in, or concerning, legal proceedings, including advice on the institution or avoidance of proceedings;
- (b) a reporting entity who has made a suspicious transaction report under section 10 of this Act or a disclosure under section 34 or 35 of the Prevention of Terrorism Act 2004, to the extent that the reporting entity is acting —

(i) in the case of a suspicious transaction report, with the consent of the FIU; or

(ii) in the case of a disclosure under section 34 or 35 of the Prevention of Terrorism Act 2004, with the consent of the Commissioner of Police.

Section 5 repealed and substituted by s 2(d) of Act 24 of 2011 with effect from 27 December 2011

Reporting entity to maintain records

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

(a) customer due diligence measures prescribed by regulations;

Section 6(1)(a) repealed and substituted by s 2(e) of Act 24 of 2011 with effect from 27 December 2011

(b) all transactions carried out by it and correspondence relating to the transactions as is necessary to enable any transaction to be readily reconstructed at any time by the FIU or the Attorney-General, and the records shall contain particulars sufficient to identify —

(i) the nature and date of the transaction;

(ii) the type and amount of currency involved;

(iii) the type and identifying number of any account with the reporting entity involved in the transaction;

(iv) if the transaction involves a negotiable instrument other than currency, the name of the drawer of the instrument, the name of the institution on which it was drawn, the name of the payee (if any), the amount and date of the instrument, the number (if any) of the instrument and details of any endorsements appearing on the instrument;

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

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

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

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

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

(b) of any transaction or correspondence; or

(c) on which the business relationship ceases.

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

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

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

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

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

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

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

Account to be in true name

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

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

Money transmission to accompany originator information

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

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

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

Reporting entity to monitor transactions

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

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

with no apparent economic or lawful purpose.

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

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

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

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

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

Reporting suspicious transaction

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

(i) knowledge or reasonable grounds to suspect that any service, or transaction may be related to the commission of criminal conduct including an offence of money laundering or of financing of terrorism or to money or property that is or represents the benefit of criminal conduct;

(ii) information that may be —

(aa) relevant to an act preparatory to an offence or to money or property referred to in paragraph (a)(i) of subsection (1);

(bb) relevant to an investigation or prosecution of a person for an offence referred to in paragraph (a)(i) of subsection (1); or

(cc) of assistance in the enforcement of this Act or the Proceeds of Crime (Civil Confiscation) Act, 2008,

the reporting entity shall make a suspicious transaction report to the FIU within two working days of ascertaining the knowledge, forming the suspicion or receiving the information.

(b) The FIU shall acknowledge receipt of the suspicious transaction report within 24 hours of receipt.

(c) Where a suspicious transaction report relates to a service or transaction in respect of property in the possession or control of a reporting entity, the reporting entity shall not provide the service nor proceed with the transaction within a period of 10 working days from the date of the suspicious transaction report without the written consent of the FIU.

(d) If no such consent is received within a period of 10 working days from the date of the suspicious transaction report, the reporting entity may provide the service or carry out the transaction, and section 3(2) shall not apply unless the FIU issues a direction under subsection (4) and the reporting entity complies with the direction.

(e) For the purpose of paragraph (c), the FIU may consent to a service being provided or the transaction to proceed in whole or in part.

(f) Paragraph (c) shall not apply to inward transfers in a bank account or to any service or transaction that will increase the value of the property.

(2) (a) A report under this section shall —

(i) be in writing and may be given by way of telephone to be followed up in writing, mail, fax or electronic mail or such other manner as may be prescribed;

(ii) be in such form and contain such details as may be prescribed;

(iii) contain a statement of the grounds on which the reporting entity has the knowledge, holds the suspicion or receives the information; and

(iv) be signed or otherwise authenticated by the reporting entity.

(b) A person shall not commit an offence under this section or under section 3 of this Act if the person complies with the directions of the FIU or order of the Court where —

(i) a suspicious transaction report is made in relation to property, or

(ii) the person is informed by the FIU in writing or verbally and confirmed in writing within 24 hours, that property in his or her

possession or control is suspected to be the benefit from criminal conduct.

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

(4) The Director, the Deputy Director or an assets agent of the FIU duly authorised by the Director or the Deputy Director may, by notice in writing, direct a reporting entity not to carry out any specified service or transaction during the period specified in the direction, not exceeding 180 days, if —

(a) a suspicious transaction report has been made to the FIU in relation to the service or transaction within the preceding 30 days; or

(b) the FIU has obtained or received information, whether or not in a suspicious transaction report, in relation to the service or transaction, and

(c) such a direction is reasonably necessary to enable the FIU to investigate whether or not there are reasonable grounds to suspect that the property represents the proceeds of or benefit from criminal conduct including an offence of money laundering and financing of terrorism.

(5) A reporting entity in receipt of a direction shall not without the consent of the FIU or by order of a Court under this section carry out any service or transaction specified in the direction.

(6) The FIU shall, as soon as practicable after giving a direction under subsection (4), take all reasonable steps to notify in writing any person whom the FIU is aware is affected by the direction except where —

(a) it is not reasonably practicable to ascertain the whereabouts of the person; or

(b) there are reasonable grounds for believing that notice to the person will prejudice —

(i) the investigation in respect of which the direction or order is given;

(ii) any other investigation by a law enforcement agency in any jurisdiction;

(iii) a restraint order, pecuniary penalty order or forfeiture order made or to be made under this Act; or

(iv) an order made or to be made under the Proceeds of Crime (Civil Confiscation) Act, 2008.

(7) (a) A Court may, on an ex-parte application, extend a direction issued under subsection (4) on such terms and conditions where the Court is satisfied on oath that —

(i) there are reasonable grounds to suspect that the property represents the proceeds of criminal conduct including an offence of money laundering or of financing of terrorism, or may be related to money or property that is or represents the benefit from criminal conduct;

(ii) there are reasonable grounds to suspect that service or transaction will constitute or assist in the commission of criminal conduct including an offence of money laundering or of financing of terrorism;

(iii) an investigation by the FIU or by another law enforcement agency is taking place.

(b) The direction issued under subsection (4) may be further extended for periods not exceeding 180 days.

(8) (a) The FIU may, to expedite its investigations while a direction is in force require from a person reasonably appearing to have relevant knowledge, information, documents or materials in his or her possession or control to furnish such information, materials or documents in the manner and within the required time.

(b) Any information, materials or documents furnished by a person pursuant to paragraph (a) shall not be used as evidence in any criminal prosecution of that person except for the prosecution of the offence under subsection (11)(d).

(c) In this subsection “person” means —

(i) in the case of a bank account, the beneficial owner of the account, any person having signing authority on the account and any servant or agent of any other person reasonably appearing to the FIU to have the relevant knowledge, including any shareholders, or directors, secretary or other officers of a corporate body and any trustee or beneficiary of a trust;

(ii) in the case of property other than a bank account, the registered owner of the property or any servant or agent of the registered owner;

(9) (a) Any person who is aggrieved by a direction given under subsection (4) may apply to Court for revocation.

(b) An application under paragraph (a) shall be heard inter-partes.

(c) A Court may revoke the direction under subsection (4) in whole or in part if the Court is satisfied that the —

(i) applicant has established a legitimate source of the funds or property as the case may be;

(ii) revocation will not prejudice the investigation in respect of the direction given or a restraint order, pecuniary penalty order or forfeiture order or order made or to be made under this Act or under the Proceeds of Crime (Civil Confiscation) Act, 2008, as applicable.

(d) A Court shall not revoke a direction issued under subsection (4) if the applicant failed to furnish the information requested by the FIU under subsection (8)(a).

(10) The FIU shall not be obliged to furnish any details of any information held in its possession or the grounds of any suspicion if the FIU reasonably believes that the disclosure will prejudice —

- (a) the investigation in respect of which the direction is given;
- (b) any other investigation by a law enforcement agency in any jurisdiction;
- (c) a restraint order, pecuniary penalty order or forfeiture order made or to be made under this Act; or
- (d) an order made or to be made under the Proceeds of Crime (Civil Confiscation) Act, 2008.

(11) Any person who —

- (a) fails or refuses to comply with a request by the FIU under subsection (8)(a);
- (b) knowingly, directly or indirectly furnishes false or misleading information, documents or material to a reporting entity relating to a service, transaction or property;
- (c) fails to comply with a direction or order under this section;
- (d) directly or indirectly furnishes false or misleading information, documents or materials to the FIU or to the Court in support of an application under subsection (9),

commits an offence and is liable on conviction to a fine not exceeding SCR3,000,000 or a term of imprisonment not exceeding five years or to both such fine and term of imprisonment.

(12) In this section “transaction” means a transaction or a proposed transaction.

Section 10 repealed and substituted by s 2(f) of Act 24 of 2011 with effect from 27 December 2011

Supervisory authority or auditor to report suspicious transaction

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

(a) related to the commission of criminal conduct;

Section 11(a) amended by s 9(c)(i) of Act 18 of 2008 with effect from 25 August 2008

(b) of assistance in the enforcement of this Act;

(c) relevant to an act preparatory to criminal conduct,

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

Section 11(c) amended by s 9(c)(ii) of Act 18 of 2008 with effect from 25 August 2008

Disclosure of information

12. (1) A person (and without prejudice to the generality of the foregoing a reporting entity, its officers, employees or agents) who, knowing or suspecting that —

(a) a suspicious transaction report or a direction of the FIU under section 10(4) has been or may be made or that further information has been given under section 10;

Section 12(1)(a) amended by s 2(g) of Act 24 of 2011 with effect from 27 December 2011

(b) a reporting entity has formed a suspicion in relation to a transaction for the purpose of section 10;

(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 suspicious transaction report has been or may be made;

(d) a search warrant is to be issued or has been issued;

(e) an application is to be made, or has been made, under this Act for a production order; or

(f) an investigation has commenced concerning the circumstances that gave rise to the suspicious transaction report, the warrant or the production order,

makes any disclosure which could or may be likely to prejudice the implementation of the warrant, the making available of the material in accordance with the production order, or the investigation, commits an offence.

Section 12(1) repealed and substituted by s 9(d) of Act 18 of 2008 with effect from 25 August 2008

(1A) In proceedings against a person for an offence under this section it shall be a defence to prove that the person had lawful authority or reasonable excuse for making the disclosure.

Section 12(1A) inserted by s 9(d) of Act 18 of 2008 with effect from 25 August 2008

(2) Subsection (1) shall not apply to disclosures made to —

- (a) an officer or employee or agent of the reporting entity for any purpose connected with the performance of that person's duties;
- (b) a legal practitioner, attorney or legal advisor for the purpose of obtaining legal advice or representation in relation to the matter;
- (c) the supervisory authority of the reporting entity for the purpose of carrying out the supervisory authority's functions.

(3) No person referred to in subsection (2)(b) to whom disclosure of any information to which that subsection applies has been made shall disclose that information except to another person of the kind referred to in that subsection, for the purpose of —

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

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

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

Protection of identity of persons and information

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

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

except for the following purposes —

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

(ii) the enforcement of this Act.

(2) Nothing in this section prohibits the disclosure of any information for the purpose of the prosecution of any offence against any of the provisions of section 12.

Protection of person reporting suspicious transaction

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

(a) a reporting entity, an auditor or supervisory authority of a reporting entity; or

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

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

[*The cross-reference to section 24 appears to be a typographical error.]

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

Other duties of reporting entities

15. (1) A reporting entity shall —

(a) appoint a compliance and reporting officer who shall be responsible for ensuring the reporting entity's compliance with the provisions of this Act;

(b) the compliance and reporting officer appointed pursuant to this section shall

—
(i) be a senior officer with the necessary qualifications and experience and able to respond adequately to enquiries relating to the reporting entity and the conduct of its business;

(ii) be responsible for establishing and maintaining such a manual of compliance procedures in relation to its business as the supervising authority or the FIU may from time to time require;

(iii) be responsible for ensuring that the staff of the reporting entity comply with the provisions of this Act and any other law relating to money laundering or financing of terrorism and the provisions of any manual of compliance procedures established pursuant to this section; and

(iv) act as the liaison officer between the reporting entity and the

supervising authority and the FIU in matters relating to compliance with the provisions of this Act and any other law with respect to money laundering or financing of terrorism;

(c) establish and maintain procedures and systems to —

(i) implement the customer identification requirements under section 4;

(ii) implement record keeping and retention requirements under sections 6 and 7;

(iii) implement the reporting requirements under section 10;

(iv) make its officers and employees aware of the laws relating to money laundering and financing of terrorism;

(v) make its officers and employees aware of the procedures, policies and audit systems adopted by it to deter money laundering and financing of terrorism;

(vi) screen persons before recruiting them as employees; and

(d) train its officers, employees and agents to recognise suspicious transactions, trends in money laundering and financing of terrorism activities and money laundering and financing of terrorism risks within the reporting entity's products, services and operations;

(e) establish an audit function to test its anti-money laundering and financing of terrorism procedures and systems.

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

PART 3 - FINANCIAL INTELLIGENCE UNIT

Part 3 repealed and substituted by s 6 of Act 18 of 2008 with effect from 25 August 2008

Establishment of the FIU

16. (1) A financial intelligence and assets recovery unit to be known as the FIU is hereby established.

(2) The FIU shall be a body corporate with perpetual succession, a common seal, power to sue and be sued in its corporate name, to acquire, hold and dispose of land or an interest in land and to acquire, hold and dispose of any other property.

(3) Subject to the provisions of this Act, the objectives of the FIU shall be —

(a) the monitoring, training and enforcing compliance by reporting entities with

the obligations imposed on them by Part 2 of the Act and to exercise the powers and duties set out the Schedule to this Part;

(b) the identification of the assets, wherever situated, of persons which derive or are suspected to derive, directly or indirectly, from criminal conduct as defined in section 2;

(c) the taking of appropriate action under the law to deprive or to deny those persons of the assets or the benefit of such assets, in whole or in part, as may be appropriate, including but not limited to all appropriate actions prior to, during and after court proceedings in relation to the making or the enforcement of a restraint order, a forfeiture order or a pecuniary penalty order within the meaning of Part 4 or Part 5 or the making or enforcement of a court order under the Proceeds of Crime (Civil Confiscation) Act, 2008;

(d) the pursuit of any investigation or the doing of any other preparatory work in relation to any proceedings or other action arising from the objectives mentioned in paragraphs (a), (b) and (c);

(e) the investigation of any criminal conduct; and

(f) the taking of any other action to deprive persons of the benefit of their criminal conduct and to secure that such benefit and any abandoned goods or property be ascertained and transferred to the Republic.

(4) Without prejudice to the generality of subsection (3), the functions of the FIU, operating through its assets agents and such other persons as the Director or the Deputy Director with the consent of the *President shall from time to time decide, shall be the taking of all necessary actions —

(a) in accordance with the relevant provisions of this Act, for the monitoring, training and enforcing compliance by reporting entities with the obligations imposed on them by Part 2 of this Act;

(b) in accordance with police functions and the FIU statutory remit, for the purposes of the confiscation, restraint of use, freezing, preservation or seizure of assets identified as deriving or suspected to derive, directly or indirectly, from criminal conduct;

(c) for the investigation of any criminal conduct;

(d) under the revenue laws or any provision of any other Act, whether passed before or after the passing of this Act, which relates to revenue, to ensure that the benefit from criminal conduct or suspected criminal conduct are subjected to tax and that the revenue laws, where appropriate, are fully applied in relation to such benefit or conduct, as the case may be;

(e) under the Social Security Act for the investigation and determination, as appropriate, of any claim for or in respect of benefit by any person suspected of

being engaged in criminal conduct; and

(f) at the request of the Director of the Fund or the Revenue Commissioner to investigate and determine, as appropriate, any claim for or in respect of a benefit where there are reasonable grounds for believing that, in the case of a particular investigation, officers of the Fund or inspectors may be subject to threats or other forms of intimidation, and such actions include, where appropriate, subject to any international agreement, as provided herein, and also as directed by the *President, cooperation with any police force, institution or agency of a territory or country other than the Republic or any international organisation, institution or agency that has duties or powers similar to the FIU.

(5) In relation to the matters referred to in subsection (4), nothing in this Act shall be construed as affecting or restricting in any way the functions of the Commissioner, the Attorney General, the Seychelles Revenue Commission, the Central Bank, the Director of the Fund or any other government agency.

(6) The *President, after consultation with the Director or the Deputy Director as the case may require, if *he so thinks fit, by order may; —

(a) confer on the FIU or its assets agents such additional functions connected with the objectives and functions for the time being of the FIU; and

(b) make such provision as *he considers necessary or expedient in relation to matters ancillary to or arising out of the conferral on the FIU or its assets agents of functions under this section or the performance by the FIU or its assets agents of functions so conferred.

(7) The *President may by order amend or revoke an order made by him under this Act (including an order under this subsection).

(8) As soon as may be, but not later than three months after the end of each year, the FIU shall present a report to the *President of its activities during that year and the *President shall cause a copy of the report to be tabled before the National Assembly.

(9) Each report under subsection (8) shall include information in such form and regarding such matters as the *President may direct.

(10) The FIU shall, whenever so requested by the *President, furnish to him information as to the general operations of the FIU.

(11) No action shall lie against the *President, any assets agent, employee or agent of the FIU or any person acting under the direction of the FIU for anything done in good faith in the exercise or discharge of any powers, duties or functions under this Act.

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

[*The exercise of powers or performing of duties by the President under sections 16(4), (6), (7), (8), (9), (10) and (11), 17(5)(a) and (7) and 18(2)(c) were transferred to the Board of Directors of the Central Bank of Seychelles by the Transfer of Statutory Functions (Anti-Money Laundering Act) Order with effect from 15 February 2010 (SI 15 of 2010).]

TABLE

Powers and duties of the FIU regarding reporting entities

The FIU —

(a) shall receive reports made under sections 10 and 11 of this Act, information provided to the FIU by a government institution or agency of the Republic or any other country and any other information voluntarily provided to the FIU about suspicions of an offence under this Act or any other law;

(b) shall have the authority to collect any information that the FIU considers relevant to an offence under this Act or any other law that is publicly available, including commercially available databases, or information that is collected or maintained including information that is stored in databases maintained by the government;

(c) shall have the authority to request information from reporting entities, any supervisory agency and any law enforcement agency for the purposes of this Act;

(d) shall analyse and assess all reports and information;

(e) may carry out examinations of reporting entities as set out in section 16C;

(f) may send any report, any information derived from such report or any other information it receives to the appropriate law enforcement agency and supervisory authorities, if on the basis of its analysis and assessment the FIU has reasonable grounds to suspect that a transaction is unlawful;

(g) shall have the authority to instruct any reporting entity to take such steps as may be appropriate in relation to any information or report received by the FIU to enforce compliance with this Act or to facilitate any investigation being carried on or anticipated by the FIU;

(h) shall compile statistics and records and may disseminate information within the Republic or elsewhere as well as make recommendations arising out of any information received;

(i) may from time to time after consultation with supervisory authorities, issue guidelines and prescribe the form and manner of suspicious transaction reports 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 programmes for reporting entities in relation to customer identification, record keeping and reporting obligations and the identification of suspicious transactions;

(l) may periodically inform reporting entities and other relevant agencies regarding the outcome of reports or information given under the Act;

(m) may conduct research into trends and developments in the area of money laundering and financing of terrorism and improved ways of detecting, preventing and deterring money laundering and the financing of terrorism;

(n) may educate the public and create awareness on matters relating to money laundering and financing of terrorism;

(o) may disclose any report, any information derived from such report or any other information it receives to an institution or agency of a foreign country or of an international organisation in accordance with section 16A; and

(p) may enter into any agreement or arrangements with any local institution or agency regarding exchange of information.

Section 16 repealed and substituted by s 6 of Act 18 of 2008 with effect from 25 August 2008

International exchange of information

16A. (1) The FIU may, with the approval of the Attorney General, disclose any report or information as set out under paragraph (o) of the Table to section 16 to an institution or agency of a foreign country or to an international organisation or institution or agency established by the governments of foreign countries that has powers and duties similar to those of the FIU —

(a) on such terms and conditions are set out in the agreement or arrangement between the FIU and that foreign country or international organisation, institution or agency regarding the exchange of such information;

(b) where such an agreement or arrangement has not been entered into between the Republic and/or the FIU and that foreign country or international organisation or institution or agency, on such terms and conditions as may be agreed upon by the Republic and/or the FIU and the foreign country, international organisation, institution or agency at the time of disclosure and such terms and conditions shall include the following—

(i) a restriction on the use of the report or information for purposes relevant to investigating or prosecuting criminal conduct, a money laundering offence or an offence of the financing of terrorism, or an offence that is substantially similar to such an offence or the restraint, forfeiture, seizing or freezing of assets (including any civil procedures

similar to those provided in the Proceeds of Crime (Civil Confiscation) Act, 2008, or the making of an order in the nature of a pecuniary penalty order; and

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

Section 16A inserted by s 6 of Act 18 of 2008 with effect from 25 August 2008; renumbered as section 16A(1) by s 2(h)(i) of Act 24 of 2011 with effect from 27 December 2011

(2) (a) The FIU may, for intelligence purposes only, disclose any report or information as set out in paragraph (o) of the Table to section 16 or any other information in its possession to the FIU of a foreign country, international organisation or institution or agency established by governments of foreign countries having similar powers and duties as the FIU.

(b) For the purpose of subsection (2)(a), the FIU may enter into a Memorandum of understanding with the FIU of a foreign country, international organisation, institution or agency established by the government of foreign countries.

Section 16A(2) inserted by s 2(h)(ii) of Act 24 of 2011 with effect from 27 December 2011

Agreements for the international exchange of information

16B. (1) The FIU may, with the approval of the President, enter into an agreement or arrangement in writing with the government of a foreign country, or an international organisation or an institution or agency established by the governments of foreign countries regarding the exchange of information between the FIU and any institution or agency of that country or organisation that has powers and duties similar to those of the FIU.

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

(a) an institution or agency of a foreign country or an international organisation established by the governments of foreign countries that has powers and duties similar to those of the FIU; and

(b) a foreign law enforcement or supervisory agency or authority,

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

(3) The information exchanged under sections 16A and 16B shall be information that the FIU, the institution, agency, organisation or authority has reasonable grounds to suspect would be relevant to investigating or prosecuting criminal conduct including the offence of money laundering or of financing of terrorism or an offence that is substantially similar to any of those offences, or to the restraint, forfeiture, seizure, freezing of assets (including any civil procedures similar to those provided in the Proceeds of Crime (Civil Confiscation Act, 2008) or the making of an order in the nature of a pecuniary penalty order.

(4) Agreements or arrangements entered into under subsections (1) and (2) of section 16B shall include the following —

(a) a restriction on the use of the report or information for purposes relevant to investigating or prosecuting criminal conduct, a money laundering offence or an offence of the financing of terrorism, or an offence that is substantially similar to such an offence or restraint, forfeiture, seizure or freezing of assets (including any civil procedures similar to those provided in the Proceeds of Crime (Civil Confiscation) Act 2008), or the making of an order in the nature of a pecuniary penalty order save as otherwise agreed in writing; and

(b) a stipulation that the information be treated in a confidential manner and not be further disclosed without the express consent of the FIU.

Section 16B inserted by s 6 of Act 18 of 2008 with effect from 25 August 2008

Power of Director to examine records of reporting entity

16C. (1) The Director or any person authorised by the Director may examine records of a reporting entity, and —

(a) during business hours, except in a case of immediate urgency when immediate access shall be given, enter any premises of a reporting entity in which the Director or the person believes, on reasonable grounds, that there are records relevant to ensuring compliance with the provisions of this Act;

(b) use or cause to be used any computer system or data processing system in the premises to examine any data contained in or available to the system;

(c) reproduce any record, or cause it to be reproduced from data in the form of a printout or other intelligible output and remove the printout or other output for examination or copying;

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

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

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

Section 16C inserted by s 6 of Act 18 of 2008 with effect from 25 August 2008

Obligation of officers and employees of a reporting entity

16D. (1) All officers and employees of a reporting entity shall take all reasonable steps to ensure that the reporting entity complies with its obligations under this Act.

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

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

(4) If the reporting entity or any officer or employee of that entity fails without reasonable excuse to comply with the requirements of an order made under subsection (3) within such period of time as may be specified in the order, such reporting entity, officer or employee shall be guilty of an offence and on conviction shall be liable to a fine not exceeding R1,000,000 in the case of an individual and R5,000,000 in the case of a reporting entity as the Court may determine.

Section 16D inserted by s 6 of Act 18 of 2008 with effect from 25 August 2008

Appointment of Director, Deputy Director and Acting Director of the FIU

17. (1) There shall be a chief officer of the FIU who shall be known, and is referred to in this Act, as the Director.

(2) There shall be a deputy chief officer of the FIU who shall be known, and is referred to in this Act, as the Deputy Director.

(3) The President shall from time to time, appoint to the FIU the Director and the Deputy Director and may, at any time, at his absolute discretion, remove the Director, the Deputy Director or the FIU Legal Officer, from his appointment with the FIU.

(4) The Director shall carry on, manage and control generally the administration and business of the FIU in consultation with the Deputy Director.

(5) (a) At any time the *President in *his absolute discretion may, by order, assign principal responsibility for any of the powers and functions of the FIU to the Director, the Deputy Director or the FIU Legal Officer, and for so long as that order remains in force the exercise of those powers and the performance of those functions shall vest exclusively in the Director, the Deputy Director or in the FIU Legal Officer as the case may be.

(b) During the continuance of an order made subsection (5) references thereafter to “the Director” shall mean the Deputy Director or the FIU Legal Officer as the case may require and the provisions herein set out shall apply mutatis mutandis

to the Deputy Director or the FIU Legal Officer.

(6) Where a power may be exercised or a function performed by the Director, the Deputy Director, the FIU Legal Officer or an assets agent, no question or issue shall be raised in any court or other proceedings regarding the capacity of that person to exercise the power or perform the function and it shall not be a defence that the exercise of the power or performance of the function should have been by another person.

(7) The Director and the Deputy Director shall be responsible to the *President for the performance of the functions of the FIU.

(8) (a) In the event of temporary incapacity through illness, or absence or otherwise of the Director, the Deputy Director shall perform the functions of the Director and while so acting the Deputy Director shall have and exercise all the powers and functions of the Director.

(b) Without prejudice to the foregoing, in the event of any incapacity through illness, or absence of the Director or any other cause as decided by the President, the President may appoint to the FIU a person, who shall be known as the Acting Director, to perform the functions of the Director and the President shall remove the Acting Director from that appointment upon being satisfied that the incapacity or absence of the Director or other reason has ceased.

(c) The Acting Director shall have and exercise all the powers and functions of the Director during the period of his appointment.

(9) For the purposes of this Act and otherwise where relevant, the Director, the Deputy Director and the Acting Director, as the case may be, shall be assets agents while so appointed.

Section 17 repealed and substituted by s 6 of Act 18 of 2008 with effect from 25 August 2008

[*The exercise of powers or performing of duties by the President under sections 16(4), (6), (7), (8), (9), (10) and (11), 17(5)(a) and (7) and 18(2)(c) were transferred to the Board of Directors of the Central Bank of Seychelles by the Transfer of Statutory Functions (Anti-Money Laundering Act) Order with effect from 15 February 2010 (SI 15 of 2010).]

Appointment of assets agent and FIU Legal Officer

18. (1) The President may appoint, such and so many persons as he thinks fit to be assets agents of the FIU.

(2) The President may appoint a person to be the FIU Legal Officer, who shall —

(a) be an assets agent;

(b) assist and advise the Director, the Deputy Director and the assets agents in legal, administrative and operational matters, to assist the FIU in the pursuit of its objectives and functions; and

(c) report directly to the *President.

(3) An appointment under this section shall –

(a) be in writing and signed by the President;

(b) be known as a warrant of appointment; and

(c) inter alia specify the name of the appointee, the date of the appointment and, if different shall specify the date from which the appointment is to take effect.

(4) (a) The powers and duties vested in an assets agent for the purposes of this Act, shall be the powers and duties vested in the assets agent, as the case may be, by virtue of —

(i) being a member or officer of the agency, body or organisation to which he was attached prior to being appointed an assets agent;

(ii) the revenue laws or any provision of any other Act, whether passed before or after the passing of this Act, which relates to revenue, including any authorisation or nomination made thereunder;

(iii) the Social Security Act, including any appointment made thereunder;

(iv) any other appointment or qualification;

(v) such executive power as shall be granted to that assets agent by the President; and

(vi) this Act,

and the exercise or performance of any power or duty for the purposes of this Act shall be exercised or performed in the name of the FIU.

(b) On being so appointed (and in so far it is not already the case) an assets agent shall be deemed to have been authorised and vested with every authority and powers and functions under the law of the agency, body or organisation as is mentioned in subparagraph (a)(i) above.

(5) An assets agent, other than the FIU Legal Officer or the Deputy Director, when exercising or performing any powers or duties, shall be under the direction and control of the Director.

(6) Where in any case, an assets agent (other than the Deputy Director and the FIU Legal Officer) who, prior to being appointed an assets agent, was required to exercise or perform any power or duty on the direction of any other person, it shall be lawful for the assets agent to exercise or perform such power or duty on the direction of the Director.

(7) An assets agent may exercise or perform his powers or duties pursuant to any information received by him, including but not limited to any information received from another assets agent or pursuant to any action taken by that other assets agent in the exercise or performance of that other assets agent's powers or duties, and any information, document or other

material obtained by assets agents under this subsection shall be admitted in evidence in any subsequent civil proceedings, and in all proceedings under Part 5 of this Act, notwithstanding any Act, rule of law or practice to the contrary and it shall be a matter for the relevant court to determine the weight to be attached to the said information, document or other material.

(8) (a) An assets agent may be accompanied or assisted in the exercise or performance of that assets agent's powers or duties by such other persons (including assets agents) as the first-mentioned assets agent, the Director, the Deputy Director or the FIU Legal Officer considers necessary.

(b) An assets agent may take with him to assist in the exercise or performance of his powers or duties, any equipment or materials as that assets agent, the Director, the Deputy Director or the FIU Legal Officer considers necessary.

(c) An assets agent who accompanies or assists another assets agent under paragraph (a) shall have and be conferred with the powers and duties of the first mentioned assets agent for the purposes of that assistance and vice versa.

(d) Information, documents or other material obtained by assets agents under paragraph (a) or (c) shall be admitted in evidence in any subsequent civil proceedings, and in all proceedings under Part 5 of this Act, notwithstanding any Act, rule of law or practice to the contrary and it shall be a matter for the relevant court to determine the weight to be attached to the said information, document or other material.

(9) Any information or material obtained by an assets agent for the purposes of this Act may be disclosed by an assets agent or the FIU to —

(a) another assets agent; and

(b) with the consent of the Director, the Deputy Director or the FIU Legal Officer to —

(i) any member of the police, armed forces or other body, agency or organisation having responsibility for combating criminal conduct including drug trafficking and/or preserving the security of the Republic, for the purposes of that body, agency or organisation;

(ii) any officer of the Seychelles Revenue Commission for the purpose of the revenue laws or any provision of any other Act, whether passed before or after the passing of this Act, which relates to revenue;

(iii) any other officer of a Ministry of the Government or the Governor of the Central Bank for the purposes of that other officer exercising or performing his powers or duties; and

(iv) any officer of an agency established by the Government for the collection of intelligence and/or information for the purpose for combating criminal conduct including drug trafficking and/or preserving

the security of the Republic,

and information, documents or other material obtained by an assets agent or any other person under the provisions of this subsection shall be admitted in evidence in any subsequent civil proceedings, and in all proceedings under Part 5 of this Act, by any person or body to whom it shall have been lawfully disclosed notwithstanding any law, rule of law or practice to the contrary and it shall be a matter for the relevant court to determine the weight to be attached to the said information, document or other material. For the purposes of this Act “disclose” includes “transmit”.

(10) (a) The President may, at his absolute discretion, at any time, after consultation with the Director or the Deputy Director as the case may require, remove any assets agent, from the FIU whereupon the appointment of that person as an assets agent shall cease.

(b) This subsection shall not apply to the Director, the Deputy Director or the FIU Legal Officer.

(11) Nothing in this Act shall affect the powers and duties of a member of the police, an officer of the Commissioner of Taxes or any other relevant person, who is not an assets agent.

(12) An assets agent, shall hold his appointment on such terms and conditions (including terms and conditions relating to remuneration and superannuation) as the President may determine.

Section 18 repealed and substituted by s 6 of Act 18 of 2008 with effect from 25 August 2008

[*The exercise of powers or performing of duties by the President under sections 16(4), (6), (7), (8), (9), (10) and (11), 17(5)(a) and (7) and 18(2)(c) were transferred to the Board of Directors of the Central Bank of Seychelles by the Transfer of Statutory Functions (Anti-Money Laundering Act) Order with effect from 15 February 2010 (SI 15 of 2010).]

Anonymity

19. (1) Notwithstanding any requirement made by or under any Act or any other requirement in administrative and operational procedures, including internal procedures, all reasonable care shall be taken to ensure that the identity of an assets agent, who is not a member of the police other than the Director, the Deputy Director or the FIU Legal Officer, shall not be revealed.

(2) Where an assets agent who is not a member of the police is or may be required by law or practice, for the purposes of exercising or performing his powers or duties, to produce or show any written authority or warrant of appointment under any Act or otherwise to identify himself, the assets agent —

(a) shall not be required to produce or show any such authority or warrant of appointment or to so identify himself, for the purposes of exercising or performing his powers or duties under those Acts; and

(b) shall be accompanied by an assets agent who is a member of the police and the assets agent who is a member of the police shall on request by a person

affected, identify himself as a member of the police and shall state that he is accompanied by an assets agent and shall inform any relevant person of the provisions in paragraph (a) whereupon that person shall be obliged to accept the authority of the assets agent.

(3) Where an assets agent exercises or performs any of his powers or duties in writing under any provision of any Act, whether passed before or after the passing of this Act, such exercise or performance of his powers or duties shall be done in the name of the FIU and not in the name of the individual assets agent involved, notwithstanding any provision to the contrary in any of those Acts.

(4) Any document relating to proceedings arising out of the exercise or performance by an assets agent of his powers or duties shall not reveal the identity of any assets agent provided that where such document is adduced in evidence subsection (6) shall apply.

(5) In any proceedings, the identity of any assets agent, other than that he is an assets agent, shall not be revealed other than, in the case of a hearing before a court, to the judge hearing the case, or in any other case, the person in charge of the hearing, provided that, where the identity of such an assets agent is relevant to the evidence adduced in the proceedings, subsection (6) shall apply.

(6) In any proceedings where an assets agent may be required to give evidence, whether by affidavit or certificate, or oral evidence —

(a) the judge, in the case of proceedings before a court; or

(b) the person in charge of the proceedings, in any other case,

may, on the application of the Director or the Deputy Director, if satisfied that there are reasonable grounds in the public interest to do so, give such directions for the preservation of the anonymity of the assets agent as he thinks fit, including directions as to —

(i) the restriction of the circulation of affidavits or certificates;

(ii) the deletion from affidavits or certificates of the name and address of any assets agent, including the deponent and certifier; or

(iii) the giving of evidence in the hearing but not in the sight of any person.

Section 19 repealed and substituted by s 6 of Act 18 of 2008 with effect from 25 August 2008

Prohibition on publication

20. (1) A person who publishes or causes to be published —

(a) the fact that an individual not being or having been a member of the police is or was an assets agent;

- (b) the fact that an individual is a member of the family of —
- (i) an assets agent;
 - (ii) a former assets agent; or
- (c) the address of any place as being the address where any —
- (i) assets agent;
 - (ii) former assets agent;
 - (iii) member of the family of any assets agent, or former assets agent, resides,
- shall be guilty of an offence.

(2) The reference to publication of a fact or an address in this section shall include publication of any material from which a reasonable person could readily identify the fact or ascertain the address as the case may be.

(3) References to assets agent, or former assets agent in subsection (1)(a) of this section do not include references to the Director, the Deputy Director, the Acting Director or the FIU Legal Officer.

Section 20 repealed and substituted by s 6 of Act 18 of 2008 with effect from 25 August 2008

Offences of assault, intimidation or obstruction of assets agents

21. (1) A person who assaults or attempts to assault an assets agent or any member of the family of an assets agent shall be guilty of an offence.

(2) A person who utters or sends threats to or, in any way, intimidates or menaces an assets agent or any member of the family of an assets agent shall be guilty of an offence.

(3) A person who delays, obstructs, impedes, interferes with or resists an assets agent or any person lawfully accompanying or assisting an assets agent in the exercise or performance of his powers or duties or attempts or conspires to do any of the foregoing shall be guilty of an offence.

(4) A person guilty of an offence referred to in sections 20(1), 21(7), 22(8), 23(8), 24(2) or 53 of this Act shall be liable on conviction, to a fine not exceeding R500,000, or to imprisonment for a term not exceeding five years, or to both.

(5) A person guilty of an offence referred to in sections 12(1), 21(1), 21(2), 21(3), 23(9)(e), 46, 47, 48, 49, 50 or 56 of this Act shall be liable on conviction, to a fine not exceeding R1,000,000, or to imprisonment for a term not exceeding 12 years, or to both.

(6) If a financial institution or other person whose trade or business is regulated by license or permit is convicted of an offence under this Act, the sentencing Judge may order the said license to be terminated or to be suspended for such period as thought proper, in addition to any other penalty or sentence that may be imposed

(7) Subject to the provisions of this section it shall be an offence to communicate with the Attorney General or an officer of the Attorney General, a member of the Police, an assets agent or a lawyer who acts on behalf of the Attorney General in his official capacity for the purpose of influencing the making of a decision to withdraw or not to initiate or otherwise influencing the conduct or outcome of, criminal proceedings or any particular charge in criminal proceedings under this Act or any other Act.

(8) If a person referred to in subsection (7) becomes of opinion that a communication is in breach of that subsection, it shall be the duty of the person not to entertain the communication further.

(9) Subsections (7) and (8) do not apply to —

(a) communications made by a person who is a defendant or a complainant in criminal proceedings or believes that he is likely to be a defendant in criminal proceedings; or

(b) communications made by a person involved in the matter either personally or as legal or medical adviser to a person involved in the matter or as social worker or a member of the family of a person involved in the matter.

Search warrant

22. (1) A Judge of the Court, on hearing evidence on oath given by an assets agent who is a member of the police, may, if he is satisfied that there are reasonable grounds for suspecting that evidence of, or relating to assets or benefits deriving from criminal conduct or to their identity or whereabouts, is to be found in any place, issue a warrant for the search of that place and any person found at that place.

(2) A Judge of the Court, may hear an application for a search warrant under subsection (1) at any place.

(3) A warrant under this section shall be expressed to and shall operate to authorise a named assets agent who is a member of the police accompanied by such other persons as the assets agent thinks necessary, to enter, within one week of the date of issuing of the warrant (if necessary by the use of reasonable force), the place named in the warrant, and to search it and any person found at that place and seize and retain any material found at that place, or any material found in the possession of a person found present at that place at the time of the search, which the member of the police or person accompanying him believes to be evidence of or relating to assets or benefits deriving from criminal conduct, or to their identity or whereabouts.

(4) The authority conferred by subsection (3) to seize and retain any material includes, in the case of a document or record, authority —

(a) to make and retain a copy of the document or record; and

(b) where necessary, to seize and retain any computer or other storage medium in which any record is kept.

(5) An assets agent acting under the authority of a warrant under this section may —

(a) operate any computer at the place which is being searched or direct that it be operated by a person accompanying the member of the police for that purpose; and

(b) require any person at that place who appears to the member of the police to have lawful access to the information in the computer—

(i) to give to the member of the police any password necessary to operate the computer;

(ii) to otherwise furnish any necessary information to enable the member of the police or a person accompanying the member of the police to examine the information accessible by the computer in a form in which the information is visible and legible; or

(iii) to produce the information to the member of the police or a person accompanying the member of the police in a form in which it can be removed and in which the information is, or can be made, visible and legible.

(6) In this section —

(i) “computer at the place which is being searched” includes any other computer, whether at that place or at any other place, which is lawfully accessible by means of the first mentioned computer; and

(ii) “material” includes a copy of the material and a document or record.

(7) An assets agent who is the member of the police acting under the authority of a warrant under this section may —

(a) require any person present at the place where the search is carried out to give to the member of the Police the person’s name and address; and

(b) arrest without warrant any person who —

(i) obstructs or attempts to obstruct that member of the police or any person accompanying that member of the police in the carrying out of his or her duties;

(ii) fails to comply with a requirement under subsection (5)(b) or subsection (7)(a); or

(iii) gives a name or address which the member of the police has reasonable cause for believing is false or misleading.

(8) A person who obstructs or attempts to obstruct a person acting under the authority of a warrant under this section, or who fails to comply with a requirement under subsections (5)(b) or (7)(a) or who gives a false or misleading name or address to an assets agent, shall be guilty of an offence.

(9) The power to issue a warrant under this section is in addition to and not in substitution for any other power to search without warrant or to issue a warrant for the search of any place or person under this Act or under any other Act.

(10) In this section, “place” includes a dwelling and any vehicle, caravan or boat at or near the place named in the warrant, in circumstances where the assets agent named in the warrant suspects that evidence of or relating to assets or benefits deriving from criminal conduct, or to their identity or whereabouts, is to be found therein or thereon.

(11) Where an assets agent, or any person lawfully accompanying such assets agent is in or at any place under the authority of a warrant granted under this section or other lawful authority for the purposes of a search or an arrest the assets agent or person may seize and retain any material found at that place, or any material found in the possession of a person found present at that place at the time of the search or arrest, which the member of the police or person accompanying him believes to be evidence of or relating to the commission of any criminal conduct.

Section 22 repealed and substituted by s 6 of Act 18 of 2008 with effect from 25 August 2008

Production Order

23. (1) For the purposes of an investigation into whether a person has benefited from assets or benefits deriving from criminal conduct or is in receipt of or controls assets or benefits deriving from criminal conduct, an assets agent who is a member of the police may apply to Judge of the Court for an order under this section in relation to making available any particular material or material of a particular description.

(2) On an application under subsection (1) the Judge, if satisfied —

(a) that there are reasonable grounds for suspecting that a person has benefited from assets or benefits deriving from criminal conduct or is in receipt of or controls such assets or benefits; and

(b) that the material concerned is required for the purposes of such an investigation,

may order that any person who appears to him or her to be in possession of the material shall —

(i) produce the material to the member of the police or such other person named in the order so that the member of the police or other person may take the material away; or

(ii) give the member of the police or other person named in the order access to the material within a period to be specified in the order.

(3) The period to be specified under subsection (2)(b)(ii) shall be one week, unless it appears to the Judge that a longer or shorter period would be appropriate in the particular circumstances of the case.

(4) (a) An order under this section in relation to material in any place may, on the application of the member of the police concerned, require any person who appears to the Judge to be entitled to grant entry to the place, to allow the member of the police to enter the place to obtain access to the material.

(b) Where a person required under paragraph (a) to allow the member of the police or such other person named in the order to enter a place, does not allow him to do so, section 22 shall have effect, with any necessary modifications, as if a warrant had been issued under that section authorising the member of the police, accompanied by such other persons as the assets agent thinks necessary to search the place and any person found there and to exercise the powers under such warrant.

(5) Where such material consists of information contained in a computer, the order shall have effect as an order to produce the material, or to give access to it, in a form in which it is visible and legible and in which it can be taken away.

(6) The order —

(a) in so far as it may empower a person to take away a document or to be given access to the document, shall authorise the person to make a copy of the document and to take the copy away;

(b) shall not confer any right to production of, or access to, any material subject to legal privilege; and

(c) shall have effect notwithstanding any other obligation as to secrecy or other restriction on disclosure of information imposed by an Act or otherwise.

(7) Any material taken away by a person under this section may be retained for use as evidence in any proceedings.

(8) A person who without reasonable excuse fails or refuses to comply with any requirement of an order under this section is guilty of an offence.

(9) (a) For the purposes of an investigation into whether a person has benefited from assets or benefits deriving from criminal conduct or is in receipt of or controls such assets or benefits, the FIU may apply to a Judge of the Court for an order under this section in relation to

obtaining information regarding any trust in which the person may have an interest or with which he may be otherwise connected.

(b) On such an application the Judge, if satisfied —

(i) that there are reasonable grounds for suspecting that a person —

(aa) has benefited from assets or benefits deriving from criminal conduct or is in receipt of or controls assets or benefits deriving from criminal conduct; and

(bb) has some interest in or other connection with the trust;

(ii) that the information concerned is required for the purposes of an investigation into whether a person has benefited from assets or benefits deriving from criminal conduct or is in receipt of or controls such assets or benefits; and

(iii) that there are reasonable grounds for believing that it is in the public interest that the information should be disclosed for the purposes of the investigation, having regard to the benefit likely to accrue to the investigation and any other relevant circumstances,

may order the trustees of the trust and any other person (including the suspected person) to disclose to the FIU such information as it may require in relation to the trust, including the identity of the settlor and any or all of the trustees and beneficiaries.

(c) An order under this section —

(i) shall not confer any right to production of, or access to, any information subject to legal privilege; and

(ii) shall have effect notwithstanding any other obligation as to secrecy or other restriction on disclosure of information imposed by an Act or otherwise.

(d) A Judge of the Court may vary or discharge an order under this section on the application of any person to whom it relates or the FIU.

(e) A trustee or other person who without reasonable excuse fails or refuses to comply with an order under this section or gives information which is false or misleading shall be guilty of an offence.

(f) Any information given by a person in compliance with an order under this subsection is not admissible in evidence in any criminal proceedings against the person, except in any proceedings for an offence under paragraph(e).

(10) In this section “information” includes —

- (a) a document or record; and
- (b) information in non-legible form.

Section 23 repealed and substituted by s 6 of Act 18 of 2008 with effect from 25 August 2008

Power of arrest of assets agent who is a member of the police

24. (1) Where an assets agent who is a member of the police has reasonable cause to suspect that a person is committing or has committed criminal conduct, the assets agent may —

- (a) arrest that person according to law without warrant; or
- (b) require the person to give his name and address, and if the person fails or refuses to do so or gives a name or address which the assets agent reasonably suspects to be false or misleading, the assets agent may arrest that person without warrant.

(2) A person who fails or refuses to give his name or address when required under this section or gives a name or address which is false or misleading, shall be guilty of an offence.

Section 24 repealed and substituted by s 6 of Act 18 of 2008 with effect from 25 August 2008

Funding of the FIU

25. (1) The funds of the FIU shall be as voted by the National Assembly for the use of the FIU, together with such advances, in such manner and such sums as the President may determine and direct, to be paid from time to time either specifically or generally out of public funds voted to or in the possession of any government department, agency or the Central Bank.

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

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

Section 25 repealed and substituted by s 6 of Act 18 of 2008 with effect from 25 August 2008

PART 4 – RESTRAINT, SEIZURE AND FORFEITURE

Part 4 repealed and substituted by s 7 of Act 18 of 2008 with effect from 25 August 2008

Circumstances in which Court may make restraint order

26. (1) The powers conferred on the Court by this part of this Act shall be exercisable where

(a) proceedings have been instituted in the Republic against the defendant for criminal conduct or an application has been made in respect of the defendant under section 41 or section 42 of this Act, and

(i) the proceedings or the application have not or has not been concluded; and

(ii) either a pecuniary penalty order has been made or it appears to the Court that there are reasonable grounds for thinking that a pecuniary penalty order may be made in the proceedings or an application granted to the Attorney General under sections 38, 41 or 42 of this Act; or

(b) the Court is satisfied that proceedings are to be instituted against a person for criminal conduct in respect of which a pecuniary penalty order might be made under Part 5 of this Act.

(2) For the purposes of section 27 of this Act, at any time when the powers referred to in subsection (1) are exercisable before proceedings have been instituted —

(a) references to the defendant shall be construed as references to the person referred to in subsection (1)(b) of this section; and

(b) references to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in subsection (1)(b) of this section for criminal conduct in respect of which a pecuniary penalty order might be made under section 38 of this Act.

(3) Where the Court has made an order under section 27 of this Act by virtue of subsection (1)(b) of this section, the Court shall discharge the order if proceedings in respect of the criminal conduct are not instituted or the relevant application is not made within such time as the court considers reasonable.

Section 26 repealed and substituted by s 7 of Act 18 of 2008 with effect from 25 August 2008

Restraint Order

27. (1) The Court may by order (in this Act referred to as a “restraint order”) prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in that order.

(2) Without prejudice to the generality of subsection (1), a restraint order may make such provision as the Court thinks fit for living expenses and legal expenses of the defendant where the Court considers it essential to do so.

(3) A restraint order may apply —

(a) to all realisable property held by a specified person or persons, whether the property is described in the order or not; and

(b) to realisable property held by a specified person or persons, being property transferred to the person after the making of the order.

(4) A restraint order —

(a) may be made only on an application by the Attorney General, and may be made ex parte and otherwise than in public; and

(b) shall provide for notice of the application to be given to persons affected by the order.

(5) A restraint order —

(a) may be discharged or varied in relation to any property; and

(b) shall be discharged on the conclusion of the proceedings or of the application mentioned in subsection (6).

(6) An application for the discharge or variation of a restraint order may be made by any person affected by it.

(7) (a) Where the Court has made a restraint order, the Court may at any time appoint a receiver —

(i) to take possession of any realisable property; and

(ii) in accordance with the Court's directions, to manage or otherwise deal with any property in respect of which he is appointed, and may require any person having possession or control of property in respect of which the receiver is appointed to give possession of the property to the receiver,

subject to such exceptions and conditions as may be specified by the Court.

(b) On any sale of any property by a receiver appointed hereunder, the purchaser shall receive a good and valid title and as regards land, the Land Registrar shall register the purchaser as full owner in the land register without further requisition or enquiry.

(c) On the sale of any property by a receiver appointed hereunder, any right, title or interest of any person therein shall stand extinguished and any such right, title or interest shall be transferred and be limited to the net proceeds of such sale.

(8) For the purposes of this Act, dealing with property held by any person includes (without prejudice to the generality of the expression) —

(a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt, and

(b) removing the property from the Republic.

(9) Where the Court has made a restraint order, a member of the police, or an officer of customs may, for the purpose of preventing any realisable property being removed from the Republic, seize the property.

(10) Property seized under subsection (9) shall be dealt with in accordance with the Court's directions.

Section 27 repealed and substituted by s 7 of Act 18 of 2008 with effect from 25 August 2008

Notice of restraint order to be given to Registrar General

28. (1) Where a restraint order is made, the Registrar of the Supreme Court shall, unless the court orders otherwise, serve the order on the Registrar General or any other public officer who is required under any written Act to maintain a public record relating to properties in Seychelles where any of the property affected by the order falls within the scope of such records.

(2) Upon receipt of a restraint order, the Registrar General shall —

(a) where the property consists of land which is registered under the Land Registration Act, enter a Restriction under the Land Registration Act in the register in respect of the land in terms of the restraint order and this Act;

(b) where the property consists of land falling under the Mortgage and Registration Act, enter a conspicuous note in the repertoire of the Respondent and the owner of any such land to the effect that the land is the subject of a restraint order under this Act giving the date of this order and the terms of any restriction or conditions of the restraint order; or

(c) where the property belongs to a body corporate incorporated under any written law administered by the Registrar General, enter a conspicuous note in the register or record of the body corporate recording the existence of the restraint order, giving the date of the order and the terms of any restriction or condition of the restraint order.

(3) A restriction or a note entered pursuant to subsection (2) shall be deemed to be sufficient notice to all persons of the restraint order and any dealing, transaction, encumbering, seizure or sequestration of the property whatsoever and for whatsoever purposes contrary to the restraint order shall be null and of no effect.

(4) Where an order has been served under subsection (1) and the order is varied or discharged, the Registrar of the Supreme Court shall furnish the Registrar General with notice to that effect and the Registrar General shall thereupon cause any entry made under subsection (2) of this section to be varied or cancelled as the case may require.

Section 28 repealed and substituted by s 7 of Act 18 of 2008 with effect from 25 August 2008

Appointment of Receiver

29. (1) This section applies to the powers conferred on the Court by section 27 or on a receiver appointed under that section.

(2) Subject to the provisions of this section, the powers referred to in subsection (1) shall be exercised with a view to making available, for satisfying the pecuniary penalty order or as the case may be, any pecuniary penalty order that may be made in the defendant's case, the value for the time being of realisable property held by any person.

(3) In the case of realisable property held by a person to whom the defendant has directly or indirectly made a gift, caught by this Act, the powers shall be exercised with a view to realising no more than the value for the time being of the gift.

(4) The powers referred to in subsection (1) shall be exercised with a view to allowing any person, other than the defendant or the recipient of any such gift, to retain or recover the value of any property held by him.

(5) In exercising the powers referred to in subsection (1) no account shall be taken of any obligation of the defendant or of the recipient or any such gift that conflict with the obligation to satisfy the pecuniary penalty order.

Section 29 repealed and substituted by s 7 of Act 18 of 2008 with effect from 25 August 2008

Immunity of Receiver

30. Where a receiver appointed under section 27(7)(a)(i) takes any action —

(a) in relation to any property which is not realisable property, being action which he would be entitled to take if it were such property;

(b) believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property,

no action shall lie against the receiver for anything done in good faith in the discharge of any powers, duties or functions under this Act.

Section 30 repealed and substituted by s 7 of Act 18 of 2008 with effect from 25 August 2008

Provisions for restraint order when company is in liquidation

31. (1) Where realisable property is held by a company and an order for winding up of the company has been made or a resolution has been passed by the company for a voluntary winding up, the functions of the liquidator shall not be exercisable in relation to —

(a) property for the time being subject to a restraint order made before the relevant time; and

(b) any proceeds of property realised by virtue of section 27 (7) for the time

being in the hands of a receiver.

(2) Where in the case of a company, an order or a resolution referred to in subsection (1) has been made or passed, the powers conferred by section 27 of this Act on the Court or on a receiver shall not be exercised in relation to any realisable property held by the company in relation to which the function of the liquidator are exercisable —

(a) so as to inhibit the liquidator from exercising those functions for the purpose of distributing any property held by the liquidator to the company's creditors, but so that the liquidator shall give 30 days notice to the Attorney General and the FIU of his intention to make a distribution and shall not make any distribution until the said period of 30 days shall have expired, and so that the Court or a receiver may exercise the powers mentioned in section 27 in respect of the proposed distribution or any portion thereof; or

(b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

(3) In this section —

“company” means any company which may be wound up under the Companies Act, 1972;

“relevant time” means —

(a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;

(b) where an order for the winding up of the company has been made and, before the presentation of the petition for the winding up of the company by the Court, such a resolution had been passed by the company, the time of the passing of the resolution; and

(c) in any other case where order for the winding up of the company has been made, the time of the making of the order.

Section 31 repealed and substituted by s 7 of Act 18 of 2008 with effect from 25 August 2008

Effects of restraint order

32. (1) (a) Where any property of whatever kind and wherever situated, or any interest in such property, becomes subject to seizure, forfeiture, pecuniary penalty order or any measure of restraint or control by virtue of any provision of this Act (including any provision for giving effect to orders made under the law of any country or territory outside the Republic) or of any action taken under any such provision, no purported disposition of the property or interest, and no other action purporting to be taken in respect of it, by or on behalf of any owner or other person having or claiming to have any interest in it (whether as beneficial owner or trustee or in any other capacity) in reliance on the law of any country or territory outside the Republic shall have

effect so as to prevent the seizure, forfeiture, pecuniary penalty order or restraint or control measure from taking effect as provided by this Act.

(b) A person who knowingly contravenes or attempts to contravene a restraint order by disposing of or otherwise dealing with property that is subject to the restraint order, commits an offence punishable upon conviction by —

(i) a fine not exceeding R500,000 or imprisonment for a period not exceeding 5 years, or both, in the case of an individual; or

(ii) fine not exceeding R1,000,000 in any other case.

(2) Where a restraint order is made against property and the property is disposed of or otherwise dealt with in contravention of the restraint order, and the disposition or dealing was not for sufficient consideration or not in favour of a person who acted in good faith and without notice, the Attorney General may apply to the Court for an order that the disposition or dealing be set aside or declared null and of no effect.

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

(a) set aside or declare null and of no effect the disposition or dealing as from the day on which the disposition or dealing took place; or

(b) set aside or declare null and of no effect the disposition or dealing as from the day of the order under this subsection,

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

Section 32 repealed and substituted by s 7 of Act 18 of 2008 with effect from 25 August 2008

Forfeiture

33. (1) Subject to the following provisions of this section, where a person is convicted of an offence, and —

(a) the Court by or before which he is convicted is satisfied that any property which has been lawfully seized from him or which was in his possession or under his control at the time when he was apprehended for the offence or when a summons in respect of it was issued —

(i) has been used for the purpose of committing, or facilitating the commission of, any offence, or

(ii) was intended by him to be used for that purpose; or

(b) the offence, or an offence which the Court has taken into consideration in determining his sentence, consists of unlawful possession of property which —

(i) has been lawfully seized from him; or

(ii) was in his possession or under his control at the time when he was apprehended for the offence of which he has been convicted,

the Court may make an order under this section (referred to in this Act as a “forfeiture order”) in respect of that property, and may do so whether or not it also deals with the offender in respect of the offence in any other way;

(c) the Court may, in addition to any other penalty, order to be forfeited to the Republic any vehicle, vessel, aircraft or other thing whatsoever which —

(i) is owned by the offender and which the court is satisfied has been used in any manner in connection with the commission of the offence;

(ii) is owned by any other person and which the court is satisfied has been used by the offender with the consent or knowledge of the other person in connection with the commission of the offence or that other person was reckless in that regard; or

(iii) has been used by the offender with the consent or knowledge of the master, captain or other person in charge of same or such master, captain or other person in charge was reckless in that regard.

(2) In considering whether to make a forfeiture order in respect of any property a court shall have regard —

(a) to the value of the property; and

(b) to the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making).

(3) Facilitating the commission of an offence shall be taken for the purposes of this section to include the taking of any steps after it has been committed for the purpose of disposing of any property to which the offence relates or of avoiding, or enabling any other person to avoid, apprehension or detection.

(4) An order under this section shall operate to deprive the offender of his rights, if any, in the property to which it relates, and the property shall (if not already in their possession) be taken in to the possession of the police.

(5) (a) The Court shall not order property to be forfeited under this section if a person claiming to be the owner of it or otherwise interested in it applies to be heard by the Court, unless an opportunity has been given to him to show cause why the order should not be made.

(b) No application shall be made under this subsection by any claimant of the property after the expiration of three months from the date on which the forfeiture order in respect of the property was made under this section.

(c) No such application shall succeed unless the claimant satisfies the Court either that he had not consented to the offender having possession of the property or that he did not know, and had no reason to suspect, that the property was likely to be used for a purpose mentioned in subsection (1) of this section.

(d) No such application shall succeed unless the claimant satisfies the court either that he is not and was not at any material time, a member of a terrorist organisation.

(6) If at the conclusion of a trial (or at the conclusion of an appeal), the defendant shall have been found not guilty in respect of any charge of which if he had been convicted, a forfeiture order might have been made in respect of property described in subsection (1) of this section, the court notwithstanding such acquittal, may make a forfeiture order in respect of any such property which is unlawful or dangerous or ought in the interests of safety to the public, be so forfeited.

(7) An order under this section shall not take effect until the ordinary time for instituting an appeal against the conviction or order concerned has expired or, where such an appeal is instituted, until it or any further appeal is finally decided or abandoned or the ordinary time for instituting any further appeal has expired.

(8) At any time after property in respect of which a forfeiture might be made has come into the possession of the Police or has been otherwise identified, the trial judge (or if no trial judge has been appointed any judge of the Court) may direct the Police to dispose of some or all of the property or may appoint a receiver and so that the provisions of section 27(7) shall apply mutatis mutandis to such receiver.

Section 33 repealed and substituted by s 7 of Act 18 of 2008 with effect from 25 August 2008

Search and seizure of cash

34. (1) (a) A member of the police, or an officer of customs or an immigration officer, notwithstanding that they might be an assets agent may search without warrant a person, his luggage or other property in his immediate vicinity or recently in his possession and any vehicle belonging to him or in which he was to be found or nearby which is reasonably suspected of being connected to him, if the member of the police, or officer has reasonable grounds for suspecting that —

(i) the person is importing or exporting, or intends or is about to import or export, or has possession or control of an amount of cash which is not less than the prescribed sum;

Section 34(1)(a)(i) amended by s 2(j)(i)(aa) of Act 24 of 2011 with effect from 27 December 2011

(ii) the cash represents benefit from criminal conduct or is intended by any person for use in connection with any criminal conduct; and

Section 34(1)(a)(ii) amended by s 2(j)(i)(bb) of Act 24 of 2011 with effect from 27 December 2011

(iii) the cash in excess of the sum prescribed under section 34A was not declared by person when entering or leaving the Republic.

(b) The said member of the police or officer may seize, and in accordance with this section, detain any cash (including cash found during a search under subsection (1)(a) if —

(i) its amount is not less than the prescribed sum, and

(ii) he has reasonable grounds for suspecting that it represents benefit from, or is intended by any person to be used in connection with any criminal conduct;

(c) But so that a suspected breach of the Exchange Control Act, shall not of itself justify any search or seizure under this section and so that cash shall not be retained upon seizure except on the authority in writing of a member of the police not below the rank of Superintendent or such other person as the President shall from time to time prescribe.

(d) The President may appoint in writing such person as he thinks fit to exercise the authority in paragraph (c) and may without cause terminate such authority in writing.

(2) Cash seized by virtue of this section shall not be detained for more than 14 days unless its detention beyond 14 days is authorised by an order made by a Judge of the Court and such order shall be made where the judge is satisfied —

(a) that there are reasonable grounds for the suspicions mentioned in subsection (1) of this section, and

(b) that detention of the cash beyond 14 days is justified while its origin or derivation is further investigated or consideration is given to the institution (whether in the Republic or elsewhere) of criminal proceedings against any person for an offence with which the cash is connected.

(3) (a) Any order under subsection (2) of this section shall authorise the continued detention of the cash to which it relates for such period, not exceeding 12 months beginning with the date of the order, as may be specified in the order, and a Judge of the Court, if satisfied as to the matters mentioned in that subsection, may thereafter from time to time, by order authorise the further detention of the cash but so that no period of detention specified in such an order, shall exceed 12 months beginning with the date of the order.

(b) Where an application is made under section 35(1) for an order for the forfeiture of cash detained under this section, the cash shall, notwithstanding the foregoing, continue to be so detained until the application is finally determined.

(4) Any application for an order under subsection (2) or (3) of this section shall be made by or on behalf of the Attorney General.

(5) At any time while cash is detained by virtue of the foregoing provisions of this section a Judge of the Court may direct the release of all or part of it, if satisfied on an application made

by the person from whom it was seized or a person by or on whose behalf it was being imported or exported, that there are no, or are no longer, any such grounds for the detention of all or part of the cash, as are mentioned in subsection (1) of this section.

(6) If, at a time when any cash is being detained by virtue of the foregoing provisions of this section —

(a) an application for its forfeiture is made under section 33 of this Act; or

(b) proceedings are instituted (whether in the Republic or elsewhere) against any person for an offence with which the cash is connected,

the cash shall not be released until any proceedings pursuant to the application or, as the case may be, the proceedings for that offence have been concluded.

(7) Cash seized under this Part of this Act and detained for more than 48 hours shall, unless required as evidence of an offence, be held in an interest-bearing account and the interest accruing on any such cash shall be added to that cash on its forfeiture or release.

(8) In this Act —

“cash” includes notes and coins in any currency, postal orders, cheques of any kind (including travellers’ cheques), bank drafts, bearer bonds and bearer shares;

“exported” in relation to any cash, includes its being brought to any place in the Republic for the purpose of being exported.

(9) In this Part of this Act “the prescribed sum” means such sum as may for the time being be prescribed for the purposes of that section by the Minister and until so prescribed shall be the sum of USD 10,000 or its equivalent in any currency.

Section 34(9) amended by s 2(j)(ii) of Act 24 of 2011 with effect from 27 December 2011

(10) An order under section 34(2) of this Act shall provide for notice to be given to persons affected by the order.

(11) Provisions may be made by rules of court with respect to applications to court under this section and section 35, for the giving of notice of such applications to persons affected, for the joinder of such persons as parties. Pending the making of such rules, the Court shall implement the provisions of this Act within the existing court structures.

Section 34 repealed and substituted by s 7 of Act 18 of 2008 with effect from 25 August 2008

Declaration of cash

34A. (1) Any person entering or leaving the Republic who has cash in his or her possession in excess of the prescribed sum shall declare the particulars of the currency in the manner and form prescribed by regulations.

(2) Any person who —

(a) fails to make a declaration in accordance with this section; or

(b) knowingly makes a declaration which is false or misleading,

commits an offence and is to be liable on conviction to a fine not exceeding double the amount of cash found in his or her possession in excess of the prescribed sum and the cash in his or her possession shall be liable to forfeiture.

Section 34A inserted by s 2(j)(iii) of Act 24 of 2011 with effect from 27 December 2011

Court proceedings for forfeiture of cash seized

35. (1) A judge of the Court may order the forfeiture of any cash which has been seized under section 34 of this Act if satisfied, on an application made while the cash is detained under that section, that the cash amounts to not less than the prescribed sum and he has reasonable grounds for suspecting that it directly or indirectly represents any person's benefit from, or is intended by any person for use in connection with any offence.

(2) Any application under this section shall be made, by or on behalf of the Attorney General.

(3) The standard of proof in proceedings on an application under this section shall be that applicable to civil proceedings and an order may be made under this section whether or not proceedings are brought against any person for an offence with which the cash in question may be connected.

(4) Where it appears to the court on evidence tendered by or on behalf of the Attorney General consisting of or including evidence admissible by virtue of subsection (5) that the cash constitutes directly or indirectly the benefit from criminal conduct or was intended by any person to be used in connection with criminal conduct, the Court shall make an order of forfeiture under this section in respect of the whole or, if appropriate, a specified part of the cash unless it is shown to the satisfaction of the Court on evidence tendered by the respondent or any other person that the cash does not constitute directly or indirectly the benefit from criminal conduct or was not intended by any person to be used in connection with criminal conduct.

(5) Where the Director or Deputy Director of the FIU states in proceedings under this section or section 34 on affidavit or, if the Court so permits or directs, in oral evidence, that he believes, that —

(a) the cash constitutes, directly or indirectly, benefit from criminal conduct; or

(b) is intended by any person for use in connection with criminal conduct,

then, if the Court is satisfied that there are reasonable grounds for the belief aforesaid, the statement shall be evidence of the matters referred to in paragraph (a) or in paragraph (b) or in both paragraphs (a) and (b), as may be appropriate and the Court shall make an order detaining the cash under section 34 or forfeiting the cash under section 35, unless it is shown to the satisfaction of the Court by or behalf of the person from whom it was seized, or a person by or on whose behalf it was being imported or exported that the cash did not constitute, directly or

indirectly, benefit from criminal conduct; or was not intended by any person for use in connection with any offence.

(6) On an application made by the person from whom it was seized or a person by or on whose behalf it was being imported or exported, to a Judge of the Court at any time, the judge may order the release of so much of the cash which is detained under section 34(2), as he considers essential to enable the applicant to meet his reasonable living expenses and reasonable legal expenses in connection with the seizure.

(7) When hearing an application under this section or section 34 the Court may make such order as it considers appropriate.

Section 35 repealed and substituted by s 7 of Act 18 of 2008 with effect from 25 August 2008

Cash seized and detained for more than 14 days to be lodged with interest bearing account

36. Cash seized under this Part of this Act and detained for more than 14 days shall, unless required as evidence of an offence, be held in an interest-bearing account (where possible) and the interest accruing on any such cash shall be added to that cash on its forfeiture or release.

Section 36 repealed and substituted by s 7 of Act 18 of 2008 with effect from 25 August 2008

Power of Minister to prescribe

37. The Minister may from time to time by regulation prescribe the sum to be the prescribed sum for the purposes of sections 34 and 35 of this Act.

Section 37 repealed and substituted by s 7 of Act 18 of 2008 with effect from 25 August 2008

PART 5 – PECUNIARY PENALTY ORDER

Part 5 repealed and substituted by s 8 of Act 18 of 2008 with effect from 25 August 2008

Pecuniary penalty order

38. (1) Where a person has been sentenced or otherwise dealt with by a court in respect of criminal conduct of which he has been convicted, the Attorney General may make, or cause to be made, an application to the Court to determine whether the person convicted has benefited from criminal conduct.

(2) An application under subsection (1) of this section shall be made without delay as soon as may be, after the person is sentenced or otherwise dealt with or if the Court so decides may be made at a later stage.

(3) An application under subsection (1) of this section shall not be made unless it appears to the Attorney General that the person in question has benefited from criminal conduct.

(4) If the Court determines that the person in question has benefited from criminal conduct, the Court shall determine in accordance with section 40 of this Act, the amount to be recovered in his case by virtue of this section and shall make a pecuniary penalty order under this

section requiring the person concerned to pay that amount.

(5) (a) The standard of proof required to determine any question arising under this Act as to —

(i) whether a person has benefited from criminal conduct, and/or

(ii) the amount to be recovered in his case by virtue of this section,

shall be that applicable in civil proceedings, and

(b) The matters referred to in subparagraphs (i) and (ii) shall be for the determination of the trial judge before whom the person was sentenced (or in his absence before another judge exercising appropriate criminal jurisdiction), save as is otherwise provided herein.

Section 38 repealed and substituted by s 8 of Act 18 of 2008 with effect from 25 August 2008

Procedure for calculating benefit from criminal conduct

39. (1) For the purposes of this Act —

(a) any payments or other rewards received by a person at any time including the amount of the benefit or pecuniary advantage which the Court is satisfied that a person has obtained, in each case whether before or after the commencement of this Act, in connection with criminal conduct carried on by him or another are his benefit from criminal conduct; and

(b) the value of his benefit from criminal conduct is the aggregate of the value of the payments, other rewards and the amount of the benefit or pecuniary advantage as determined by the Court.

(2) The Court shall, for the purpose of determining whether the defendant has benefited from criminal conduct and, if he has, of assessing the value of his benefit from criminal conduct, in addition to such evidence that the Attorney General might adduce, make the assumptions set out in subsection (4) of this section except that the court shall not make any of the said assumptions if —

(a) the assumption is shown to be incorrect in the case of the defendant, or

(b) it is satisfied that there would be a serious risk of injustice in his case if the assumption were to be made.

(3) Where the Court does not apply one or more of the assumptions set out in subsection (4) of this section, it shall state its reasons.

(4) The assumptions referred to in subsection (2) of this section are —

(a) that any property appearing to the Court —

(i) to have been held by the defendant; or

(ii) to have been transferred to him,

at any time since the beginning of the period of six years ending on the date of the commencement of the proceedings in which the order is being sought in his case, was received by him, at the earliest time at which he appears to the Court to have held it, or it was transferred to him, as a payment or reward in connection with criminal conduct carried on by him;

(b) that any expenditure of his, since the beginning of that period was met out of payments received by him in connection with criminal conduct carried on by him; and

(c) that, for the purpose of valuing any property received or assumed to have been received by him at any time as such a reward, he received the property free of any other interest in it.

(5) For the purpose of assessing the value of the defendant's benefit from criminal conduct in a case where a pecuniary penalty order has previously been made against him, the Court shall not take into account any of his benefit of criminal conduct that are shown to the Court to have been taken into account in determining the amount to be recovered under that order.

Section 39 repealed and substituted by s 8 of Act 18 of 2008 with effect from 25 August 2008

Pecuniary penalty order to be confined to realisable property

40. (1) Subject to subsection (2) of this section, where a pecuniary penalty order is being made under section 38 of this Act, the amount to be recovered under the order shall be equal to the amount assessed by the Court to be the value of the defendant's benefit from criminal conduct.

(2) If the Court is satisfied that the amount that might be realised at the time the pecuniary penalty order is made, is less than the amount the Court assesses to be the value of his benefit from criminal conduct, the amount to be recovered in the defendant's case under the pecuniary penalty order shall be the amount appearing to the Court to be the amount that might be so realised.

Section 40 repealed and substituted by s 8 of Act 18 of 2008 with effect from 25 August 2008

Making of pecuniary penalty order where new evidence becomes available

41. (1) This section applies where an application has previously been made to a court under section 38 of this Act and the Court has determined that the defendant has not benefited from criminal conduct.

(2) If the Attorney General has evidence —

(a) which was not considered by the Court in making the determination referred to in subsection (1) of this section; and

(b) which the Attorney General believes would have led the Court to determine that the defendant had benefited from criminal conduct if it had been considered by the Court, he may make, or cause to be made, an application to the Court for it to consider that evidence.

(3) If, having considered the evidence, the Court is satisfied that it would have determined that the defendant had benefited from criminal conduct, if that evidence had been available to it, the Court shall —

(a) (i) make a fresh determination of whether the defendant benefited from criminal conduct; and

(ii) make a determination under section 40 of this Act of the amount to be recovered by virtue of that section; and

(b) make a pecuniary penalty order under this section requiring the person concerned to pay that amount.

(4) In considering an application under this section the Court may take into account any payment or other reward received by the defendant on or after the determination referred to in subsection (1) of this section.

(5) In considering any evidence under this section which relates to any payments or reward to which subsection (4) of this section applies, the Court shall make the assumptions which are required by section 39 of this Act.

(6) No application shall be entertained by the Court under this section if it is made after the end of the period of two years beginning with the date on which the defendant was convicted.

Section 41 repealed and substituted by s 8 of Act 18 of 2008 with effect from 25 August 2008

Further determination possibly leading to increased pecuniary penalty order

42. (1) This section applies where a court has made a determination under section 40 of this Act of the amount to be recovered in a particular case by virtue of that section referred to in this section as “the current determination”.

(2) Where the Attorney General is of the opinion that the real value of the defendant’s benefit from criminal conduct was greater than its assessed value, the Attorney General may make, or cause to be made, an application to the Court in order that the evidence on which he has formed his opinion may be considered by the Court.

(3) In subsection (2) of this section —

“assessed value” means the value of the defendant’s benefit from criminal conduct as assessed by the Court under section 40 of this Act; and

“real value” means the value of the defendant’s benefit from criminal conduct which took place —

(a) in the period by reference to which the current determination was made; or

(b) in any earlier period.

(4) If, having considered the evidence, the Court is satisfied that the real value of the defendant’s benefit from criminal conduct is greater than its assessed value (whether because the real value was higher at the time of the current determination than was thought or because the value of the benefit in question has subsequently increased), the Court shall make a fresh determination under section 40 of this Act of the amount to be recovered by virtue of that section.

(5) Any determination under section 40 of this Act by virtue of this section shall be by reference to the amount that might be realised at the time when the determination is made.

(6) For any determination under section 40 of this Act by virtue of this section, section 39(5) of this Act shall apply in relation to any of the defendant’s benefit from criminal conduct taken into account in respect of the current determination.

(7) In relation to any such determination the relevant provisions of this Act shall be read as if “determination” was substituted for “pecuniary penalty order” where the context so requires.

(8) The Court may take into account any payment or other reward received by the defendant on or after the date of the current determination, but only if the Attorney General shows that it was received by the defendant in connection with criminal conduct carried on by the defendant or another on or before that date.

(9) In considering any evidence under this section which relates to any payment or reward to which subsection (8) of this section applies, the Court shall make the assumptions which would otherwise be required by section 39(4) of this Act.

(10) If, as a result of making the fresh determination required by subsection (4) of this section, the amount to be recovered exceeds the amount set by the current determination, the Court may substitute for the amount to be recovered under the pecuniary penalty order which was made by reference to the current determination such greater amount as it thinks just, in all circumstances of the case.

(11) No application shall be entertained by the Court under this section if it is made after the end of the period of two years beginning with the date on which the defendant was convicted.

Section 42 repealed and substituted by s 8 of Act 18 of 2008 with effect from 25 August 2008

Procedure for statements to assist calculation of amount of defendant’s benefit from criminal conduct

43. (1) Where —

(a) an application has been made to the Court under section 38, 41, 42 or 45 of

this Act and there is tendered to the Court by or on behalf of the Attorney General a statement as to any matters relevant to the determination of whether the defendant (in the case of a conviction for a criminal conduct offence) has benefited from criminal conduct, or

(b) the defendant accepts to any extent any allegation in the statement, the Court may, for the purposes of that determination or assessment, treat his acceptance as conclusive evidence of the matters to which it relates.

(2) Nothing in this section shall prevent the Attorney General from making more than one statement.

(3) Where —

(a) an application has been made to the Court under sections 38, 41, 42 or 45 and there is tendered to the Court by or on behalf of the Attorney General a statement as to any matters relevant to the determination of whether the defendant (in the case of a conviction for a criminal conduct offence) has benefited from criminal conduct; or

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

the court may, for the purposes of that determination or assessment, treat his acceptance as conclusive evidence of the matters to which it relates

[Note: Sections 43(1) and (3) were gazetted simultaneously as substantively identical provisions: refer Act 18 of 2008, gazetted 25 August 2008.]

(4) Nothing in this section shall prevent a defendant from making more than one statement.

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

(a) in writing; or

(b) as the Court may direct.

(6) No acceptance by the defendant under this section that any payment or other reward was received by him in connection with criminal conduct carried on by him or another or that he has benefited from criminal conduct offence shall be admissible in evidence in any proceedings against him.

(7) Nothing herein shall oblige the defendant to make any response to a statement tendered to the Court by or on behalf the Attorney General or to tender a statement to the court under this section and no adverse inference shall be capable of being drawn against the defendant in either event.

Matters to be taken into account in determining amount to be paid by a pecuniary penalty order

44. (1) When considering whether to make a pecuniary penalty order or to determine the amount to be paid by a pecuniary penalty order under this Act, the Court may take into account any information placed before it showing that a victim of an offence to which the proceedings relate, has instituted, or intends to institute, civil proceedings against the defendant in respect of loss, injury or damage sustained in connection with the offence, and may reduce the amount of the pecuniary penalty order to take account of such civil proceedings or in its discretion may direct that such portion of the amount paid in satisfaction or part satisfaction of a pecuniary penalty order as equates to the loss of the victim, be paid to that victim.

(2) Where the Court makes a pecuniary penalty order, it may direct that payment of the amount to be recovered in respect of the order shall be made forthwith or at some other time specified in the order.

(3) Where the Court makes a pecuniary penalty order against a defendant in any proceedings, it shall, in respect of any offence of which he is convicted in those proceedings, take account of —

- (a) any fine imposed on him;
- (b) any order involving any payment by him; or
- (c) any forfeiture order made under this Act.

(4) If the Court is satisfied as to any matter relevant for determining the amount that might be realised at the time the pecuniary penalty order is made (whether by an acceptance under section 43 of this Act or otherwise), the Court may issue a certificate giving the opinion of the Court as to the matters concerned and shall do so if satisfied that the amount that might be realised at the time the pecuniary penalty order is made is less than the amount the Court assesses to be the value of the defendant's benefit from criminal conduct.

Section 44 repealed and substituted by s 8 of Act 18 of 2008 with effect from 25 August 2008

Making of pecuniary penalty order where defendant has died or absconded

45. (1) Subsection (2) of this section applies where a person has been convicted of criminal conduct.

(2) If the Attorney General asks it to proceed under this section, the Court may exercise the powers of the Court under sections 38, 41 or 42 of this Act, in the case of a conviction for criminal conduct, to make a pecuniary penalty order against the defendant if satisfied that the defendant has died or absconded.

(3) Subsection (4) of this section applies where proceedings for criminal conduct in respect of which a pecuniary penalty order may be made under this Act have been instituted against a person but have not been concluded.

(4) If the Attorney General asks it to proceed under this section, the Court may exercise the powers of the Court under section 38, section 41 and section 42 of this Act, where the relevant proceedings have been instituted in respect of criminal conduct, to make a pecuniary penalty order —

(a) against the defendant if satisfied that the defendant has absconded; or

(b) against the defendant's estate if satisfied that the defendant has died.

(5) The power conferred by subsection (2) and (4) of this section as regards any person alleged to have absconded may not be exercised at any time before the end of the period of six months beginning with the date which is, in the opinion of the Court, the date on which the defendant absconded, save where it appears to the Court that it would be reasonable in the circumstances.

(6) In any proceedings on an application under this section —

(a) the Court shall not make a pecuniary penalty order against a person who has absconded unless it is satisfied that the Attorney General has taken reasonable steps to contact him; and

(b) any person appearing to the Court to be likely to be affected by the making of a pecuniary penalty order by the Court shall be entitled to appear before the Court and make representations.

Section 45 repealed and substituted by s 8 of Act 18 of 2008 with effect from 25 August 2008

Appeals and compensation

45A. (1) An appeal against the making of a pecuniary penalty order shall lie to the Court of Appeal.

(2) If it upholds the appeal, in whole or in part, the Court of Appeal may, on an application by a person who held property which was realisable property, order compensation to be paid to the applicant if —

(a) it is satisfied that the applicant has suffered loss as a result of the making of the pecuniary penalty order; and

(b) having regard to all the circumstances of the case, the Court considers it to be appropriate.

(3) The amount of compensation to be paid under this section shall be such as the court considers just in all the circumstances of the case but so that no compensation shall be paid to a member of a terrorist organisation, or where it would be manifestly unjust to do so.

Section 45A inserted by s 8 of Act 18 of 2008 with effect from 25 August 2008

Reduction in amount of pecuniary penalty order when realisable property inadequate

45B. (1) If, on an application by the defendant or by the Attorney General in respect of a pecuniary penalty order, the Court is satisfied that the value of the realisable property is inadequate for the payment of any amount remaining to be recovered under the order, the Court shall substitute for the amount to be recovered under the order such lesser amount as the Court thinks just in all the circumstances of the case.

(2) For the purposes of subsection (1) of this section the Court may disregard any inadequacy in the value of the realisable property which appears to the Court to be attributable wholly or partly to anything done by the defendant for the purpose of preventing any property, including any property held by a person to whom the defendant had directly or indirectly made a gift caught by this Act from any risk or realisation under this Act.

(3) For any determination under this Part of this Act by virtue of this section, section 39 shall apply in relation to any of the defendant's benefit from criminal conduct taken into account in determining the value or the realisable value as the case may be.

Section 45B inserted by s 8 of Act 18 of 2008 with effect from 25 August 2008

Increase in amount of pecuniary penalty order when value of realisable property increases

45C. (1) This section shall have effect where the amount which a person is ordered to pay by a pecuniary penalty order is less than the amount assessed to be the realisable value of his benefit from criminal conduct.

(2) If, on an application made by the Attorney General, the Court is satisfied that the amount ("the first amount") that might be realised in the case of the person in question is greater than the amount taken into account in making the pecuniary penalty order (whether it was greater than was thought when the order was made or has subsequently increased), the Court may substitute for the first amount such amount (not exceeding the amount assessed as the value referred to in subsection (1) of this section) as appears to the Court to be appropriate having regard to the amount now shown to be realisable.

Section 45C inserted by s 8 of Act 18 of 2008 with effect from 25 August 2008

Enforcement of pecuniary penalty order

45D. (1) Where a court makes a pecuniary penalty order, then (without prejudice to the provisions of section 45G of this Act enabling property of the defendant in the hands of a receiver appointed under this Act to be applied in satisfaction of the pecuniary penalty order) the order may be enforced by the Attorney General at any time after it is made (or, if the order provides for payment at a later time, then at any time after the later time) as if it were a judgment of the Court for the payment to the Republic of the sum specified in the order (or of any lesser sum remaining due under the order), save that nothing in this subsection shall enable a person to be imprisoned.

(2) Subject to subsection (3) of this section, if, at any time after payment of a sum due under a pecuniary penalty order has become enforceable in the manner provided for by subsection (1) of this section, it is reported to the Court, by the Attorney General that any such sum or any part thereof remains unpaid, the Court shall, without prejudice to the validity of anything

previously done under the order or to the power to enforce the order in the future in accordance with subsection (1) of this section, order that the defendant be imprisoned for the period set out in the second column of the table to this section opposite to the amount set out therein of the pecuniary penalty order remaining unpaid.

(3) An order under subsection (2) of this section shall not be made unless the defendant has been given a reasonable opportunity to make any representations to the Court that the order should not be made and the Court has taken into account any representations so made and any representations made by the Attorney General in reply.

(4) Any term of imprisonment imposed under subsection (2) of this section shall commence on the expiration of any term of imprisonment for which the defendant is liable under the sentence for the offence in question or otherwise, but shall be reduced in proportion to any sum or sums paid or recovered from time to time under the pecuniary penalty order.

(5) The service by the defendant of any term of imprisonment as provided herein shall not expunge any liability he may have under a pecuniary penalty order.

(6) Any term of imprisonment being served or to be served by the defendant shall not be delayed or in any way affected by an order made under subsection (1) or by the appointment of a receiver save and so far as the term of imprisonment not already served shall be appropriately reduced in accordance with the said table on the receipt by the Republic of any monies realised by either or both of those methods of enforcement.

TABLE

Amount outstanding under pecuniary penalty order	Period of imprisonment
Not exceeding R5,000	45 days
Exceeding R5,000 but not exceeding R10,000	3 months
Exceeding R10,000 but not exceeding R25,000	4 months
Exceeding R25,000 but not exceeding R50,000	6 months
Exceeding R50,000 but not exceeding R100,000	9 months
Exceeding R100,000 but not exceeding R200,000	12 months
Exceeding R200,000 but not exceeding R500,000	18 months
Exceeding R500,000 but not exceeding R1,000,000	2 years
Exceeding R1,000,000 but not exceeding R2,000,000	3 years
Exceeding R2,000,000 but not exceeding R3,000,000	4 years
Exceeding R3,000,000 but not exceeding R4,000,000	6 years
Exceeding R4,000,000 but not exceeding R5,000,000	8 years
Exceeding R5,000,000	10 years

Appointment of receiver for enforcement of pecuniary penalty order

45E. (1) Where —

- (a) a pecuniary penalty order has been made under this Act;
- (b) the pecuniary penalty order is not subject to appeal; and
- (c) the pecuniary penalty order has not been satisfied,

the Court may, on an application by the Attorney General, exercise the powers conferred by subsections (2) to (6) of this section.

(2) The Court may appoint a person to be a receiver in respect of realisable property.

(3) The Court may empower a receiver appointed under subsection (2) of this section to take possession of any realisable property subject to such conditions or exceptions as may be specified by the Court.

(4) The Court may order any person having possession or control of realisable property to give possession of it to the receiver.

(5) The Court may empower the receiver to realise any realisable property in such manner as the Court may direct.

(6) The Court may order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, by the recipient of any gift caught by this Act as the Court may direct.

(7) The Court shall not, in respect of any property, exercise the powers conferred by subsections (3), (4), (5) or (6) of this section unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the Court.

(8) On any sale of any property by a receiver appointed hereunder, the purchaser shall receive a good and valid title and as regards land the Land Registrar shall register the purchaser as full owner in the land register without further requisition or enquiry.

(9) On any sale of any property by a receiver appointed hereunder, any right, title or interest of any person therein shall stand extinguished and any such right, title or interest shall be transferred and be limited to the net proceeds of such sale.

Section 45E inserted by s 8 of Act 18 of 2008 with effect from 25 August 2008

Interest on unpaid sums

45F. (1) Subject to subsection (2) of this section, if any sum required to be paid by a person under a pecuniary penalty order is not paid when it is required to be paid (whether forthwith on the making of an order or at the time specified by the court), that person shall be liable to pay interest on that sum for the period for which it remains unpaid and the amount of the interest shall

for the purposes of enforcement be treated as part of the amount to be recovered from him under the pecuniary penalty order.

(2) The amount of interest payable under subsection (1) of this section shall be disregarded for the purposes of calculating the term of imprisonment to be imposed by virtue of section 45D of this Act.

(3) The rate of interest payable under subsection (1) of this section shall be that for the time being applying to a court civil judgment debt and if no such rate is provided at any material time, 8% per annum or part thereof.

Section 45F inserted by s 8 of Act 18 of 2008 with effect from 25 August 2008

Disposal of proceeds of pecuniary penalty order

45G. (1) Money paid or recovered in respect of a pecuniary penalty order (including any variation of such an order) may, to the extent necessary, be applied to meet expenses incurred in exercising any powers under this Act and the remuneration of any person employed for that purpose.

(2) Money paid or recovered in respect of a pecuniary penalty order shall, following the payment of any expenses or remuneration in accordance with subsection (1) of this section, be paid to the Republic.

Section 45G inserted by s 8 of Act 18 of 2008 with effect from 25 August 2008

PART 6 – OFFENCES AND PENALTIES

Failure to establish identity etc.

46. A reporting entity that contravenes section 4, 5(1), (2) and (3) commits an offence.

Section 46 repealed and substituted by s 2(k) of Act 24 of 2011 with effect from 27 December 2011

Failure to maintain records

47. A reporting entity that fails to —

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

is guilty of an offence.

Failure to maintain account in true name

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

guilty of an offence.

[Note: There was no section 48(2) in the Act as gazetted.]

Failure to report suspicious transactions

49. A reporting entity that fails to report to the FIU information in accordance with section 10(1), (2) or (3) is guilty of an offence.

Section 49 repealed and substituted by s 9(e) of Act 18 of 2008 with effect from 25 August 2008

Making false or misleading statements

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

51. ...

51. (Repealed).

Section 51 repealed by s 9(f) of Act 18 of 2008 with effect from 25 August 2008

Failure to implement internal rules

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

Failure to appoint compliance officer or provide training

53. A reporting entity that fails to —

(a) appoint the person referred to in section 15(1)(a); or

(b) provide training to its employees in accordance with section 15(1)(d),

is guilty of an offence.

54. ...

54. (Repealed).

55. ...

55. (Repealed).

Sections 54 and 55 repealed by s 9(f) of Act 18 of 2008 with effect from 25 August 2008

Opening account in fictitious, false or incorrect name

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

57. ...

57. (Repealed).

Section 57 repealed by s 9(f) of Act 18 of 2008 with effect from 25 August 2008

PART 7 – MISCELLANEOUS

Overriding of confidentiality

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

Account in fictitious, false or incorrect name

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

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

(3) For the purposes of this section —

(a) a person opens an account in a false name if the person in opening the account or becoming a signatory to the account uses a name other than the name by which the person is commonly known;

(b) a person operates an account in a false name if the person does any act or thing in relation to the account, whether by way of making a deposit or withdrawal or by way of communication with the reporting entity concerned or otherwise, and in doing so, uses a name other than the name by which the person is commonly known; and

(c) an account is in a false name if it was opened in a false name, whether before or after the coming into operation of this Act.

Liability of employers and principals

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

done or made with the knowledge or approval of the employer or principal or without such knowledge or approval if it was the result of lack of supervision, provided, in the case of an agent, that he or she acted within the terms of his or her agency or contract.

Liabilities of Directors etc.

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

Money laundering an extraditable offence

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

Regulations

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

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

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

Repeal of Act 8 of 1996

64. The Anti-Money Laundering Act, 1996 is hereby repealed.

Savings

65. Data, books, papers, forms and things prepared or used under the Principal Act may continue to be used as before the repeal;

Section 65 inserted by s 9 of Act 18 of 2008 with effect from 25 August 2008

Repeal of certain provisions of Cap 133

66. Section 26(1)(d), the reference to 26(1)(d) in the Second Schedule and sections 30 to 37 inclusive, of the Misuse of Drugs Act 1990 are hereby repealed.

Section 66 inserted by s 9 of Act 18 of 2008 with effect from 25 August 2008

FIRST SCHEDULE - REGULATORY LICENCES

First Schedule inserted by s 2(l) of Act 24 of 2011 with effect from 27 December 2011

(Section 2)

Any licences issued under the following Acts —

- (a) Financial Institutions Act;
- (b) International Corporate Service Providers Act;
- (c) Insurance Act;
- (d) Mutual Funds and Hedge Funds Act; and
- (e) Securities Act.

SECOND SCHEDULE - REPORTING ENTITIES

Second Schedule inserted by s 2(l) of Act 24 of 2011 with effect from 27 December 2011

(Section 2)

PART 1 – REPORTING ENTITIES CARRYING ON REGULATED BUSINESS

- 1. A person carrying on a regulated business.**

PART 2 – REPORTING ENTITIES CARRYING ON A BUSINESS OTHER THAN A REGULATED BUSINESS

- 2. Accountants**

2.1 A person who, by way of business, provides any of the following services —

- (a) external accountancy services;
- (b) tax advice;
- (c) audit services; or
- (d) insolvency services.

2.2 In this paragraph —

- (a) “external accountancy services” means accountancy services provided to customers for remuneration and excludes services provided by accountants employed by public authorities or by undertakings which do not by way of business provide accountancy services to third parties;

(b) “audit services” are audit services provided by way of business pursuant to any function under any enactment; and

(c) “insolvency services” are services provided by a person if, by way of business, that person accepts appointment as a liquidator under the Companies Act, International Business Companies Act or the Foundations Act.

3. Lawyers

3.1 An independent legal professional.

3.2 In this paragraph “independent legal professional” means a person or firm who by way of business provides legal or notarial services to third parties when preparing for or in carrying out transactions concerning any of the following —

(a) buying and selling of immovable property or business entities;

(b) managing client’s money, securities or other assets;

(c) opening or managing bank, savings or securities accounts;

(d) the organisation of contributions necessary for the creation, operation or management of companies; or

(e) the creation, operation or management of trusts, companies or similar structures, excluding any activity that requires a licence under the International Corporate Services Act.

3.3 Sub-paragraph 3.2 does not include legal professionals employed by public authorities or undertakings which do not by way of business provide legal services to third parties.

4. Estate agency services

4.1 A person who, by way of business, provides real estate agency services for or on behalf of third parties concerning the buying or selling of immovable property.

5. High value dealers

5.1 A high value dealer.

5.2 In this paragraph, “high value dealer” means a person who, by way of business trades in goods when he receives, in respect of any transaction, a payment or payments in cash of at least SCR.200,000, or the equivalent in any other currency, whether the transaction is executed in a single operation or in several linked operations.

6. Casinos

6.1 A person who, by way of business, operates a casino, including an internet-based

casino.

7. Other services

7.1 A person who, by way of business, provides any of the following services to third parties, where the business is not otherwise included in this Schedule—

- (a) acceptance of deposits and other repayable funds from the public;
- (b) lending, including consumer credit, mortgage credit, factoring, financing of commercial transactions, including forfeiting;
- (c) financial leasing;
- (d) money transmission services;
- (e) issuing and administering means of payment, such as credit and debit cards, cheques, travellers' cheques, money orders and bankers' drafts, and electronic money;
- (f) financial guarantees and commitments;
- (g) trust and company service providers, in relation to the following activities —
 - (i) acting as a formation agent of legal persons;
 - (ii) acting or arranging for another person to act as a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
 - (iii) providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
 - (iv) acting or arranging for another person to act as a trustee of an express trust;
 - (v) acting or arranging for another person to act as a nominee shareholder for another person.
- (h) trading for the account of third parties in —
 - (i) money market instruments including cheques, bills, certificates of deposit and derivatives;
 - (ii) foreign exchange;
 - (iii) futures and options including financial and commodity;

- (iv) exchange, interest rate and index instruments;
- (v) shares and other transferable securities;
- (i) participation in securities issues and the provision of financial services related to such issues;
- (j) advice on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings;
- (k) money broking or currency changing;
- (l) portfolio management and advice;
- (m) safekeeping and administration of securities;
- (n) safe custody services;
- (o) otherwise investing, administering or managing funds or money on behalf of third parties.

7.2 A reference in this paragraph to providing services to third parties shall not include a company's providing a service to an associated company.

LAWS OF SEYCHELLES

CHAPTER 9A

ANTI-MONEY LAUNDERING ACT

SUBSIDIARY LEGISLATION: ANTI-MONEY LAUNDERING REGULATIONS, 2012

[17th April 2012]

S.I. 18 of 2012

Citation

1. These Regulations may be cited as the Anti-Money Laundering Regulations, 2012.

Interpretation

2. In these Regulations, unless the context otherwise requires —
“Act” means the Anti-Money Laundering Act, 2006;

“beneficial owner” has the meaning given in regulation 4;

“Bureau de Change” has the meaning given in the Financial Institutions Act;

“criminal conduct” has the meaning given in section 3(9) of the Act;

“customer due diligence measures” has the meaning given in regulation 3;”

“FATF” means the intergovernmental body known as the Financial Action Task Force;

“FATF Recommendations” means the recommendations issued by the FATF from time to time;

“foreign regulated person” has the meaning given in regulation 7;

“foreign regulatory authority” means an authority in a country outside Seychelles which exercises functions corresponding to those of a supervisory authority with respect to enforcing compliance with the Act and these Regulations;

“independent legal professional” means a person or the persons specified in paragraph 3.2 of the Second Schedule to the Act;

“legal entity” means a body corporate, wherever incorporated, registered or formed, and includes a company and a foundation;

“licensed bank” means an institution licensed under the Financial Institutions Act to conduct banking business;

“money laundering” has the meaning given in section 3 of the Act;

“one-off transaction” has the meaning given in regulation 5;

“ongoing monitoring” has the meaning given in regulation 9(2);

“politically exposed person” has the meaning in given regulation 6;

“recognised exchange” means —

- (a) a securities exchange licensed under the Securities Act;
- (b) a recognised overseas securities exchange as defined in the Securities Act;
- (c) any other exchange that is a member of the World Federation of Exchanges;

“recognised foreign bank” means a bank holding a valid licence to operate as a bank in a country which is a member of the FATF;

“shell bank” has the meaning given in regulation 17;

“supervisory authority” means the authority having oversight over a reporting entity.

Meaning of customer due diligence measures

3. (1) “Customer due diligence measures” means —

(a) identifying the customer and verifying the customer’s identity on the basis of documents, data or information obtained from a reliable and independent source or from any other sources that the reporting entity has reasonable grounds to believe can be relied upon to identify and verify the identity of the customer;

(b) where the customer is not the beneficial owner, identifying the beneficial owner and taking reasonable measures, on a risk-sensitive basis, to verify the identity of the beneficial owner, including, in the case of a legal entity, partnership or trust, measures to understand the ownership and control structure of that legal entity, partnership or trust;

(c) obtaining information on the purpose and intended nature of the business relationship and to establish details of the business of the customer or a beneficial owner to enable the reporting entity to identify —

(i) complex or unusual large transactions;

(ii) unusual patterns of transactions which have no apparent economic or visible lawful purpose; or

(iii) any other activity which may be, by its nature, likely to be related to money laundering, financing of terrorism or other criminal conduct; and

(d) taking reasonable measures to ascertain the purpose of a one-off transaction and the origin and ultimate destination of funds involved in a one-off transaction or transferred as part of a business relationship.

(2) Where the customer is not an individual, the reporting entity shall take reasonable measures to —

(a) verify that any person purporting to act on behalf of the customer is authorised to do so, and

(b) identify and verify the identity of that person.

(3) The customer due diligence measures for identifying and verifying the identity of the beneficial owners shall not be required in respect of an individual who holds shares or other equity interests in a legal entity, partnership or trust the securities of which are listed on a recognised exchange.

Beneficial owner

4. (1) In these Regulations, “beneficial owner” means —

(a) in the case of a legal entity, any individual who —

(i) exercises control over the management of the legal entity;

(ii) in respect of a legal entity other than a legal entity whose securities are listed on a recognised exchange, owns or controls, directly or indirectly, more than 25 percent of the shares or voting rights in the body corporate or legal entity;

(b) in the case of a partnership, any individual who —

(i) ultimately is entitled to or controls, directly or indirectly, more than 25 percent of the capital or profits of the partnership or more than 25 percent of the voting rights in the partnership; or

(ii) otherwise exercises control over the management of the partnership;

(c) in the case of a trust, —

(i) any individual who is entitled to a specified interest in at least 25 percent of the capital of the trust property;

(ii) the class of persons in whose main interest the trust is set up or operates except where the trust is set up or operates entirely for the benefit of the individuals referred to in subparagraph (i);

(iii) any individual who has control over the trust.

(d) in the case of a legal entity, partnership or trust other than one referred to in paragraph (a), (b) or (c) —

(i) where the individuals who benefit from the legal entity, partnership or trust have been determined, any individual who benefits from at least 25 percent of the property of the legal entity, partnership or trust;

(ii) where the individuals who benefit from the legal entity partnership or trust are yet to be determined, the class of persons for whom the legal entity, partnership or trust is set up or operates;

(iii) any individual who exercises control over at least 25 percent of the property of the legal entity, partnership or trust.

(2) For the purpose of subregulation (1)(c) —

“control” means a power, whether exercisable alone, jointly with another person or with the consent of another person, under the trust instrument or by law to —

(a) dispose of, advance, lend, invest, pay or apply trust property;

- (b) vary the trust;
- (c) add or remove a person as a beneficiary to or from a class of beneficiaries;
- (d) appoint or remove trustees; or
- (e) direct, withhold consent to or veto the exercise of a power such as is mentioned in paragraph (a), (b), (c) or (d).

“specified interest” means a vested interest which is —

- (a) in possession or in remainder or reversion; and
- (b) defeasible or indefeasible.

(3) For the purpose of subregulation (1)(d), the beneficial owner of a legal entity who benefits from or exercises control over the property of a legal entity, partnership or trust is to be regarded as benefiting from or exercising control over the property of the legal entity, partnership or trust.

(4) In case of death of a beneficial owner, the term “beneficial owner” means the heirs, executor or administrator of the estates of the deceased.

(5) In any other case, “beneficial owner” means an individual who ultimately owns or controls the customer or on whose behalf a transaction is conducted.

(6) These Regulations shall apply to a legal entity, partnership or trust carrying on any activity for which a regulatory licence is required under the Act, notwithstanding that the activity was not licensed or the licence has lapsed or been cancelled.

Meaning of one-off transaction

5. In these Regulations, “one-off transaction” means a transaction carried out other than as part of a business relationship that exceeds SCR100,000, or SCR50,000 in the case of cash transactions, whether the transaction is carried out in a single operation or several operations which appear to be linked.

Meaning of politically exposed person

6. (1) In these Regulations, “politically exposed person” means —

- (a) an individual who is or has been, during the preceding three years, entrusted with a prominent public function in —
 - (i) Seychelles;
 - (ii) any other country; or

(iii) an international body or organisation;

(b) an immediate family member of a person referred to in paragraph (a); or

(c) a close associate of a person referred to in paragraph (a).

(2) In subregulation (1)(a), politically exposed persons includes —

(a) heads of state, heads of government, ministers and other and senior politicians;

(b) senior government or judicial officials;

(c) ambassadors and chargés d'affaires;

(d) high-ranking officers in the armed forces;

(e) members of the boards of central banks;

(f) members of state-owned corporations; and

(g) important political party officials.

(3) In subregulation (1)(b), immediate family members of a person specified in paragraph (a) of subregulation (1) includes —

(a) a spouse;

(b) a partner, that is an individual considered by his or her national law as equivalent to a spouse;

(c) children and their spouses or partners, as defined in paragraph (b);

(d) parents; and

(e) siblings.

(4) In subregulation (1)(c), close associates of a person specified in paragraph (a) of subregulation (1) includes —

(a) any person who is known to have joint beneficial ownership of a legal entity, partnership, trust or any other close business relations with that legal entity, partnership or trust; and

(b) any person who has sole beneficial ownership of a legal entity, partnership or trust which is known to have been set up for the benefit of that legal entity, partnership or trust.

(5) In determining whether a person is a close associate of a person specified in subregulation (1)(a), a reporting entity shall have regard to public information or such information that the reporting entity has in its possession.

Meaning of foreign regulated person

7. A “foreign regulated person” means a person that —

(a) is incorporated, registered or otherwise established, or having its principal place of business in a country outside Seychelles;

(b) carries on a business outside Seychelles which if carried on in Seychelles constitutes —

(i) a regulated business;

(ii) the business of an independent legal professional; or

(iii) the business of an external accountancy service and or audit service as specified in paragraph 2.1 (a) and (c) of the Second Schedule to the Act;

(c) in respect of a business referred to in paragraph (b), is subject to legal requirements in its country of origin for the prevention of money laundering and financing of terrorism that are consistent with the requirements of the FATF in relation to such business and to supervision by a foreign regulatory authority.

Application of customer due diligence measures

8. (1) Subject to regulations 10, 11, 12, 13, 14 and 15, a reporting entity shall apply customer due diligence measures when —

(a) establishing a business relationship;

(b) carrying out a one-off transaction;

(c) the reporting entity has doubts on the veracity or adequacy of documents, data or information obtained for the purpose of identification or verification of a customer; or

(d) there are reasonable suspicions of money laundering, financing of terrorism or other criminal conduct.

(2) Notwithstanding subregulation (1), a reporting entity shall apply customer due diligence measures to existing customers at appropriate times on risk-sensitive basis.

(3) A reporting entity shall —

(a) determine the extent of customer due diligence measures on risk-sensitive

basis depending on —

(i) the type of customer, business relationship, product or transaction;
and

(ii) the guidelines issued by the FIU which are not inconsistent with the Act or these Regulations; and

(b) be able to demonstrate to its supervisory authority that the extent of the measures is appropriate in view of the risks of money laundering, financing of terrorism or other criminal conduct.

(4) Where —

(a) a reporting entity is required to apply customer due diligence measures in the case of a foundation or trust; and

(b) the class of persons in whose main interest the foundation or trust is set up or operates is identified as a beneficial owner,

the reporting entity shall only be required to identify the members of the class having not less than 10 percent interest in the foundation or trust.

(5) The reporting entity shall keep records relating to customer due diligence, ongoing monitoring, the safeguards exercised before relying on regulated persons and the business or services carried out by or with a customer or on his behalf, for the period referred to in section 6(2) of the Act.

(6) The records kept under subregulation (5) shall be made available on request to any regulatory body including the FIU or the Attorney General in the performance of their functions.

Ongoing monitoring

9. (1) A reporting entity shall conduct ongoing monitoring of a business relationship.

(2) “Ongoing monitoring” of a business relationship means —

(a) scrutinising transactions undertaken throughout the relationship to ensure that the transactions are consistent with the reporting entity’s knowledge of the customer, the business and risk profile and the source of funds of the customer;
and

(b) keeping the documents, data or information obtained for the purpose of applying customer due diligence measures up to date.

Timing of customer due diligence measures

10. (1) For the purpose of regulation 8(1)(a) and (b), a reporting entity shall carry out customer due diligence measures before establishing a business relationship or carrying out a

one-off transaction.

(2) The reporting entity may complete the customer due diligence measures during the establishment of a business relationship if —

- (a) this is necessary so as not to interrupt the normal conduct of business; and
- (b) there is low risk of money laundering, financing of terrorism or other criminal conduct,

Provided that the customer due diligence measures are completed as soon as practicable after establishing the business relationship.

Simplified due diligence

11. (1) Subject to subregulation (2), a reporting entity may apply the customer due diligence measures in regulation 8(1)(a), (b) or (c) where —

- (a) the customer is —
 - (i) a licensed bank;
 - (ii) a recognised foreign bank;
 - (iii) the Central Bank of Seychelles;
 - (iv) a public body in Seychelles; or
 - (v) a legal entity, partnership or trust the securities of which are listed on a recognised exchange; or
- (b) there are reasonable grounds for believing that the product related to the relevant transaction is a pension, superannuation or similar scheme that provides retirement benefits to employees, where contributions are made by way of deduction from wages and the scheme rules do not permit the assignment of a member's interest under the scheme.

(2) Where there is suspicion of money laundering, financing of terrorism or other criminal conduct, the reporting entity shall apply the customer due diligence measures in regulation 8(1)(a), (b) or (c).

Reliance on regulated persons

12. (1) A “regulated person” means —

- (a) a regulated reporting entity other than a bureau de change; or
- (b) a foreign regulated person.

(2) Subject to subregulation (4), a reporting entity may rely on a regulated person to apply customer due diligence measures in respect of the regulated person's customer or a person referred to in subregulation (3) if the regulated person —

- (a) consents to being relied on;
- (b) gives the reporting entity a written undertaking that it—
 - (i) applies or will apply customer due diligence measures on an ongoing basis;
 - (ii) is under a legal obligation to keep and keeps records of the customer due diligence measures applied with respect to its customers;
 - (iii) will keep the records described in paragraph (ii) for the same period referred to section 6(2) of the Act;
 - (iv) will, without delay, on request by the reporting entity produce the original or certified copies of the records described in paragraph (ii) to the reporting entity, which records may be used as evidence in court proceedings;
 - (v) where it is about to or has ceased to carry on business, shall forward to the reporting entity all records of customer due diligence measures applied in respect of its customers.

(3) For the purpose of subregulation (2), a reporting entity may rely on a regulated person to apply customer due diligence measures in respect of —

- (a) any beneficial owner or controller of the customer;
- (b) any third party for whom the customer is acting;
- (c) any beneficial owner or controller of a third party for whom the customer is acting; or
- (d) any person purporting to act on behalf of a customer.

(4) This regulation shall not apply to—

- (a) a licensed bank;
- (b) a bureau de change; or
- (c) a reporting entity referred to in paragraph 7.1 (a) and (b) of the Second Schedule to the Act.

(5) Where a reporting entity becomes aware that a regulated person on whom it has relied to conduct customer due diligence measures in respect of its customers is about to or has ceased

to carry on business, the reporting entity shall immediately take all reasonable steps to take possession of and keep the records of the customer due diligence measures applied with respect of its customers for the period referred to in section 6(2) of the Act.

(6) Where a reporting entity relies on a regulated person to apply customer due diligence measures in respect of the regulated person's customer or a person referred to in subregulation (3), the ultimate responsibility for applying the customer due diligence measures remains with the reporting entity.

Politically exposed persons

13. (1) Where a reporting entity knows or has reasonable grounds to believe that a customer, or a beneficial owner of a customer, residing in or outside Seychelles is or becomes a politically exposed person, the reporting entity shall apply, on a risk-sensitive basis, enhanced customer due diligence measures and enhanced ongoing monitoring.

(2) For the purpose of subregulation (1), the reporting entity shall, in addition to the measures provided in regulation 8 (1) —

- (a) obtain the approval of the senior management before a business relationship is established with the customer;
- (b) take adequate measures to establish the source of wealth and source of funds which are involved in the proposed business relationship or one-off transaction;
- (c) where the business relationship is entered into, conduct enhanced ongoing monitoring of the relationship; or
- (d) apply such other measures provided for in the guidelines issued by the FIU to compensate for the higher risk of money laundering, financing of terrorism or other criminal conduct.

Correspondent banking relationship

14. A licensed bank shall not enter into a correspondent banking relationship with a bank or other credit institution situated outside Seychelles unless the licensed bank —

- (a) gathers sufficient information about the bank or credit institution so as to understand fully the nature of the business of that bank or credit institution;
- (b) is satisfied on reasonable grounds, based on publicly available information, that the reputation of the bank or credit institution and the quality of supervision or monitoring of the operation of that bank or credit institution in the other country are sound, adequate and effective;
- (c) is satisfied on reasonable grounds, having assessed the anti-money laundering and anti-terrorist financing controls applied by the bank or credit institution, that those controls are sound, adequate and effective;

(d) obtains approval of the Board of Directors;

(e) documents the responsibilities of the bank or credit institution in applying anti-money laundering and anti-terrorist financing controls to customers in the conduct of the correspondent banking relationship; and

(f) in the case of customers of the bank or credit institution who have direct access to a payable-through account held with the licensed bank in the name of the bank or credit institution, is satisfied on reasonable grounds that the bank or credit institution —

(i) has identified and verified the identity of those customers, and is able to provide to the licensed bank, upon request, the documents, whether or not in electronic form, or information used by the credit institution to identify and verify the identity, of those customers;

(ii) has applied measures equivalent to the measures referred to in regulation 8 in relation to those customers; and

(iii) is applying measures equivalent to the measures referred to in regulation 9 in relation to those customers.

Enhanced due diligence in other cases

15. (1) Notwithstanding regulations 13 and 14, a reporting entity shall apply on a risk-sensitive basis enhanced customer due diligence measures and enhanced ongoing monitoring in any other situation which by its nature can present a higher risk of money laundering, financing of terrorism or other criminal conduct.

(2) Without limiting the generality of subregulation (1), a reporting entity shall apply on a risk-sensitive basis enhanced customer due diligence measures and enhanced ongoing monitoring in respect of business relationships with persons from, and transactions in, countries which do not apply or fully apply the FATF Recommendations.

Branches and subsidiaries

16. (1) A reporting entity shall require its branches and subsidiaries outside Seychelles to apply, to the extent permitted by the laws of the country where they are located, measures at least equivalent to those set out in these Regulations with regard to customer due diligence, ongoing monitoring and record-keeping.

(2) Where no such equivalent customer due diligence measures are required under the laws of the country where the branches and subsidiaries are located, the reporting entity shall —

(a) inform its supervisory authority accordingly;

(b) apply the customer due diligence measures provided in these Regulations, as applicable to the risk of money laundering, financing of terrorism or other

criminal conduct; and

(c) produce to the FIU, without delay on request, all information data and documents in the possession or control of such branch or subsidiary undertaking in accordance with the obligations of the reporting entity under these Regulations.

Shell banks

17. (1) A licensed bank shall —

(a) not enter into or continue a correspondent banking relationship with a shell bank; and

(b) take appropriate measures to ensure that it does not enter into, or continue, a banking relationship with a bank that is known to permit its accounts to be used by a shell bank.

(2) In this regulation —

(a) a “shell bank” is a bank, or an institution engaged in equivalent activities, that —

(i) is incorporated in a country in which it has no physical presence involving meaningful decision-making and management; and

(ii) is not subject to supervision by the Central Bank of Seychelles or a foreign regulatory authority, by reason that it is not affiliated to any financial services group that is subject to effective consolidated supervision;

(b) “correspondent banking” means the provision of banking services by one bank to another bank; and

(c) “banking services” includes —

(i) cash management, including establishing interest-bearing accounts in different currencies;

(ii) international wire transfers of funds;

(iii) cheque clearing;

(iv) payable-through accounts; and

(v) foreign exchange services.”
