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**ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM (SECOND AMENDMENT) BILL, 2021**

*(Bill No. 63 of 2021)*

**OBJECTS AND REASONS**

The Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020 (Act 5 of 2020) (hereinafter referred to as AMLCFT Act) was enacted for the prevention, detection and combating of money laundering and terrorist financing activities; for collection, analysis and managing information on suspicious financial transactions and activities; to create and empower institutions to suppress money laundering and the financing of terrorism and for matters connected therewith or incidental thereto.

2. A review of the Act was conducted while implementing the provisions of the Act and certain shortcomings have been identified to meet with the recommendations of the FATF and the observations made in the Mutual Evaluation Report of the ESAAMLG. Accordingly, it is proposed to amend sections 2, 7, 13, 27, 29, 30A, 32, 34, 35, 45, 50, 57, 60, 61, 67, 69, 69A, 74, 90, 92, 97 and repeal PART XI of the AMLCFT Act.

3. The salient features of the proposed amendments, inter alia, are as follows —

- (a) re-defining the terms “beneficial owner” and “suspicious transaction report or suspicious activity report”;
- (b) to amend section 7 of the Act to empower the National Committee on AMLCFT to apply counter measures and specifying the countermeasures as required under recommendation No. 19 of the FATF recommendations;
- (c) to amend section 13 of the Act to direct the reporting entities to submit the records, documents etc. to the FIU for the discharge of its functions;

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- (d) to amend section 27 of the Act to fix a maximum time of ten days for refraining and freezing the account by the reporting entities;
  - (e) to amend section 30A of the Act empowering the Minister to make regulations in respect of designated NPO's;
  - (f) to amend section 45 of the Act to align the same with FATF recommendation number 16 regarding wire transfers;
  - (j) to amend section 57 of the Act to caution the reporting entities not to repeat the noncompliant conduct and to take remedial actions etc.;
  - (m) to amend sections 69 and 69A of the Act to empower the prosecutor on behalf of Anti-Corruption Commission to file certain applications before the Court;
  - (n) to amend section 74 of the Act to seize any cash found during search, if the law enforcement officer has reasonable grounds for suspecting that it represents proceeds of crime;
  - (o) amendments to sections 90, 92 and 97 of the Act to remove the reference of Asset Recovery Fund; and
  - (p) repeal PART XI of the Act, in view of the provisions incorporated in the Custody, Management and Disposal of Seized, Forfeited or Confiscated Properties Bill, 2021.

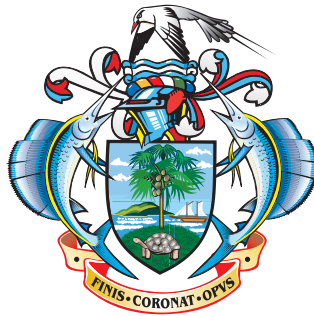
**Dated this 9<sup>th</sup> day of December, 2021.**

**FRANK D.R. ALLY  
ATTORNEY-GENERAL**

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**ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING  
OF TERRORISM (SECOND AMENDMENT) BILL, 2021**

*(Bill No. 63 of 2021)*



**A BILL  
FOR**

**AN ACT** TO AMEND THE ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM ACT, 2020 (ACT 5 OF 2020).

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

**Short title**

1. This Act may be cited as the Anti-Money Laundering and Countering the Financing of Terrorism (Second Amendment) Act, 2021.

**Amendments to Act 5 of 2020**

2. The Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020 (hereinafter referred to as the principal Act) is hereby amended as follows —

(a) in section 2 of the principal Act, —

(i) by repealing the definition of “beneficial owner” and therefor substituting the following definition —

‘ “beneficial owner” shall have the meaning assigned to it under the Beneficial Ownership Act, 2020 (Act 4 of 2020) and the determination provided under regulation 3 of the Beneficial Ownership Regulations, 2020 (S.I. 107 of 2020);”;

(ii) by repealing the definition of “Suspicious Transaction Report” and therefor substituting the following definition —

‘ “Suspicious Transaction Report or Suspicious Activity Report” means a report that shall be submitted by a reporting entity to the FIU under section 48, if there are reasonable grounds to suspect that an activity or a transaction or series of transactions made or attempted in the course of their activities relating to commission or the attempted commission of criminal conduct including the money laundering and terrorist financing offences;”;

(b) section 7 of the principal Act is hereby amended —

(i) by inserting after paragraph (j), the following paragraph —

“(ja) apply counter measures as may be necessary, when called upon to do so by the Financial

Action Task Force or on country's independent determination, issue directives to the reporting entities to apply such countermeasures proportionate to the risk, business relationship and transactions;”;

- (ii) by inserting after subsection (6), the following subsection —

“(7) The following countermeasures may be applied under subsection (1) (ja), when called upon by the Financial Action Task force or after country's independent determination, proportionate to the risk, business relationship and transactions —

- (a) requiring the financial institutions to apply specific elements of enhanced due diligence;
- (b) introducing enhanced relevant reporting mechanisms or systematic reporting of financial transactions;
- (c) refusing the establishment of subsidiaries or branches or representative offices of financial institutions from the country concerned, or otherwise taking into account the fact that the relevant financial institution is from a country that does not have adequate AMLCFT systems;
- (d) prohibiting financial institutions from establishing branches or representative offices in the country concerned, or otherwise taking into account the fact that the relevant branch or representative office would be in a country that does not have adequate AMLCFT systems;

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- (e) limiting business relationships or financial transactions with the identified country or persons in that country;
  - (f) prohibiting financial institutions from relying on third parties located in the country concerned to conduct elements of the CDD process;
  - (g) requiring financial institutions to review and amend, or if necessary, terminate, correspondent relationships with financial institutions in the country concerned;
  - (h) requiring increased supervisory examination and external audit requirements for branches and subsidiaries of financial institutions based in the country concerned;
  - (i) requiring increased external audit requirements for financial groups with respect to any of their branches and subsidiaries located in the country concerned; and
  - (j) any other counter measure, as may be necessary to implement the Act, FATF suggestions or on the basis of risk assessment, which shall be notified by the Minister responsible for Finance by notice published in the Gazette.”;
- (c) section 13 of the principal Act is hereby amended by inserting after paragraph (e), the following paragraph —

- “(ea) directing the reporting entity to produce, who is in possession of any record, document or information that is necessary for the discharge of the functions of the FIU.”;
- (d) section 27 (1) of the principal Act is hereby amended —
- (i) in paragraph (d), repeal the words “for a period not exceeding five working days”;
- (ii) in paragraph (e), repeal the words “for a period not exceeding five working days”;
- (iii) after paragraph (e), the following proviso shall be added —
- “Provided that the period for refraining the reporting entity from completing the transaction under paragraph (d) and freezing of banking or similar account of the entity or person under paragraph (e), shall not exceed ten working days.”;
- (e) section 29 (6) of the principal Act is hereby amended by repealing the words “requesting FIU's” and therefor substituting the words “requesting foreign counterpart agencies”;
- (f) section 30A of the principal Act is hereby amended by inserting after subsection (5), the following subsection —
- “(6) The designated high-risk NPO's under subsection (1) shall be regulated in accordance with the regulations, as may be prescribed by the Minister in consultation with the Committee.”;
- (g) section 32(6) of the principal Act is hereby amended by repealing the words “money laundering and the terrorist financing activities” and substituting therefor the following words “money laundering and terrorist financing activities”;

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- (h) section 34 of the principal Act is hereby amended —
- (a) in subsection (3) —
- (i) by inserting after the words “management level”, the words “or employee with the same qualifications prescribed for the compliance officer,”;
- (ii) by repealing the words “absence of a compliance office” and substituting therefor the words “absence of a compliance officer”;
- (b) in subsection (4), after the words “under subsection (1)” the words “or an alternate compliance officer under subsection (3)” shall be added;
- (i) section 35 (2)(c) of the principal Act is hereby amended by inserting after the words “identify the beneficial owner”, the words “as per the determination provided under regulation 3 of the Beneficial Ownership Regulations, 2020 (S.I. 107 of 2020);
- (j) section 45 of the principal Act is hereby amended —
- (a) by repealing subsection (2) and therefor substituting the following subsection —
- “(2) The following particulars shall be made available by the ordering financial institution —
- (a) in the case of domestic wire transfers, full details of the originator information within three business days from the date of request from the beneficiary financial institution or from the appropriate competent authority; and



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- (b) in case of cross-border transfers, where individual transfers from a single originator are bundled in a batch file, the originator's account number, full beneficiary information and the unique reference number allocated for such transfer including the full details of the originator information traceable in the recipient jurisdiction.”;
- (b) in subsection (5)(b), by repealing the words “section 35” and substituting therefor the words “section 47”;
- (c) by repealing subsection 5 (c) and renumbering subsection 5 (d) as subsection 5(c);
- (d) by inserting a new subsection after subsection (5) —
- “(5A) Every reporting entity receiving a wire transfer shall ensure that the identity of the beneficiary is verified, where the identity has not been previously verified and maintain the information in accordance with the provisions of section 47.”;
- (k) section 50(1) of the principal Act is hereby amended by repealing paragraphs (f) and (g) and substituting therefor the following paragraph —
- “(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 and is liable on conviction to imprisonment up

to six months or to a fine not exceeding SCR200,000 or to both.”;

(l) section 57 of the principal Act is hereby amended —

(a) in subsection (1), by inserting after paragraph (g), the following paragraphs —

“(ga) to caution a reporting entity not to repeat a non-compliant conduct;

(gb) to direct a reporting entity to take remedial action;”;

(b) by repealing subsection (3) and therefor substituting the following subsection —

“(3) Every reporting entity, including a director, manager or other officer involved in the control or management of the entity, that

(i) obstructs or interferes with the exercise of the powers of a supervisory authority; or

(ii) fails to comply with a direction or request made by the supervisory authority within such timeframe as may be specified by the supervisory authority,

commits an offence and is liable on conviction to a fine not exceeding SCR200,000.”;

(m) section 60 of the principal Act is hereby amended —

(a) in subsection (1), after the words “directive issued under the Act” add the words “,within timeframe specified by the supervisory authority”;

- (b) in subsection (3), by repealing paragraphs (a) and (b) and consequentially renumbering paragraphs (c), (d) and (e) as paragraphs (a), (b) and (c);
- (c) by inserting after subsection(3), the following subsection —

“(3A) Financial penalty imposed by the supervisory authorities under this section or under any other provision of the Act shall be credited to a separate designated account maintained by the Ministry of Finance for this purpose and the funds so accrued in the said account shall be utilised only for the purpose of anti-money laundering and countering the financing of terrorism compliance awareness, education and capacity building for implementing the provisions of the Act.”.

- (n) section 61(2)(a) of the principal Act is hereby amended by repealing the words “at least 10 years' experience ” and substituting therefor the words “at least 3 years' experience”;
- (o) section 67(1)(b) of the principal Act is hereby amended by repealing the words “FCIU officer” and therefor substituting the words “law enforcement officer”;
- (p) section 69 of the principal Act is hereby amended —
  - (i) in subsection (4), after the words “Attorney General” the words “ or a prosecutor on behalf of Anti-Corruption Commission of Seychelles” shall be added;
  - (ii) in subsection (6), after the words “Attorney General” the words “ or a prosecutor on behalf of Anti-Corruption Commission of Seychelles” shall be added;
- (q) section 69A of the principal Act is hereby amended —

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- (i) in subsection (1), after the words “Attorney General” the words “or a prosecutor on behalf of Anti-Corruption Commission of Seychelles” shall be added;
  - (ii) in subsection (2), after the words “Attorney General” the words “ or a prosecutor on behalf of Anti-Corruption Commission of Seychelles” shall be added;
- (r) section 74 (2) of the principal Act is hereby repealed and substitute therefor the following subsection —
- “(2) The officers referred to in subsection (1) may seize, any cash found during a search under subsection (1) if he or she has reasonable grounds for suspecting that it represents proceeds of crime, or is intended by any person to be used in connection with any criminal conduct and shall have the authority to seek further information from the carrier regarding the origin of the cash and their intended use and also notify the FIU regarding such cash seizure in such form and manner as may be prescribed.”;
- (s) in section 90(1) of the principal Act, by repealing the words “Asset Recovery Fund established under section 93 of this Act” and substitute therefor the words “Asset Recovery Fund established under section 11 of the Custody, Management and Disposal of Seized, Forfeited or Confiscated Properties Act, 2021.”;
  - (t) in section 92 (2) of the principal Act, by repealing the words “paid into the Asset Recovery Fund.” and substitute therefor the words “paid into the Asset Recovery Fund established under section 11 of the Custody, Management and Disposal of Seized, Forfeited or Confiscated Properties Act, 2021.”;
  - (u) by repealing PART XI of the principal Act; and
  - (v) by repealing paragraph (f) of section 97(1) of the principal Act.