

ACT

ii

Supplement to the Sierra Leone Gazette Vol. CXLIII, No. 13

dated 15th March, 2012

THE ANTI-MONEY LAUNDERING AND COMBATING OF FINANCING OF TERRORISM ACT, 2012

ARRANGEMENT OF SECTIONS

Section

PART 1–PRELIMINARY

1. Interpretation.

PART II–ESTABLISHMENT OF FINANCIAL INTELLIGENCE UNIT

2. Establishment of Financial Intelligence Unit.
3. Governing body of Unit.
4. Meeting of Inter-Ministerial Committee.
5. Powers of Inter-Ministerial Committee.
6. Committees of Inter Ministerial Committee.

PART III –STAFF OF UNIT

7. Appointment of staff of Unit.
8. Oath of secrecy.

PART IV - FINANCIAL PROVISIONS

9. Funds of Unit.
10. Accounts and audit.
11. Financial year of Unit.
12. Annual report.

PART V–FUNCTIONS OF UNIT

13. Functions and powers of Unit.
14. International cooperation and sharing of information.

PART VI–OFFENCES RELATING TO MONEY LAUNDERING AND FINANCING OF TERRORISM

15. Offence of money laundering.
16. Offence of financing of terrorism.

PART VII –PREVENTIVE MEASURES TO COMBAT MONEY LAUNDERING AND FINANCING OF TERRORISM

17. Effective use of resources.
18. Application of risk-based approach.
19. Prohibition of anonymous accounts.
20. Application of CDD and KYC principles.
21. Obligation to verify customer identity.
22. Identification of beneficial owner.
23. Currency exchange or transmission business.
24. Special identification requirements.
25. Reliance on identification by third parties or intermediaries.
26. Customers not physically present.
27. High risk customers and politically-exposed persons.
28. Identification and account opening for correspondent banking relationship.
29. Inability to fulfill customer due diligence and customer identification obligations.
30. Record-keeping requirements.
31. Financial institutions and money transmission service providers to include originator information.
32. Ongoing due diligence.
33. Special monitoring of certain transactions.
34. Obligations regarding wire transfers.
35. Other preventive measures.
36. Internal programs to combat money laundering and financing of terrorism.
37. Compliance with obligations by foreign subsidiaries and branches of Sierra Leone financial institutions.
38. Over-the-counter exchange dealings.
39. Casinos and gambling establishments.
40. Prohibition of shell banks.
41. Reporting entity to report suspicious transactions or information that may assist law enforcement.
42. Supervisory authority or external auditor or Auditor-General to report suspicious transactions.
43. Format of reporting.
44. Inapplicability of confidentiality provisions.
45. Prohibition against tipping-off.

46. Immunity for reporting in good faith.
47. Protection of persons and information relating to suspicious transaction reports.
48. Privileged communication.
49. Test of reasonableness of belief etc.
50. Authorities responsible for supervision.
51. Disclosing information regarding compliance.
52. Power to examine records etc.
53. Power to enforce compliance.
54. Mechanism to maintain beneficial ownership information.
55. Failure to comply with identification requirements.
56. Failure to maintain or provide access to records.
57. Failure to fulfill due diligence obligations or maintain internal controls.
58. Failure regarding suspicious transaction or other reporting.
59. Failure to comply with the regulations of supervisory authority or Unit.
60. False or misleading statement.
61. Violation of confidentiality.
62. Shell bank offence.
63. Other sanctions.
64. Supervisory authority to issue guidelines.
65. Confidential information.
66. Liability of employers and principals.
67. Liability of directors, controllers or officers of bodies corporate.

PART VIII—CURRENCY REPORTING AT POINT OF ENTRY

68. Currency reporting at point of entry.
69. Seizure of cash or negotiable instruments.
70. Retention and release of cash or negotiable instruments seized.

PART IX—LAW ENFORCEMENT MEASURES

71. Authority to conduct money laundering investigations and prosecutions.
72. Law enforcement agencies' power to obtain warrant.
73. Law enforcement agencies to obtain property monitoring tracking.
74. Officers etc. to enforce compliance.

PART X—RESTRAINT, SEIZURE AND FORFEITURE OF ASSETS IN RELATION TO MONEY LAUNDERING AND FINANCING OF TERRORISM

75. Freezing of assets of suspects.
76. Restraint of property.
77. Service of restraining order.
78. Registration of restraining order.
79. Contravention of restraining order.
80. Extension of restraining order.
81. Seizure of property subject to restraining order.
82. Forfeiture of property.
83. Effect of forfeiture order and confiscation order.
84. Forfeiture or confiscation where a person dies or absconds.
85. Voidable transfers.
86. Competent authority to obtain property tracking or monitoring order.
87. Offences in relation to property tracking, etc.
88. Appeals.

PART XI—PECUNIARY PENALTY ORDERS

89. Pecuniary penalty order on conviction.
90. Rules of determining benefit and assessing value.
91. Statements relating to benefits from commission of unlawful activity or offence.
92. Amount recovered under pecuniary penalty order.
93. Variation of pecuniary penalty order.
94. Enforcement of pecuniary penalty order.
95. Discharge of pecuniary penalty order.
96. Overriding of confidentiality.
97. Liability of employers and principals.
98. Liability of directors, controllers or officers of bodies corporate.
99. Sharing of confiscated property.

PART XII—MUTUAL ASSISTANCE IN RELATION TO MONEY LAUNDERING

100. International cooperation.
101. Mutual assistance.
102. Competent authority's power to obtain search warrant.
103. Freezing and forfeiture of property in international cooperation.
104. Request to be accompanied by evidence order.

v

- 105. Limitations on compliance with request.
- 106. Request to States.
- 107. Issuing evidence against foreign resident.
- 108. Evidence pursuant to request.
- 109. Form of requests.
- 110. Contents of requests.
- 111. Request for forfeiture.
- 112. Request not to be invalidated.
- 113. Offence of interference with mutual assistance.

PART XIII – OFFENCES AND PENALTIES

- 114. Interference with investigation.
- 115. Further measure to avoid unlawful activity, money laundering or financing of terrorism.
- 116. Obstruction of official in performance of functions.
- 117. Failure to comply with monitoring and restraint order.
- 118. Failure to establish and verify identity of persons and transactions.
- 119. Failure to maintain records.
- 120. Failure to maintain accounts in true name.
- 121. Failure to report suspicious transaction.
- 122. Providing false or misleading statement.
- 123. Unauthorized disclosure of suspicious transaction reports and other information.
- 124. Failure to formulate and implement internal rules.
- 125. Failure to appoint compliance officer or provide training.
- 126. Opening account in fictitious, false or incorrect name.
- 127. Penalties.

PART XIV – MISCELLANEOUS PROVISIONS

- 128. Extradition.
- 129. Attempts, aiding and abetting.
- 130. Offence by body of persons.
- 131. General offence and penalty.
- 132. Court banning order.
- 133. Regulations
- 134. Money laundering and financing of terrorism offences for extradition purposes.
- 135. Repeal and savings.

First Schedule

Second Schedule

SIGNED this 15th day of February, 2012.

DR. ERNEST BAI KOROMA,
President.



No. 2



Sierra Leone

2012

The Anti Money Laundering and Combating of Financing of Terrorism Act, 2012. Short title.

Being an Act to provide for the criminalization of money laundering and financing of terrorism, the establishment of structures to implement this and for other related matters.

[] Date of commencement.

ENACTED by the President and Members of Parliament in this present Parliament assembled.

PART 1—PRELIMINARY

Interpretation. **1.** In this Act, unless the context otherwise requires—

“Attorney-General” means the Attorney-General and Minister of Justice;

“beneficial owner” means.

(a) an individual who ultimately owns or controls the rights to or benefits from property, including the person on whose behalf a transaction is conducted; or

(b) a person who exercises ultimate effective control over a legal person or legal arrangement;

“business relationship” means any arrangement between a person and a reporting entity where—

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

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

“business transaction record” includes, where relevant to a business transaction—

(a) the identification records of all the parties to that transaction;

(b) a description of that transaction sufficient to identify its purpose and method of execution;

(c) the details of any bank account used for that transaction, including bank branch and short code; and

(d) the total value of that transaction,

Act No. 10
of 2002.

“CISU” means the Central Intelligence and Security Unit referred to in section 11 of the National Security and Central Intelligence Act, 2002:

“Central Bank” means the Bank of Sierra Leone;

“competent authority” means the Attorney General, the Director of Public Prosecutions, the Director of CISU, the Inspector General of Police, Commissioner of the Anti Corruption Commission, the Governor of the Bank of Sierra Leone, the Director, any law enforcement agency and any person exercising such powers on behalf of the these authorities as provided in this Act;

“confiscation” means the permanent deprivation of funds or other assets by order of a competent authority or a court and includes forfeiture;

“court” means the High Court;

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

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

- (b) a signatory to a transaction or account;
- (c) a person to whom a transaction has been assigned or transferred;
- (d) a person who is authorized to conduct a transaction; or
- (e) any other person as may be prescribed;

“customer due diligence” or CDD means the process of–

- (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;
- (b) identifying, where there is a beneficial owner who is not the customer, the beneficial owner, and taking adequate measures, on a risk-sensitive basis, to verify his identity so that the relevant person is satisfied that he knows who the beneficial owner is, including, in the case of a legal person, trust or similar legal arrangement, measures to understand the ownership and control structure of the person, trust or arrangement; and
- (c) obtaining information on the purpose and intended nature of the business relationship;

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

“Director” means the Director appointed under section 7;

“document” means any record of information, and includes–

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

“enhanced due diligence” means, for higher risk customers such as non face-to-face customers, in addition to conducting customer due diligence, a reporting entity taking specific and adequate measures to compensate for the higher risk, for example, by applying one or more of the following measures:–

- (a) ensuring that the customer's identity is established by additional documents, data or information;
- (b) supplementary measures to verify or certify the documents supplied, or requiring confirmatory certification by a credit or financial institution which is subject to the money laundering directive;
- (c) ensuring that the first payment is carried out through an account opened in the customer's name with a credit institution;

“financing of terrorism” means the offence stated in section 16;

“Unit” means the Financial Intelligence Unit established by section 2;

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

“funds” means financial assets, property of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to or interest in, the funds or other assets, including bank credits, travelers cheques, bank cheques, money orders, shares, securities, bonds, drafts, or letters of credit, and any interest, dividends or other income on or value accruing from or generated by the funds or other assets;

“identification record” means—

- (a) where the person is a corporate body, the details of—
 - (i) the person, including a nominee, agent, beneficiary or principal, in relation to a business transaction,
 - (ii) the memorandum and articles of association and certificate of incorporation, notarized, where the corporate body is incorporated abroad:
 - (iii) the most recent annual return to the Registrar under the Companies Act, 2009, or such returns notarized where the corporate body is incorporated abroad;
- (iv) any officer of the corporate body,

Act No. 5
of 2009.

- (b) sufficient documentary evidence to prove to the satisfaction of a reporting entity that the person is who that person claims to be;

“Inter-Ministerial Committee” means the Inter-Ministerial Committee established by section 3.

“KYC” means Know Your Customer;

“law enforcement agency” means Government agencies such as the Police, the National Revenue Authority, CISU, the Anti Corruption Commission and the Immigration Service;

“Minister” means the Minister responsible for finance;

“money laundering” means the offence stated in section 15:

“offence” means money laundering offence or financing of terrorism offence;

“ongoing monitoring of a business relationship” means—

- (a) scrutiny of a transaction undertaken throughout the course of the relationship (including, where necessary, the source of funds) to ensure that the transaction is consistent with the reporting entity's knowledge of the customer, his business and risk profile; and
- (b) keeping the documents, data or information obtained for the purpose of applying customer due diligence measures up-to-date.

“occasional transaction” means any transaction involving cash that is conducted in a financial institution by any person otherwise than through an account in respect of which the person is the customer.

“persons, groups or entities involved in terrorist acts” means—

- (i) persons who commit, or attempt to commit, terrorist acts or who participate in or facilitate, the commission of terrorist acts; and
- (ii) groups or entities owned or controlled directly or indirectly by such persons; and
- (c) persons, groups and entities acting on behalf of, or under the direction of, the persons, groups and entities, including funds derived or generated from property owned or controlled directly or indirectly by the persons, associated persons, groups or entities;

“Police” means the Sierra Leone Police Force;

“politically exposed persons” means persons holding prominent public positions domestically or in a foreign country such as heads of state or government, senior politicians on the national level, senior government, judicial, military or party officials on the national level, or senior executives of state-owned enterprises of national importance, or individuals or undertakings identified as having close family ties or personal or business connections to such persons.

“proceeds of a crime” means any money or property that is derived, obtained or realized, directly or indirectly, by any person, from an unlawful activity;

“production order” means an order requiring a person to produce a document or information in readable form for the purpose of identifying, locating or quantifying the property, or identifying or locating the document or information, of a person who has been convicted of the offence of money laundering;

“property” means currency and any asset of every kind, whether moveable or immovable, tangible or intangible, and legal documents or instruments in any form including electronic or digital, evidencing title to, or interest in, the assets, including bank credits, travelers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit, whether situated in Sierra Leone or elsewhere and includes any legal or equitable interest in any property;

“reporting entity” means any person or entity including a financial institution who conducts as a business, for or on behalf of a customer, one or more of the activities or operations specified in -

(a) Parts I and II of the First Schedule;

(b) any other activity specified by the Unit;

“requesting State” means any State which makes a request for assistance under Part IX;

“self regulatory organization” means a body that represents a profession, including legal practitioners, notaries, other independent professionals or accountants, and which—

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

“shell bank” means a financial institution that does not have physical presence, that is, meaningful mind and management in the country where it is incorporated and licensed, and is not affiliated to any financial services group that is subject to effective consolidated supervision;

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

“supervisory authority” means the Central Bank of Sierra Leone or any other authority having oversight over a reporting entity;

“terrorist” means a person who commits or attempts to commit, a terrorist act or who participates in or facilitates the commission of a terrorist act or conspires to do so;

“terrorist act” means–

- (a) an act or omission in or outside Sierra Leone which constitutes an offence within the scope of a counter terrorism convention;
- (b) an act or threat of action in or outside Sierra Leone which–
 - (i) involves serious bodily harm to a person;
 - (ii) involves serious damage to property;
 - (iii) endangers a person's life;
 - (iv) creates a serious risk to the health or safety of the public or a section of the public;
 - (v) involves the use of firearms or explosives;
 - (vi) involves releasing into the environment or any part of it or distributing or exposing the public or any part thereof to–
 - (a) any dangerous, hazardous, radioactive or harmful substance;
 - (b) any toxic chemical; or
 - (c) any microbial or other biological agent or toxin;
 - (vii) is designed or intended to disrupt any computer system or the provision of services directly related to communications infrastructure, banking or financial services, utilities, transportation or other essential infrastructure;

(viii) is designed or intended to disrupt the provision of essential emergency services such as police, civil defence or medical services;

(ix) involves prejudice to national security or public safety;

(x) involves participating in the activities of a terrorist group, including by supplying information or material resources, or by funding its activities in any way, with knowledge of the fact that the participation will contribute to the criminal activities of the group, and is intended, or by its nature and context, may reasonably be regarded as being intended to—

(a) intimidate the public or a section of the public; or

(b) compel a government or an international organization to do or refrain from doing, any act,

(c) seriously destabilize or destroy the fundamental political, constitutional, economic or social structures of a country or an international organization; and

(d) advance a political, ideological, or religious cause.

but an act which—

(a) disrupts any services; and

(b) is committed in pursuance of a protest, demonstration or stoppage of work,

shall not be considered a terrorist act if the act is not intended to result in any harm referred to in sub-paragraphs, (i), (ii), (iii) or (iv);

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

“terrorist property” means the property of a terrorist or any other property consisting of funds that are intended to be used to finance or otherwise assist the commission of a terrorist act;

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

(a) acting as formation agents of legal persons;

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

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

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

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

“unlawful activity” means–

- (a) any act or omission which is an offence under any enactment; or
- (b) an act or omission committed or done outside Sierra Leone, which if it were committed or done in Sierra Leone, would constitute an offence.

PART II—ESTABLISHMENT OF FINANCIAL INTELEIGENCE UNIT

Establishment of Financial Intelligence Unit.

2. (1) There is hereby established a body to be Financial known as the Financial Intelligence Unit.

(2) The Unit shall be a body corporate, having perpetual succession and capable of acquiring, holding and disposing of any property, whether movable or immovable, of suing and being sued in its corporate name and subject to this Act, of performing all such acts as bodies corporate may by law perform.

(3) The Unit shall have a common seal the use of which shall be authenticated by the signatures of the Chairman of the Inter-Ministerial Committee and the Director or any other staff of the Unit designated in that behalf by the Inter-Ministerial Committee.

Governing body of Unit.

3. (1) The governing body of the Unit shall be the Inter-Ministerial Committee consisting of–

- (a) the Minister responsible for finance who shall be the chairman;
- (b) the Attorney-General;
- (c) the Minister responsible for internal affairs ; and
- (d) the Governor of the Bank of Sierra Leone.

(2) The Director shall be secretary to the Inter-Ministerial Committee.

(3) The Inter-Ministerial Committee shall–

- (a) supervise the activities of the Unit;
- (b) approve the financial estimates of the Unit;
- (c) provide policy guidance, advice or directives that will ensure that the Unit performs its functions efficiently ;
- (d) perform other functions prescribed in this Act.

4. (1) The Inter-Ministerial Committee shall hold its first meeting on a date and at a place as the Chairman may, after consultation with the other members determine and thereafter , it shall meet for dispatch of business at the time and place the Chairman may decide but shall meet at least once a month. Meeting of Inter-Ministerial Committee.

(2) At any meeting at which he is present, the Chairman shall preside and in his absence the members present shall elect one of their number to preside.

(3) The quorum at a meeting of the Board shall be three.

(4) Each member of the Inter-Ministerial Committee shall have one vote and in the case of equality of votes, the Chairman or other person presiding shall have a casting vote.

(5) The Inter-Ministerial Committee may co-opt any person to attend its meetings and provide technical or other advice to the Committee but that person shall not vote on any matter for decision by the Committee.

5. In the discharge of its functions, the Inter-Ministerial Committee may– Powers of Inter-Ministerial Committee.

- (a) direct the Director to furnish it with any information, report or other document which the Committee considers necessary for the performance of its functions;
- (b) give instructions to the Director in connection with the management and performance of the functions of the Unit.

Committees of Inter-Ministerial Committee.

6. (1) The Inter-Ministerial Committee shall establish committees consisting of its members or non-members or both to perform any function that the Committee may determine.

(2) Without prejudice to subsection (1), there is established the Technical Committee which shall consist of the following:—

- (a) Governor of the Bank of Sierra Leone who shall be the Chairman;
- (b) the Deputy Governor of the Bank of Sierra Leone;
- (c) a representative each from the following Ministries not below the rank of Permanent Secretary:—
 - (i) Finance;
 - (ii) Internal Affairs;
 - (iii) Foreign Affairs;
 - (iv) Mineral Resources;
 - (v) Fisheries and Marine Resources;

- (d) Solicitor-General;
- (e) Commissioner-General, National Revenue Authority;
- (f) Director-General, Central Intelligence and Security Unit;
- (g) Executive Director, National Drugs Enforcement Agency;
- (h) Ombudsman;
- (i) Commissioner, Anti Corruption Commission;
- (j) Inspector-General of Police;
- (k) Chairman, Association of Commercial Banks;
- (l) Commissioner, Sierra Leone Insurance Commission;
- (m) President, Sierra Leone Chamber of Commerce, Industry and Agriculture;
- (n) Chief Immigration Officer;
- (o) a representative of the Narcotic Drugs Enforcement Agency; and
- (p) the Director.

(4) The Technical Committee shall—

- (a) recommend to the Inter-Ministerial Committee policies for the achievement of the objects for which the Inter-Ministerial Committee is established;

- (b) at the request of the Inter-Ministerial Committee or at its own initiative advise the Inter-Ministerial Committee on policies and best practices to identify money laundering activities and financing of terrorist activities;
- (c) submit six-monthly reports on its activities to the Inter-Ministerial Committee.

(5) The Chairman of the Technical Committee may call a meeting of the Committee, but shall call a meeting if a member of the Inter-Ministerial Committee so requests.

(6) The Technical Committee—

- (a) shall meet regularly, but not less than two times a year;
- (b) may determine its own procedures at meetings;
- (c) may request advice and assistance from such persons as it considers necessary to assist it to perform its functions;
- (d) may appoint sub-committees from its members to assist it in the performance of its functions.

(7) A sub-committee appointed in accordance with subsection (6) may co-opt any person who is not a member of the Technical Committee as a member of the sub-committee, whether for a particular period or in relation to a particular matter to be dealt with by that sub-committee.

(8) When a provision of this Act requires consultation with the Technical Committee on any specific matter and it is not feasible to call a meeting of the Technical Committee, that provision is satisfied if—

- (a) a proposed decision on that matter is circulated in writing to the members of the Technical Committee; and
- (b) an opportunity is given to each of them to comment in writing on the proposed decision within a reasonable time.

PART III—STAFF OF UNIT

7. (1) The President shall appoint a person to be designated as “Director”. Appointment of staff Unit.

(2) The appointment of the Director shall be—

- (a) subject to the approval of Parliament;
- (b) for a term of five years which may be renewed for another term only; and
- (c) on the terms and conditions considered appropriate for the efficient discharge of his functions.

(3) The Director—

- (a) shall be a legal practitioner, or a person with qualification and experience in accounting, economics, banking or auditing and experienced in the investigation of financial matters;
- (b) shall not be a director or officer of a financial institution or have a controlling interest in a financial institution;
- (c) shall be responsible to the Technical Committee in the performance of his functions.

(4) The Director shall, after consulting the Technical Committee appoint other staff of the Unit.

(5) The Unit may engage the services of consultants or advisers as may-be necessary for the discharge of its functions.

Oath of secrecy. **8.** The Director and every other employee of the Unit shall, before assuming duty swear that they shall observe utmost secrecy and confidentiality in the performance of their duties.

PART IV–FINANCIAL PROVISIONS

Funds of Unit. **9.** The activities of the Unit shall be financed by a fund consisting of–

(a) moneys appropriated by Parliament for the purposes of the Unit;

(b) grants or gifts from any person or organization.

Accounts and audit. **10.** (1) The Unit shall keep proper books of accounts and proper records in relation to the funds of the Unit and the books of accounts and records shall be in the form approved by the Auditor-General.

(2) The books of accounts shall be audited by the Auditor-General or an auditor appointed by him within three months after the end of each financial year.

Financial year of Unit. **11.** The financial year of the Unit shall be the same as the financial year of the Government.

Annual report. **12.** (1) The Unit shall, within six months after the end of the financial year submit to the President an annual report on the performance of its functions during that year.

(2) The annual report shall include a copy of the audited accounts of the Unit together with the audit report on the accounts.

(3) The President shall cause the report to be laid before Parliament.

PART V–FUNCTIONS OF UNIT

13. (1) Subject to this Act the Unit–

Functions and powers of Unit.

(a) shall receive reports made under sections 41, 42 and subsection (6) of section 68 and information provided to the Unit by any agency of another country that has power and duties similar to those of the Unit;

(b) may request and obtain any information that it considers relevant to an unlawful activity, money laundering activities or financing of terrorism and that is publicly available, including commercially available databases or information that is collected, or maintained or stored in databases, maintained by Government Ministries, Departments and Agencies;

(c) may request and obtain information from reporting entities, supervisory authorities or any law enforcement agency for the purposes of this Act;

(d) may receive information voluntarily provided by a competent authority or Government institution or agency about suspicions of an unlawful activity, a money laundering offence or an offence of financing of terrorism;

(e) shall carry out and participate in examinations of reporting entities prescribed in section 52;

- (f) shall send any information it receives from a report or any other information to the appropriate law enforcement agency and supervisory authorities if it has reasonable grounds to suspect that the transaction is suspicious;
- (g) may instruct a reporting entity to take such steps as may be appropriate in relation to any information or report received by the Unit, to enforce compliance with this Act or to facilitate any investigation anticipated by the Unit;
- (h) shall compile statistics and records and may disseminate information within Sierra Leone or elsewhere;
- (i) shall make recommendations arising out of any information received;
- (j) after consulting supervisory authorities, shall issue guidelines to reporting entities on anti-money laundering and combating the financing of terrorism issues;
- (k) may obtain further information on parties or transactions referred to in a report made to it;
- (l) may provide training programs for reporting entities in anti money laundering and combating the financing of terrorism issues and related matters;
- (m) may periodically provide feedback to reporting entities and other relevant agencies regarding outcomes relating to the reports or information given under this Act;

- (n) shall conduct research into trends and developments in money laundering and financing of terrorism and improved ways of detecting, preventing and determining money laundering and the financing of terrorism activities;
- (o) may inform and educate the public on matters relating to money laundering and financing of terrorism;
- (p) may disclose any report or information derived from the report or received from elsewhere to an institution or agency of a foreign state or an international organization established by Governments of foreign states, if on the basis of its analysis and assessment it has reasonable grounds to suspect that the report or information will be relevant to investigating or prosecuting a money laundering or terrorist financing offence;
- (q) may extend assistance to other countries on property tracking, monitoring and confiscation orders;
- (r) may require a competent authority to report progress and outcome on matters it refers to the authority;
- (s) may enter into agreements with public institutions on the exchange of information on money laundering or financing of terrorism;
- (t) may perform such other functions as are provided in this Act.

(2) The Unit shall keep any information obtained under paragraphs (b) and (c) of subsection (1) confidential.

(3) The Unit may enter the premises of a reporting Agency during business hours to inspect any record kept under section 41 and may ask questions relating to the record, make notes or copies of the record

International cooperation and sharing of information.

14. The disclosure of information referred to in paragraph (p) of subsection (1) of section 13 shall be on such terms and conditions as are set out in an agreement or between the Unit and that foreign state or international organization regarding the exchange of information and shall include a condition that the report or information shall only be used for intelligence purposes and be treated as confidential and shall only be disclosed with the consent of the Unit.

PART VI—OFFENCES RELATING TO MONEY LAUNDERING AND FINANCING OF TERRORISM

Offence of money laundering.

15. (1) A person who—

- (a) converts or transfers property knowing or having reason to believe that the property is derived directly or indirectly from an unlawful activity, with the aim of concealing or disguising the illicit origin of that property, or of aiding any person involved in the commission of the unlawful activity to evade the legal consequences of the unlawful activity;
- (b) conceals or disguises the true nature, origin, location, disposition, movement or ownership of the property knowing or having reason to believe that the property is derived directly or indirectly from an unlawful activity;

(c) acquires, possesses or uses property, knowing or having reason to believe that it is derived directly or indirectly from an unlawful activity;

(d) participates in, associates with or conspires to commit, attempts to commit and aids, abets and facilitates the commission of any of the acts referred to in subparagraphs (a), (b) and (c),

commits an offence of money laundering.

(2) A person engages in money laundering if he—

(a) engages directly or indirectly in any transaction which involves property that is the proceeds of crime; or

(b) receives, possesses, conceals, disguises, transfers, converts, disposes of, removes from or brings into Sierra Leone any property that is the proceeds of crime,

knowing or having reasonable grounds to believe that the property is the proceeds of crime.

(3) A person who—

(a) organizes or directs others to commit;

(b) attempts to commit;

(c) conspires to commit; or

(d) participates as an accomplice to a person committing, or attempting to commit, an offence under subsection (1),

commits the offence.

(4) In determining whether a person has committed the offence of money laundering, knowledge, intent or purpose required as an element of the activities mentioned in subsections (1) and (2) may be inferred from objective factual circumstances.

(5) Where it is necessary for the purpose of an offence of money laundering committed by a body corporate, to establish the state of mind of the body corporate, it shall be sufficient to show that a director, officer, employee or agent of the body corporate, acting in the course of employment or agency as the case maybe, had that state of mind.

(6) A person convicted of a money laundering offence is liable—

- (a) in the case of an individual, including a director, employee or agent of a reporting entity to imprisonment for a term of not less than seven years;
- (b) in the case of a body corporate to a fine of not less than Le30,000,000.00 or an order for the revocation of the licence of the corporate body or organization.

Offence of
financing of
terrorism.

16. (1) A person who, by any means whatsoever, directly or indirectly, provides, whether by giving, lending or otherwise making available, or collects funds or property with the intention that they should be used, or having reasonable grounds to believe that they are to be used, in full or in part, for carrying out a terrorist act, commits an offence.

(2) A person who—

- (a) organises or directs others to commit an offence;
- (b) attempts to commit an offence;
- (c) conspires to commit an offence; or

(d) participates as an accomplice to a person committing, or attempting to commit an offence under subsection (1),
also commits the offence.

(3) In determining whether a person has committed the offence of financing of terrorism, knowledge, intent or purpose required as an element of the activities mentioned in subsections (1) and (2) may be inferred from objective factual circumstances.

(4) Where it is necessary for the purpose of an offence of financing of terrorism committed by a body corporate to establish the state of mind of the body corporate, it shall be sufficient to show that a director, officer, employee or agent of the body corporate, acting in the course of employment or agency as the case maybe, had that state of mind.

(5) A person convicted of financing of terrorism is liable—

- (a) to imprisonment for a term not less than fifteen years; and
- (b) in the case of a body corporate to a fine of not less than thirty million leones or an order for the revocation of the licence of the corporate body or organization.

(6) A supervisory authority or self regulatory organization of a corporate body convicted of a money laundering offence or financing of terrorism may in addition to the penalty specified in this Part, take civil or administrative proceedings against the corporate body and employees, which may include revocation of licence and professional memberships.

PART VII—PREVENTIVE MEASURES TO COMBAT MONEY LAUNDERING AND FINANCING OF TERRORISM

Effective use of resources.

17. (1) To enhance effectiveness and efficient use of resources in fighting money laundering and terrorism financing, the anti money laundering and combating the financing of terrorism system shall be built on the basis of a risk-based approach with minimum standards for anti money laundering or combating of terrorism financing compliance obligations applicable to all reporting entities prescribed in this Act.

(2) Further sector-specific and supplementary obligations may be provided for in other enactments, or guidelines applicable to specific sectors of reporting entities.

Application of risk-based approach.

18. When applying a risk-based approach, all minimum standards for compliance are obligatory; but where minimum standards are not specified, reporting entities may implement internal controls which correspond to the actual risks represented by the various products, services, clients, transactions, geographical or other risk factors, as long as they are consistent with prescribed risk levels or guidance issued by the Unit or supervisory authority as the case may be, for the respective sector.

Prohibition of anonymous accounts.

19. Reporting entities, including financial institutions, non-financial institutions and designated businesses anonymous and professions, shall not establish or maintain accounts or accounts in fictitious names.

Application of CDD and KYC principles.

20. (1) A reporting entity shall collect sufficient information about the intended use, nature and purpose of each customer account so that it generally understands the size and kinds of expected transactions, so as to have sufficient basis for identifying transactions as required in sections 41 and 42.

(2) The information collected under subsection (1) shall be sufficient to enable the reporting entity to—

(a) verify the identity of the person executing the transaction whether it is on the person's own behalf or on behalf of another person ; and

(b) verify the person who controls the account.

21. (1) Subject to paragraph (a) of subsection (2) of section 24, a reporting entity shall verify the identity of the customer on the basis of reliable and independent source documents, data or information such as a passport, a driver's licence, a national identification document or a certified certificate of incorporation or other evidence as is reasonably capable of verifying the identity of the customer when—

Obligation to verify customer identity.

(a) opening an account or taking into safe custody stocks, bonds or other securities, or granting safe-deposit facilities or otherwise establishing a business relationship with a customer;

(b) the customer, who is neither an account holder nor in an established business relationship, wishes to carry out a transaction in an amount equal to or above thirty million Leones or its equivalent in foreign currency whether conducted as a single transaction or several transactions that appear to be linked;

(c) the customer (whether an existing customer or not) carries out an international or a domestic wire transfer of an amount equal to or above three million Leones or its equivalent in foreign currency;

(d) there is suspicion of money laundering or the financing of terrorism; or

- (e) any doubts exist about the veracity or adequacy of any statement or documentation of the customer or any previously obtained customer identification information.

(2) In the case of an individual customer, the identity shall be verified by the presentation of a valid international passport, driver's licence, national identification document or such other official document bearing the customers photograph, a copy of which shall be retained by the reporting entity; and the address shall be verified by the presentation of a document capable of providing proof of identity.

(3) In the case of a customer which is a body corporate, the identification shall be by the production of records establishing that it has been lawfully established and that it is actually in existence at the time of the identification, a copy each of which shall be retained by the reporting entity.

(4) Where the customer is an individual delegated as a director, employee or agent of a body corporate to enter into transactions on behalf of third parties, he shall produce the documents referred to in subsection (3) as well as documents authenticating the identity and addresses of the beneficial owner.

Identification
of beneficial
owner.

22. (1) If it is uncertain whether a customer is acting on his own behalf, the reporting entity shall seek information by any means as to the true identity of the principal or party on whose behalf the customer is acting.

(2) If, following verification, any doubt remains as to the true identity of the beneficial owner, the business relationship shall be terminated, without prejudice to the requirement to report suspicious business transactions.

(3) A customer who is a legal practitioner, a public or private accountant, an individual with public powers of attorney or an authorised agent, acting as a financial intermediary, shall not invoke professional secrecy or confidentiality in order to refuse to disclose the true identity of the transacting party or beneficial owner.

(4) In the case of existing customers and beneficial owners with which it established business relationships before the coming into operation of this Act, a reporting entity shall apply the identification and verification requirements but the competent supervisory authority or the Unit, where a competent supervisory authority does not exist, shall set deadlines and further details related to obligations for completing this process.

(5) Without limiting the generality of subsection (4), a reporting entity shall—

- (a) when establishing a business relationship, obtain information on the purpose and nature of the business relationship;
- (b) monitor its business relationships and the transactions undertaken throughout the course of the relationship to ensure 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.
- (c) if the transaction is conducted by an individual, adequately identify and verify the person's identity including information relating to—
 - (i) the person's name, address and occupation;
 - (ii) the national identification document, passport or other official identifying document;
- (d) if the transaction is conducted by a legal entity, adequately identify and verify its legal existence and structure, including information relating to—

- (i) the customer's name, legal form, address and directors;
- (ii) the principal owners and beneficiaries and the control structure;
- (iii) provisions regulating the power to bind the entity and to verify that any person purporting to act on behalf of the customer is authorised to do so and identify those persons.

(6) The identification and verification of the identity of each customer, and obtaining customer due diligence information and documentation shall, subject to subsection (7) take place before the establishment of an account or business relationship, or before carrying on of further business.

(7) In exceptional circumstances where completing verification of identity and collecting the necessary customer due diligence information prior to commencing business would be impossible, the reporting entity may collect the required documentation as soon as practical after commencement of the business relationship only where—

- (a) the risk of money laundering or financing of terrorism is effectively managed; and
- (b) a delay in verification is essential in order not to interrupt the normal conduct of business;

but in no circumstances shall collection of customer identity and other documentation be delayed longer than two months following commencement of business relations.

(8) If, after two months, the reporting entity has not obtained all necessary customer identification and other necessary documentation, it shall consider reporting the transaction as suspicious to the Unit or closing the account and severing the business relationship.

(9) If an individual conducts a transaction through a reporting entity and the reporting entity has reasonable grounds to believe that the person is undertaking the transaction on behalf of another person then, in addition to complying with subsections (1) and (2), the reporting entity shall identify or verify the identity of the other person for whom, or for whose ultimate benefit, the transaction is being conducted.

(10) A reporting entity shall take reasonable measures to ascertain the purpose of any transaction if the amount is equal to or above thirty million Leones or its equivalent in foreign currency and the origin and ultimate destination of the funds.

(11) Subsection (1), (2) or (4) does not apply—

- (a) if the transaction is part of an existing and regular business relationship with a person who has already produced satisfactory evidence of identity unless the reporting entity has reason to suspect that the transaction is suspicious or unusual;
- (b) if the transaction is an occasional transaction not exceeding thirty million leones unless the reporting entity has reason to suspect that the transaction is suspicious or unusual; or
- (c) in such other circumstances as may be determined by the Unit.

(12) The Unit may determine—

- (a) the official or identifying documents, or the reliable and independent source documents, data or information or other evidence that is required for identification or verification of any particular customer or class of customers;

- (b) the threshold for or the circumstances in which, this section shall apply in relation to any particular customer or class of customers.

Currency exchange or transmission business.

23. (1) A person who intends to engage in the business of currency exchange or transmission shall obtain the required currency exchange or transmission licence from the Central Bank.

(2) Subject to this Act a person referred to in subsection (1) shall—

- (a) verify the identity of customers for any transaction if the amount is equal to or greater than three million Leones or its equivalent in foreign currency;
- (b) before executing the transaction obtain a copy of the customer's original international passport, driver's licence, national identification document or other such official document bearing the customer's photo; and in addition, the person shall require the customer to complete a standard data form prescribed by the Unit.

Special identification requirements.

24. (1) Where there are doubts or suspicion of money laundering or financing of terrorism, verification of customer identity is required regardless of the amount of the transaction.

(2) If there are no doubts or suspicions of money laundering or terrorist financing, verification of customer identity is required for the following transactions regardless of whether the customer has an existing business relationship with the reporting person or entity:—

- (a) any financial transaction in a casino (in cash or other form) when a customer opens an account or executes a financial transaction in an amount equal to or above the equivalent of five million Leones or its equivalent in foreign currency;
- (b) any cash transaction with a dealer of precious metals or precious stones in which the dealer receives a payment from a customer in an amount of twenty million Leones or more or its equivalent in foreign currency; and
- (c) any transaction (in cash or other form) involving the purchase or sale of real estate which is in an amount equal to or greater than thirty million Leones or its equivalent in foreign currency.

25. (1) A reporting entity may rely on an intermediary or third-party to perform required customer identity verification if—

Reliance on identification by third parties or intermediaries.

- (a) there is no suspicion of money laundering or the financing of terrorism;
- (b) information on the identity of each customer, beneficial owner or other required customer due diligence documentation is provided to the intermediary or third party immediately on opening of the account or commencement of the business relationship; and
- (c) the reporting entity is satisfied that the intermediary or third party-
 - (i) is able to provide without delay copies of identification information and other documents relating to the obligation of due diligence upon request; and

- (ii) is established in or is subject to the jurisdiction of a State where the person is subject to anti-money laundering and combating the financing of terrorism or obligations equivalent to those specified in this Act, and is supervised for compliance with those obligations in a manner equivalent to those applicable in Sierra Leone.

(2) The Unit or supervisory authority may determine which jurisdictions do not sufficiently adhere to and apply anti-money laundering or combating of financing of terrorism obligations for these purposes.

(3) The intermediary or third party may not claim professional privilege or a similar principle to withhold the provision of customer due diligence, identity or beneficial ownership information or documentation when requested by the reporting entity

(4) Notwithstanding any other provision in this section, any reporting entity that relies on an intermediary or third party has the ultimate responsibility for compliance with this Act, including all of the customer due diligence, identity and reporting requirements.

Customers
not physically
present.

26. (1) A reporting entity shall take adequate measures to address the specific risks of money laundering and financing of terrorism when it has business relationships or executes transactions with a customer that is not physically present for purposes of conducting customer due diligence or verification of identification.

(2) Such measures shall ensure that the customer due diligence and identification documentation are not less effective than where the customer appears in person.

(3) Notwithstanding subsection (1) a reporting entity may implement additional measures, such as obtaining additional documentary evidence or conducting additional independent verification or certification measures for foreign customers.

27. A reporting entity shall implement appropriate risk management systems—

High risk
customers
and
politically-
exposed
persons.

- (a) to identify customers whose activities may pose a high risk of money laundering and financing of terrorism and shall exercise enhanced identification, verification, customer due diligence, as well as ongoing due diligence procedures with respect to these customers; and

- (b) to determine if a customer or a beneficial owner is a politically-exposed person and if so shall—

- (i) obtain approval from senior management before establishing a business relationship with the customer or later, as soon as an existing customer is identified as a politically-exposed person;

- (ii) take all reasonable measures to identify the source of wealth and funds and other assets of the customer; and

- (iii) provide increased and on-going monitoring of the customer and the business relationship to prevent money laundering or the commission of other offences and to permit the financial institution, designated businesses and professions to fulfill their obligations under this Act, including all of the due diligence and reporting requirements.

28. (1) When entering into correspondent banking relationships, a financial institution shall—

Identification
and account
opening for
correspondent
banking re-
lationship.

- (a) identify and verify the identification of respondent institutions with which it conducts correspondent banking relationships;
- (b) collect information on the nature of the respondent institution's activities;
- (c) based on publicly available information, evaluate the respondent institution's reputation and the nature of supervision to which it is subject;
- (d) obtain approval from senior management before establishing a correspondent banking relationship;
- (e) evaluate the controls implemented by the respondent institution with respect to anti-money laundering and combating the financing of terrorism;
- (f) agree in writing with the respondent institution the respective responsibilities of each party in the relationship;
- (g) not enter into or continue business relations with a shell bank; and
- (h) not enter into or continue business relations with a respondent financial institution in a foreign country if the respondent institution permits its accounts to be used by a shell bank.

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

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

(3) The Unit shall stipulate the deadline by which banks must collect and implement the requirements in this section with respect to correspondent banking relationships which were established prior to the date on which this Act came into operation.

29. A reporting entity that cannot fulfill the customer due diligence and customer identification requirements with respect to any customer shall not establish an account for or maintain the business relationship with that customer but where appropriate, it shall make a report to the Unit in accordance with this Act.

Inability to fulfill customer due diligence and customer identification obligations.

30. (1) A reporting entity shall establish and maintain all books and records with respect to their customers and transactions as provided in subsection (2), and shall ensure that the records and the underlying information are available on a timely basis to the Unit as well as other competent authorities and supervisory authorities.

Record-keeping requirements.

(2) The books and records shall, at a minimum, include—

- (a) account files, business correspondence and copies of documents evidencing the identities of customers and beneficial owners obtained in accordance with this Act, all of which shall be maintained for not less than five years from the date on which the occasional transaction is completed or the business relationship ends;

- (b) records on transactions sufficient to reconstruct each individual transaction for both account holders and non-account holders which shall be maintained for not less than five years from the date on which the transaction is completed or the business relationship ends;
- (c) the findings set out in writing pursuant to requirements concerning transactions which involve unusual transaction patterns or transactions which are unusually large or complex, and related transaction information which shall be maintained for at least five years from the date of the transaction; and
- (d) copies of all suspicious transaction reports, including any accompanying documentation, which shall be maintained for at least five years from the date the report is made.

(3) The records established and maintained for the purposes of subsection (1) shall be–

- (a) sufficient to enable the transaction to be readily reconstructed at any time by the Unit or competent authority to provide, if necessary, evidence for 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 competent authority, appropriate law enforcement body or the Unit.

(4) Reporting entities which are required to maintain an internal list of cash transactions on currency exchange and money transmission in the amount of three million Leones or more or its equivalent in foreign currency, shall maintain the list for at least five years after the last transaction recorded in it.

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

- (a) in a machine-readable form, if a paper copy can be readily produced from it; or
- (b) in an electronic form, if a paper copy can be readily produced from it and in a manner that enables appropriate authentication, for example, by the electronic signature of the person who keeps the record to be retained.

31. (1) An entity or person that is licensed to do business in Sierra Leone as a financial institution or a money transmission service provider shall include accurate originator information on wire transfers and the information shall remain with the transfer.

Financial institutions and money transaction service providers to include originator information.

(2) Subsection (1) does not apply to an electronic funds transfer other than 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, if that credit or debit card number is included in the information accompanying the transfer.

(3) Subsection (1) does 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.

32. (1) Reporting entities shall exercise ongoing due diligence with respect to the business relationship which include–

Ongoing due diligence.

- (a) maintaining current information and records relating to the customer and beneficial owner;
- (b) closely examining the transactions carried out in order to ensure that the transactions are consistent with their knowledge of the customer, the customer's commercial or personal activities and risk profile; and

- (c) ensuring that the obligations under sections 27 and 28 relating to high risk customers, politically-exposed persons, and correspondent banking relationships are fulfilled.

Special monitoring of certain transactions.

33. (1) A reporting entity shall–

- (a) pay special attention to all complex, unusual and large transactions and all unusual patterns of transactions which have no apparent economic or visible lawful purpose;
- (b) pay special attention to business relations and transactions with persons, including legal persons and arrangements, from or in countries that do not or insufficiently apply the relevant international standards to combat money laundering and the financing of terrorism;
- (c) pay special attention to electronic funds transfer that do not contain complete originator information;
- (d) examine as far as possible the background and purpose of unusual transactions as described in paragraphs (a) and (b) and set out in writing their findings;
- (e) take such specific measures as may be determined by the competent supervisory authority to counter the risks with respect to business relations and transactions specified in this section.

(2) The findings in paragraph (d) of subsection (1) shall be maintained on file as specified in section 30 on record keeping and shall be made available promptly if requested by the Unit, a supervisory authority or any other competent authority that should have access.

(3) Where the reporting entity has reasonable grounds for believing that the business transactions referred to in this section could constitute or be related to money laundering, terrorism financing or an unlawful activity, the financial institution shall promptly report the matter to the Unit.

34. (1) Subject to subsection (2), when undertaking wire transfers equal to or more than three million Leones or its equivalent in foreign currency, a reporting entity shall–

Obligations regarding wire transfers.

- (a) identify and verify the identity of the originator;
- (b) obtain and maintain the account number of the originator or in the absence of an account number a unique reference number;
- (c) obtain and maintain the originator's address or, in the absence of the address, the national identity number or date and place of birth; and
- (d) include the information in paragraphs (a) to (c) in the message or payment form accompanying the transfer.

(2) A financial institution is not required to verify the identity of a customer with which it has an existing business relationship, if it is satisfied that it already knows and has verified the true identity of the customer.

(3) Subsections (1) and (2) do not apply to transfers executed as a result of credit card or debit card transactions, if the credit card or debit card number accompanies the transfer resulting from the transaction: nor do they apply to transfers between financial institutions acting for their own account.

(4) If the institutions referred to in this section receive wire transfers that do not contain the complete originator information required, they shall take measures to obtain and verify the missing information from the ordering institution or the beneficiary; but if they do not obtain the missing information they shall refuse acceptance of the transfer and report the matter to the Unit.

(5) When a financial institution acts as an intermediary in a chain of payments, it shall re-transmit all of the information it received with the wire transfer.

(6) The competent supervisory body may, by statutory instrument make regulations to modify the requirements set out in subsections (1) to (5)–

- (a) with respect to domestic wire transfers, as long as the regulations provide for full originator information to be made available to the beneficiary financial institution and appropriate authorities by other means; and
- (b) with respect to cross-border transfers where individual transfers from a single originator are bundled in a batch file, as long as the regulations provide for the originator's account number or unique reference number to be included, and that the batch file contains full originator information that is fully traceable in the recipient country.

35. (1) A reporting entity shall appoint a compliance officer who shall be responsible for ensuring the reporting entity's compliance with the requirements of this Act. Other preventive measures.

(2) The compliance officer shall–

- (a) be a senior officer with relevant qualifications and experience to enable him respond sufficiently well to enquiries relating to the reporting entity and the conduct of its business;
- (b) be responsible for establishing and maintaining such manual of compliance procedures in relation to its business as the supervisory authority or the Unit may from time to time require;
- (c) be responsible for ensuring compliance by staff of the reporting entity with this Act and any other enactment relating to money laundering or financing of terrorism and the provisions of any manual of compliance procedures established under this section;
- (d) act as the liaison between the reporting entity, the supervisory authority and the Unit in matters relating to compliance with this Act and any other enactment or directive with respect to money laundering or financing of terrorism;
- (e) establish and maintain procedures and systems to–
 - (i) implement the customer identification requirements under this Part;

- (ii) implement record keeping and retention requirements under this Part;
- (iii) implement the reporting requirements under this Part;
- (iv) make its officers and employees aware of the enactments 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 hiring them as employees; and
- (f) train its officers, employees and agents to recognize 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; and
- (g) establish an audit function to test its anti-money laundering and financing of terrorism procedures and systems.

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

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

36. (1) A reporting entity shall develop and implement programs for the prevention of money laundering and financing of terrorism.

Internal programs to combat money laundering and financing of terrorism.

(2) The programs shall include the following:—

- (a) internal policies, procedures and control to fulfill obligations under this Act;
- (b) adequate screening procedures to ensure high standards when hiring employees;
- (c) on-going training for officers and employees to make them aware of the enactments relating to money laundering and the financing of terrorism, to assist them in recognizing transactions and actions that may be linked to money laundering or financing of terrorism and instruct them in the procedures to be followed in such cases;
- (d) policies and procedures to prevent the misuse of technological developments including those related to electronic means of storing and transferring funds or value; and
- (e) independent audit arrangements to review and verify compliance with and effectiveness of the measures taken in accordance with this Act.

(2) A competent supervisory authority may determine the type and extent of measures reporting entities shall undertake with respect to each of the requirements in subsection (1) having regard to the risk of money laundering and financing of terrorism and the size of the business or profession.

Compliance with obligations by foreign subsidiaries and branches of Sierra Leone financial institutions.

37. (1) Reporting entities shall require their foreign branches and majority-owned subsidiaries to implement their requirements of sections 17, 21, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 to the extent that applicable laws of the host country permit.

(2) If the laws of the country where the branch or majority-owned subsidiary is situated prevent compliance with the sections referred to in subsection (1) for any reason, the financial institution shall immediately advise its competent supervisory authority, which may take or authorize other appropriate steps to accomplish the purposes of this Act.

Over-the-counter exchange dealings.

38. (1) Subject to subsection (3), any person whose usual business is to undertake over-the-counter exchange transactions shall—

- (a) before the commencement of business, submit a declaration of activity to the Unit for the purpose of obtaining the requisite operating licence in which he shall furnish proof of the lawful origin of the capital required to set up the business;
- (b) prior to any transaction involving a sum exceeding ten million leones identify the customer by requiring him to fill a standard data form and present his unexpired international passport, driver licence, national identity document or such other official document bearing his photograph as may be prescribed, a copy of which shall be taken;
- (c) record, in chronological order, all transactions under this section, indicating each customer's surname, forename, and address and the number of the official document submitted, in a register numbered and initialled by an officer authorized by the person referred to in subsection (1).

(2) A register kept under paragraph (c) of subsection (1) shall be preserved for at least five years after the last transaction recorded in it.

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

(4) Any person who contravene subsection (1) or (2) commits an offence.

39. Subsection (1) of section 38 shall apply to casinos, with the necessary modifications, in relation to the proof of the lawful origin of the initial capital of the casino, the identification of gamblers and the maintenance of other business transaction records; but the requirement for the identification of customers shall apply to gamblers who buy, bring or exchange chips or tokens for a sum exceeding five million leones.

Casinos and gambling establishments.

40. No shell bank may be established or permitted to operate in or through the territory of Sierra Leone.

Prohibition of shell banks.

41. (1) Where a reporting entity or any of its directors, principals, officers, or employees has reasonable grounds to suspect that any transaction, attempted transaction, or any other information or fact may be related to the commission of an unlawful activity, a money laundering offence or an offence of financing of terrorism, or to an act preparatory to an unlawful activity, a money laundering offence or an offence of financing of terrorism, the reporting entity shall, as soon as practicable after forming that suspicion or receiving the information, but no later than two days, report the transaction or attempted transaction or the information to the Unit.

Reporting entity to report suspicious transactions or information that may assist law enforcement.

(2) Notwithstanding subsection (1), legal practitioners, notaries and accountants are required to submit reports to the Unit

only when they engage, on behalf of or for a client, in a financial transaction associated with an activity specified in relation to the professionals including—

- (a) when acting in the function as legal practitioners;
- (b) when, on behalf of a client, they engage in a financial transaction in relation to the following kinds of transactions:-
 - (i) purchase or sale of real estate;
 - (ii) managing of client money, securities or other assets;
 - (iii) organization of contributions for the creation, operation or management of companies;
 - (iv) creation, operation or management of legal persons or arrangements, and buying and selling of business entities;
 - (v) the relevant information upon which the suspicion is based was not received or obtained from a client in the course of ascertaining the legal position of their client, or in defending or representing that client in, or concerning judicial, administrative, arbitration or mediation proceedings, including advice on instituting or avoiding proceedings, whether the information is received or obtained before, during or after the proceedings.

(3) A reporting entity that has made a report to the Unit shall give the Unit or competent authority 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 attempted transaction or the parties to the transactions if requested to do so by the Unit.

(4) If the Unit, after consulting a reporting entity required to make a report under subsection (1), has reasonable grounds to suspect that—

- (a) a transaction or a proposed transaction may involve an offence of financing of terrorism, the proceeds of an unlawful activity or a money laundering offence;
- (b) and if there is a serious risk that the money trail will be interrupted if the transaction is being carried out,

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

- (i) to make necessary inquiries concerning the transaction; and
- (ii) if the Unit thinks it appropriate, to inform and advise the competent authority.

(5) A reporting entity shall provide currency transaction report in accordance with thresholds and modalities determined by the Unit

Supervisory authority or external auditor or Auditor-General to report suspicious transactions.

42. (1) 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 a money laundering offence or an offence of financing of terrorism;
- (b) of assistance in the enforcement of this Act;
- (c) relevant to an act preparatory to a money laundering offence or the offence of financing of terrorism,

the supervisory authority, the auditor or Auditor-General shall report the transaction or attempted transaction to the Unit.

Format of reporting.

43. (1) The Unit shall prescribe the procedures for and the form in which the reports referred to in sections 41 and 42 shall be submitted and shall publish guidance in order to assist reporting entities to fulfill their obligations under this section.

(2) The reports referred to in sections 41 and 42 shall—

- (a) be in writing and may be given by way of mail or telephone to be followed up in writing, fax or electronic mail or other manner as may be prescribed by the Unit;
- (b) be in a form and contain such details as may be prescribed by the Unit;
- (c) contain a statement of the grounds on which the reporting entity holds the suspicion; and
- (d) be signed or otherwise authenticated by the reporting entity.

44. No secrecy or confidentiality provision in any other enactment shall prevent a reporting entity from fulfilling its obligations under this Act.

Inapplicability of confidentiality provisions.

45. (1) A reporting entity, its officers, employees or agents or any other person shall not disclose to any person—

Prohibition against tipping-off.

- (a) that a report to the Unit under section 41 or 42 has been or may be made, or further information has been given under subsection (3) of section 41;
- (b) that the reporting entity has formed a suspicion in relation to a transaction for the purposes of subsection (1) of section 41;
- (c) that an investigation concerning money laundering, terrorism financing or an unlawful activity is being or has been carried out; or
- (d) any other information from which the person to whom the information is disclosed could reasonably be expected to infer that a suspicion has been formed or that a report has been or may be made.

(2) 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; or
- (b) the supervisory authority of the reporting entity, for the purpose of carrying out the supervisory authority's functions.

(3) No person referred to in paragraph (b) of subsection (2) 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 paragraph (b) of subsection (2) 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 subsections (1) to (4) shall prevent a court, on the application of the competent authority and on proof to the satisfaction of the court that the information is *bona fide* required for the purposes of any inquiry or trial into or relating to an unlawful activity or money laundering or financing of terrorism from ordering the disclosure of the information referred to in subsection (1).

(6) It shall be an offence for the reporting entity or for any person required by it to make the report under sections 41 and 42 or having knowledge of the report to disclose to any person other than a court, competent authority or other person authorised by law that information has been furnished under those sections.

Immunity for
reporting in
good faith.

46. Where in any case under this Act, the report referred to in section 41 or 42 is made in good faith, the reporting entity reporting and its employees, staff, directors, owners or other representatives as authorised by law shall be exempt from all criminal, civil or other liability, as the case may be, for complying with this Act or for breach of any restriction on disclosure of information imposed by contract, or by any legislative, regulatory or administrative provision, regardless of the result of the report.

47. (1) Except for the purposes of the administration of this Act, no person shall disclose any information that will identify or is likely to identify the person who prepared or made a suspicious transaction report or handled the underlying transaction.

Protection of
identity of
persons and
information
relating
to suspicious
transaction
reports.

(2) No person shall be required to disclose a suspicious transaction report or any information contained in the report or provided in connection with it or the identity of the person preparing or making the report or handling the underlying transaction in any judicial proceedings unless the judge or other presiding officer is satisfied that the disclosure of the information is necessary in the interest of justice.

(3) Nothing in this section prohibits the disclosure of any information for the purposes of the prosecution of any offence against any of the provisions of this Act.

48. (1) Nothing in section 41 requires any legal practitioner to disclose any privileged communication.

Privileged
communi-
cation.

(2) For the purposes of this section, a communication is a privileged communication only if—

- (a) it is a confidential communication, whether oral or in writing, passing between a legal practitioner in his professional capacity and another legal practitioner in such capacity; or
- (b) it is made or brought into existence for the purpose of obtaining or giving legal advice or assistance; and
- (c) it is not made or brought into existence for the purpose of committing or furthering the commission of some illegal or wrongful act.

(3) Where the information consists wholly or partly of, or relates wholly or partly to receipts, payments, income, expenditure

or financial transactions of a specified person, whether a legal practitioner, his client, or any other person, it shall not be a privileged communication if it is contained in or comprises the whole or part of, any book, account, statement or other record prepared or kept by the legal practitioner in connection with a trust account of the legal practitioner.

(4) For the purposes of this section, references to a legal practitioner include a firm in which the person is a partner or is held out to be a partner.

Test of reasonableness of belief etc.

49. Where under subsection (2) of section 33 or any other provision of this Act, the question arises as to the reasonableness of the grounds upon which a decision or an action was taken, that question shall be determined objectively having regard to all the facts and surrounding circumstances.

Authorities responsible for supervision.

50. (1) The following bodies shall have responsibility for supervision, monitoring compliance, penalizing non-compliance and compliance enforcement with respect to the obligations in this Act:-

- (a) the Bank of Sierra Leone shall supervise financial institutions and currency exchange and transmission businesses;
- (b) the Sierra Leone Insurance Commission shall supervise the insurance industry;
- (c) the General Legal council shall supervise legal practitioners;
- (d) the Institution of Chartered Accountants of Sierra Leone shall supervise chartered accountants.

(2) For any reporting entities which do not yet have a designated supervisory authority, the Unit shall act temporarily as supervisory authority until another supervisory authority is designated by law.

(3) For the purposes of applying sections 52 and 53, the Unit may also act as supervisory authority in case the designated supervisory authority does not undertake the required action.

51. Whenever it appears to a supervisory authority or to the Unit, or an independent auditor, that a reporting entity or any of their respective directors, officers or employees, is not complying or has not complied with the obligations prescribed in this Act, it shall inform the Unit or the relevant authority.

Disclosing information regarding compliance.

52. (1) The supervisory authority referred to in section 50 or the Unit, or any person it authorises, may during or after business hours, enter any premises in which there are reasonable grounds to believe that there are records relevant to ensuring compliance with Part III for the purpose of –

Power to examine records etc.

- (a) examining the records and inquiring into the business and affairs of a reporting entity;
- (b) using or causing 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) reproducing any record or causing it to be reproduced from the data, in the form of a print out or other intelligible output and remove the print out or other output for examination or copying; and
- (d) using or causing to be used any copying equipment in the premises to make copies of any record.

(2) The owner or person responsible for premises referred to in subsection (1) and every person found there shall give the supervisory authority, the Unit or any authorized 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 Part III or Regulations made under this Act.

(3) The supervisory authority or the Unit, or any person it authorises may transmit any information derived from the examination to the appropriate domestic or foreign law enforcement authorities, if there are reasonable grounds to suspect that the information is suspicious or is relevant to an investigation for non-compliance with this Act, an unlawful activity, a money laundering offence or an offence of financing of terrorism.

Power to
enforce
compliance.

53. (1) The supervisory authority referred to in section 50, or the Unit, or any person the authority or Unit authorizes may direct a reporting entity that has without reasonable excuse failed to comply in whole or in part with any obligations in Part III to implement any action plan to ensure compliance with its obligations under this Part.

(2) Where a reporting entity fails to fully comply with a directive from the supervisory authority, or alternatively from the Unit, the supervisory authority or the Unit as the case may be, shall decide on undertaking one or more of the following actions: -

- (a) issue a written warning;
- (b) issue an order to comply with instructions;
- (c) issue an order to provide regular reports on corrective measures taken;
- (d) impose fines on the reporting entity;
- (e) impose fines on the owner, manager or employee of a reporting entity;
- (f) replace a manager;
- (g) bar a person from employment;
- (h) suspend an accountable institution's licence;
- (i) refuse to renew an accountable institution's licence;
- (j) apply to the court for an order to compel compliance.

(3) In case it is found that a person, employee, officer or director of a reporting entity is responsible for a serious compliance failure, the supervisory authority or the Unit may temporarily or permanently remove the person from his position or function with the reporting entity.

(4) The supervisory authority referred to in section 50, or the Unit or any person they authorize shall apply to the court for purposes of enforcing sections 55 to 62.

(5) The supervisory authority or the Unit shall publish cases of serious compliance failure and other facts relevant to the enforcement of subsections (1) to (4) in the *Gazette* and in at least two daily newspapers published in Sierra Leone or broadcast such facts on a radio station in the locality of such public officer's last known place of residence.

54. (1) The competent authority shall determine a mechanism by which adequate, accurate and current information on the beneficial ownership and control structure of persons and arrangements are maintained in Sierra Leone.

Mechanism
to maintain
beneficial
ownership
information.

(2) The mechanism shall provide for access to the information on a timely basis by reporting entities, competent authorities, including law enforcement, the Unit, supervisory and judicial authorities.

55. (1) A reporting entity or person who intentionally or by gross negligence and without reasonable excuse—

Failure to
comply with
identification
requirements.

- (a) fails to undertake the identification of customers or otherwise to fulfill the customer-due-diligence, customer identification and risk management requirements in accordance with this Act;
- (b) opens, operates or authorizes the opening or the operation of an account with a reporting entity in a fictitious, false or incorrect name in violation of this Act; or

- (c) fails to fulfill the obligations relating to obtaining information for and processing of a wire transfer as required by this Act,

commits an offence and is liable on conviction to a fine not less than Le10,000,000.00 or to a term of imprisonment not less than two years or to both the fine and imprisonment.

Failure to maintain or provide access to records.

56. A reporting entity or person who intentionally or by gross negligence and without reasonable excuse-

- (a) fails to maintain books and records as required by this Act;
- (b) destroys or removes any documents required to be maintained under this Act; or
- (c) fails to make the information available in a timely manner in response to a lawful request for it,

commits an offence and is liable on conviction to a fine not less than L10,000,000.00 or to a term of imprisonment not less than two years or to both the fine and imprisonment.

Failure to fulfill due diligence obligations or maintain internal controls.

57. A reporting entity or person who intentionally or by gross negligence-

- (a) fails to conduct due diligence or identity requirements with respect to customers' accounts, and transactions in compliance with this Act;
- (b) fails to comply with the obligations for special monitoring or enhanced due diligence procedures prescribed in this Act; or
- (c) fails to maintain internal control programs in compliance with this Act,

commits an offence and is liable on conviction to a fine not less than Le10,000,000.00 or to a term of imprisonment not less than two years or to both the fine and imprisonment.

58. A reporting entity or person who intentionally or by gross negligence fails to submit a report to the Unit as required by sections 28 and 29 commits an offence and is liable on conviction to a fine not less than Le10,000,000.00 or to a term of imprisonment not less than two years or to both the fine and imprisonment.

Failure regarding suspicious transaction or other reporting.

59. A person or reporting entity who intentionally or by gross negligence fails to comply with Regulations made by a supervisory authority or the Unit, commits an offence and is liable on conviction to a fine not less than Le10,000,000.00 or to a term of imprisonment not less than two years or to both the fine and imprisonment.

Failure to comply with the regulations of supervisory authority or Unit.

60. A person who intentionally makes a false or misleading statement, provides false or misleading information, or otherwise fails to state a material fact in connection with his obligations under this Act, including the obligation to make a suspicious transaction or other required report to the Unit, commits an offence and is liable on conviction to a fine not less than Le15,000,000.00 or to a term of imprisonment not less than three years or to both the fine and imprisonment.

False or misleading statement.

61. A person who intentionally or by gross negligence discloses to a customer or a third party information in violation of this Act commits an offence and is liable on conviction to a fine not less than Le15,000,000.00 or to a term of imprisonment not less than three years or to both the fine and imprisonment.

Violation of confidentiality.

62. (1) A person who intentionally or negligently-

Shell bank offence.

- (a) sets up a shell bank in Sierra Leone; or

- (b) enters into or continues business relations with a shell bank or a respondent financial institution in a foreign country that permits its accounts to be used by a shell bank,

commits an offence and is liable on conviction to a fine not less than Le20,000,000.00 or to a term of imprisonment not less than five years or to both the fine and imprisonment.

Other sanctions.

63. (1) A person who has been convicted of an offence prescribed in the Second Schedule, in Sierra Leone or elsewhere, shall not be licensed to carry on the business of a financial institution.

(2) A person found guilty of an offence prescribed in sections 37 to 48—

- (a) is subject, in addition to the sanctions and measures available to the supervisory, regulatory or disciplinary authority for administrative violations; and
- (b) may be banned permanently from pursuing the business or profession which provided the opportunity for the offence to be committed.

Supervisory authority to issue guidelines.

64. A supervisory authority referred to in section 50 may issue guidelines or by statutory instrument make regulations for carrying out or giving effect to the provisions of this Act.

Confidential information.

65. Nothing in this Act shall prevent a court, on the application of the competent authority and on proof to the satisfaction of the court that the confidential information is *bona fide* required for the purposes of any inquiry or trial into or relating to an unlawful activity or money laundering or financing of terrorism, from ordering the disclosure of such information.

66. Any act done or omitted to be done by an employee or agent shall, for the purposes of this Act, be treated as done or omitted to be done by that person's employer or principal, if it was done with the knowledge or approval of the employer or principal or if it was without such knowledge or approval as a result of lack of supervision, and in the case of an agent, that he acted within the terms of his agency or contract.

Liability of employers and principals.

67. Where any body corporate is convicted of an offence under this Act every 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 was carried out with that person's knowledge, authority, permission or consent.

Liability of directors, controllers or officers of bodies corporate.

PART VIII—CURRENCY REPORTING AT POINT OF ENTRY

68. (1) A person who leaves or arrives in Sierra Leone with more than thirty million Leones or its equivalent in foreign currency in cash or negotiable bearer instruments on his person or in his luggage without first having reported the fact to the relevant authority commits an offence and is liable on conviction—

Currency reporting at point of entry.

- (a) in the case of an individual, to a fine not less than Le10,000,000.00;
- (b) in the case of a body corporate, to a fine not less than Le20,000,000.00.

(2) For the purposes of this Part, the term—

- (a) “relevant authority” means:
- (i) a police officer; or
- (ii) a customs officer;

- (b) “negotiable bearer instrument” means a document representing ownership of debts or obligations, including bills of exchange, promissory notes or certificates of deposit, whether made payable to the bearer or not.

(3) Where a person—

- (a) is about to leave Sierra Leone or has arrived in Sierra Leone; or
- (b) is about to board or leave, or has boarded or left, any ship or aircraft,

the relevant authority may, with such assistance as is reasonable and necessary, and with use of force as is necessary,

- (i) examine any article which a person has with him in his luggage; and
- (ii) if the relevant authority has reasonable grounds to suspect that an offence under subsection (1) may have been or is being committed, search the person, for the purpose of determining whether the person has in his possession, any cash or negotiable bearer instruments in respect of which a report under subsection (1) is required.

(4) The relevant authority and any person assisting him, may stop, board and search any ship, aircraft or conveyance for the purposes of exercising the powers conferred by subsection (3).

(5) Where the relevant authority has reasonable grounds to believe that cash or negotiable bearer instruments found in the course of an examination or search conducted under subsection (3) or (4) may afford evidence as to the commission of an offence under

this section, an unlawful activity, a money laundering offence or an offence of financing of terrorism, the officer may seize the cash or negotiable bearer instruments.

(6) Where the relevant authority has seized cash and negotiable bearer instrument under subsection (5) he shall report the seizure to the Unit within forty-eight hours from the date of seizure.

69. The relevant authority may seize and detain any cash or negotiable bearer instruments which is being imported into, or exported from, Sierra Leone, in any form or manner if he has reasonable grounds for suspecting that it is-

Seizure of cash or negotiable instruments.

- (a) derived from an unlawful activity or a money laundering offence or an offence of financing of terrorism;
- (b) intended by any person for use in the commission of an unlawful activity or a money laundering offence or an offence of financing of terrorism.

70. (1) Cash and negotiable bearer instruments seized under this Part shall not be detained for more than ten working days after seizure, unless a court grants an order for continued detention for a period not exceeding three months from the date of seizure, upon being satisfied that—

Retention and release of cash or negotiable instruments seized.

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

(2) The court may subsequently order, after hearing, with notice to all parties concerned, the continued detention of the cash and negotiable bearer instruments if satisfied with the matters mentioned in subsection (1); but the total period of detention shall not exceed two years from the date of the order.

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

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

(4) Where the cash and negotiable bearer instruments have not been claimed by any person within two years of it being seized or detained, the relevant authority may make an application to the Court that such cash or negotiable instrument be forfeited to the State.

(5) No cash or negotiable bearer instruments detained under this section shall be released where –

- (a) an application is made under Part VII for the purpose of –
 - (i) the forfeiture of the whole or any part of the cash or negotiable bearer instrument; or
 - (ii) its continued detention pending determination of its liability to forfeiture; or

- (b) proceedings are instituted in Sierra Leone or elsewhere against any person for an offence with which the cash or negotiable bearer instrument is connected,

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

PART IX—LAW ENFORCEMENT MEASURES

71. (1) Where a body has the power to investigate or prosecute unlawful activities, either under this Act or under any other enactment, this power also extends to the investigation or prosecution of related money laundering and financing of terrorism offences.

Authority to conduct money laundering investigations and prosecutions.

(2) A body that has prosecution powers may seek the assistance of other law enforcement agencies for purposes of conducting the required investigations.

72. A competent authority, upon application to the Court and satisfying the court that there are reasonable grounds for believing that a reporting entity, or an officer or employee of a reporting entity, is committing, has committed or is about to commit an unlawful activity, an offence of money laundering or an offence of financing of terrorism, may obtain a warrant to enter any premises belonging to, in the possession or control of the reporting entity or any officer or employee of the entity, and to search the premises and remove any document, material or other thing in it for the purposes of the competent authority, as ordered by the court and specified in the warrant.

Law enforcement agencies' power to obtain warrant.

73. A court may on an application by a competent authority and satisfying itself that there are reasonable grounds for believing that a person is committing, has committed or is about to commit an unlawful activity, an offence of money laundering or an offence of financing of terrorism order –

Law enforcement agencies to obtain property monitoring tracking.

- (a) that any document relevant to—

- (i) identifying, locating or quantifying any property; or

- (ii) identifying or locating any document necessary for the transfer of any property,

belonging to, or in the possession or under the control of that person be delivered forthwith to the competent authority;

- (b) that a reporting entity forthwith produce to that competent authority all information obtained by the entity about any business transaction conducted by or for that person with the entity during the period before or after the date of the order as the court directs.

Officers etc
to enforce
compliance.

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

(2) The competent authority, upon application to a court and satisfying the court that a reporting entity has failed without reasonable excuse to comply in whole or in part with any obligation imposed by this Part, may obtain an order against any or all of the officers or employees of that reporting entity in such terms as the court thinks necessary to enforce compliance with the obligation.

(3) In granting an order under subsection (2), the court may order that, should the reporting entity or any officer or employee of that entity fail without reasonable excuse to comply with the order, the reporting entity, officer or employee shall pay a financial penalty in the sum and in the manner directed by the court.

PART X—RESTRAINT, SEIZURE AND FORFEITURE OF ASSETS IN RELATION TO MONEY LAUNDERING AND FINANCING OF TERRORISM

Freezing of
assets of
suspects.

75. (1) A competent authority, upon application to a court satisfying the court that the Attorney-General has charged or is about to charge a person with money laundering, may apply for an order freezing the property of, or in the possession or under the control of that person, wherever it may be.

(2) The court, in making an order freezing the property of any person referred to in subsection (1), may give directions as to—

- (a) the duration, subject to subsection (3), of the freezing order;
- (b) the disposal of that property for the purpose, of—
 - (i) determining any dispute as to the ownership of or other interest in the property or any part of it;
 - (ii) its proper administration during the period of freezing;
 - (iii) the payment of debts incurred in good faith due to creditors prior to the order;
 - (iv) the payment of moneys to that person for the reasonable subsistence of that person and his family;
 - (v) the payment of the costs and other expenses of that person to defend criminal proceedings against him.

(3) An order made under subsection (1) shall cease to have effect at the end of the period of ten working days following the hour the order was made should the person against whom the order was made not have been charged with the offence of money laundering within that time.

(4) The competent authority shall not be liable for any damages or cost arising directly or indirectly from the making of a “freezing order” unless it can be proved that the application for the freezing of the property was not made in good faith.

(5) Where the court makes an order for the administration of frozen property, the person charged with the administration of the property shall not be liable for any loss or damage to the property or for the cost of proceedings taken to establish a claim to the property or to any interest in the property unless the court in which the claim is made is of the opinion that the person has been guilty of negligence in respect of the taking of custody and control of the property.

Restraint of
property.

76. (1) Where a competent authority investigating an unlawful activity, a money laundering offence or a financing of terrorism offence has reasonable grounds to believe that any money or property relating to an unlawful activity, a money laundering offence or a financing of terrorism offence is held or is under the control of any person, the law enforcement agency may apply to a court in accordance with subsection (2) for a restraining order prohibiting the person from disposing of or otherwise dealing with that property except in the manner specified in the order.

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

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

(4) The court may, in making an order under subsection (3), give directions as to-

- (a) the effective period of the order;
- (b) the proper administration of the money or property during the effective period of the order;
- (c) the disposal of that money or property for the purpose of determining any dispute as to the ownership of or other interest in the property, payment of debts incurred in good faith to creditors prior to the order, or payment of the costs of that person to defend criminal proceedings against him.

(5) The proper administration under paragraph (b) of subsection (4) includes-

- (a) in the case of perishable or rapidly depreciating property, the power to sell that property including stocks and bonds; and
- (b) before the person restrained under subsections (1) and (2) disposes of any property referred to under this subsection, an application to a court for a disposal order.

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

- (a) reasonable living expenses of the person in respect of whom the investigation is being made, including that of the person's dependants;
- (b) reasonable expenses of that person in defending any criminal charge or any other proceedings under this Act.

(7) Compliance with an order under this section shall not be treated as a breach of any restriction or obligation, imposed by any enactment by the person complying with the order.

(8) An order under subsection (3) shall cease to have effect at the end of a period of six months following the hour the order was made if the person against whom the order was made has not been charged with an unlawful activity or a money laundering or financing of terrorism offence within the period.

(9) The competent authority shall not be liable for any damages or costs arising directly or indirectly from the making of an order under subsection (3) unless it can be proved that the application for the order was not made in good faith.

Service of restraining order.

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

Registration of restraining order.

78. (1) A copy of a restraining order which affects lands in Sierra Leone shall be registered with the Registrar-General.

Cap. 256. (2) A restraining order is of no effect with respect to registered land unless it is registered as a charge under the Registration of Instruments Act.

Cap 256. (3) Where particulars of a restraining order are registered under the Registration of Instruments Act, a person who subsequently deals with the property shall, for the purposes of section 81, be deemed to have notice of the order at the time of the dealing.

Contravention of restraining order.

79. (1) A person who knowingly or negligently contravenes a restraining order by disposing of or otherwise dealing with property that is subject to a restraining order commits an offence and is liable on conviction to—

(a) a fine of not less than fifteen million Leones or imprisonment for a term of not less than three years or to both the fine and imprisonment in the case of an individual; or

(b) a fine of not less than thirty million Leones in the case of a body corporate.

(2) Where a restraining order is made against a property and the property is disposed of, or otherwise dealt with, in contravention of the restraining 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 competent authority may apply to the Court that made the restraining order for an order that the disposition or dealing be set aside.

(3) Where the competent authority makes an application under subsection (2) in relation to a disposition or dealing, the Court may—

(a) set aside the disposition or dealing as from the day on which the disposition or dealing took place; or

(b) set aside the disposition or dealing as from the day of the order 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.

80. (1) The competent authority may apply to the Court that made a restraining order for an extension of the period of the operation of the order. Extension of restraining order.

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

81. (1) In order to prevent property subject to a restraining order from being disposed of or removed contrary to that order, any police officer may seize the property if he has reasonable grounds to believe that the property will be so disposed of or removed. Seizure of property subject to restraining order.

(2) Property seized under subsection (1) shall be dealt with in accordance with the manner determined by the court which made the restraining order.

82. (1) Where a person is convicted of an unlawful activity, an offence of money laundering or financing of terrorism, and the court is satisfied that the person has derived, obtained or realised, directly or indirectly, property from the commission of the offence the court may, unless proved to the contrary, on the application of the competent authority or a person authorised by the competent authority, after the conviction of the person, make an order of forfeiture in respect of that property. Forfeiture of property.

(2) Property subject to a forfeiture order under subsection (1) include the assets laundered or terrorist property, the proceeds, income, and gains from such assets, the assets intended to be laundered, assets used to facilitate or commit the unlawful activity or instrumentalities used or intended to be used in the commission of the offence of money laundering or financing of terrorism.

(3) Where the Court is satisfied that a forfeiture order should be made in respect of the property of a person convicted of an unlawful activity or instrumentalities used or intended to be used in the commission of the offence of money laundering or financing of terrorism but that the specified property or any part of it or interest in it cannot, for whatever reason, be made subject to such an order and, in particular that it:—

- (a) cannot, on the exercise of due diligence be located;
- (b) has been transferred to a third party in circumstances which do not give rise to a reasonable inference that the title or interest was transferred for the purpose of avoiding the confiscation of the property;
- (c) is located outside Sierra Leone;
- (d) has been substantially diminished in value or rendered worthless; or
- (e) has been co-mingled with other property that cannot be divided without difficulty,

the Court may, instead of ordering the property or part of it or interest in it to be confiscated, order the person to pay to the Government an amount equal to the value of the property, part or interest.

(4) Where property subject to forfeiture has been co-mingled with property acquired legitimately or acquired using funds from legitimate sources, the court shall in the forfeiture order, declare

the nature, extent and value of the property which is to be forfeited only in regard to property subject to the unlawful activity or money laundering offence or financing of terrorism offence.

(5) A court shall not make an order of forfeiture under this section in respect of any property where the court is satisfied that the person, not being the person who was convicted, who is in possession of the property or purports to be its owner acquired the property in good faith and—

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

(6) A person who under this section claims an interest in any property in respect of which an application for forfeiture has been made may—

- (a) before the court makes an order of forfeiture; or
- (b) when the court has made an order of forfeiture, within thirty days after the order was made—
 - (i) apply to the court against the granting of the order or where the court has made an order of forfeiture, for an order declaring the nature, extent and value of the claimant's interest, directing the Government to transfer the property to the claimant; or
 - (ii) declare that there is payable to the claimant by the Government an amount equal in value to the value of the claimant's interest declared under this section.

(7) If a court is satisfied that a person referred to in subsection (5) –

- (a) has an interest in the property which is the subject of the application; and
- (b) has exercised reasonable care to ensure that the property is not the proceeds of a crime, or terrorist property, or would not be used to commit or facilitate the commission of a terrorist act and would not be used by a terrorist group; and
- (c) is not a member of a terrorist group;

the court shall order that the interest shall not be affected by the order and the order shall declare the nature and extent of the interest in question.

(8) Where–

- (a) the court has made an order of forfeiture under this section; and
- (b) the conviction of the person in relation to whom the order was made is quashed,

the order of forfeiture shall cease to have effect and a person who claims to have an interest in any property in respect of which the order was made may apply to the court for an order–

- (i) declaring the nature, extent and value of the claimant's interest;
- (ii) directing the Government to transfer the property to the claimant; or

- (iii) declaring that there is payable to the claimant by the Government an amount equal in value to the value of the claimant's interest declared under this subsection.

(9) Where–

- (a) the court has made an order of forfeiture under this section; and
- (b) the conviction of the person in relation to whom the order was made is quashed,

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

(10) A person who makes an application under this section shall give notice to the competent authority and the competent authority shall be a party to a proceeding on the application.

(11) Where an application has been made under subsection (1), the court may, for the purpose of tracing of the property or preventing the circumventing of an order of forfeiture which the court may make under this section, make an order or give such direction as the court thinks necessary and may in particular make –

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

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

- (a) to have been under the control of the person convicted or held by that person any time after the person committed the offence and before the court makes an order under subsection (1);
- (b) to have been transferred to or by, or deposited with or by, the person convicted at any time after that person committed an offence and before the court makes an order under subsection (1);

are proceeds of crime or used in or intended to be used in the commission of an unlawful activity, the offence of money laundering or the offence of financing of terrorism.

(13) In determining whether or not any property is derived from an unlawful activity or money laundering or related to financing of terrorism, the court will apply the standard of proof required in civil proceedings.

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

Effect of
forfeiture,
order and
confiscation
order.

83. (1) Subject to subsection (2), where the court makes a forfeiture order against any property, the property vests absolutely in the Government by virtue of the order.

(2) Where property ordered to be forfeited is registrable property—

- (a) the property vests in the Government in equity but does not vest in the Government at law until the applicable registration requirements have been complied with;

(b) the Government is entitled to be registered as owner of the property;

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

(3) Where the court makes a confiscation order against a property—

(a) the property shall not, except with the leave of the Court and in accordance with any directions of the Court, be disposed of or otherwise dealt with, by or on behalf of the Government before the relevant appeal date; and

(b) if, after the relevant appeal date, the order has not been discharged, the property may be disposed of and the proceeds applied or otherwise dealt with in accordance with the direction of the competent authority.

(4) In this section—

“registrable property” means property the title to which is passed by registration in accordance with the Registration of Instruments Act;

“relevant appeal date” used in relation to a forfeiture order made in consequence of a person’s conviction of an unlawful activity means—

Cap
256.

- (a) the date on which the period allowed by rules for the lodging of an appeal against a person's conviction or for the lodging of an appeal against the making of a forfeiture order expires without an appeal having been lodged, whichever is the later; or
- (b) where an appeal against a person's conviction or against the making of a forfeiture order is lodged, the date on which the appeal lapses in accordance with the rules or is finally determined, whichever is later.

(5) Where the competent authority applies under this section for a forfeiture order against any tainted property the Court shall, before hearing the application—

- (a) require notice of the application to be given to any person who, in the opinion of the Court, appears to have an interest in the property;
- (b) direct notice of the application to be published in the Gazette and in a newspaper of wide circulation containing such particulars and for so long as the Court may require.

Forfeiture or
confiscation
where a
person dies or
absconds.

84. Were an application is made to the Court under subsection (1) of section 82 for a forfeiture or confiscation order against any tainted property in consequence of a person having died or absconded in connection with an unlawful activity and the Court is satisfied that—

- (a) any property is tainted property in respect of the offence;
- (b) an information has been laid alleging the commission of the offence by that person and a warrant for the arrest of that person has been issued in relation to that information; and

- (c) the accused charged with the offence referred to in paragraph (b) has died or absconded,

the Court may order that the property or property specified by the Court in the order be forfeited or confiscated.

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

Voidable
transfers.

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

Competent
authority to
obtain
property
tracking or
monitoring
order.

- (a) that any document relevant to—
 - (i) identifying, locating or quantifying property of that person;
 - (ii) identifying or locating any document necessary for the transfer of property of that person;

be delivered forthwith to the competent authority;

- (b) a reporting entity forthwith to produce to the competent authority all information obtained by the institution about any business transaction conducted by or for that person with the entity during a period before or after the date of the order as the court directs;
- (c) upon being satisfied by the competent authority that any person is failing to comply with, is delaying or is otherwise obstructing

an order made in accordance with paragraph (a) or (b), that the competent authority enter any premises of that person, search the premises and remove any document, material or other thing in the premises for the purposes of executing the order.

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

Offences in
relation to
property
tracking, etc.

87. (1) It is an offence—

- (a) for any person to falsify, conceal, destroy, otherwise dispose of, or cause or permit the falsification, concealment, destruction, disposal of any document or material which is or is likely to be relevant to the execution of an order made in accordance with paragraph (a) or (b) of subsection (1) of section 86;
- (b) for a person who is the subject of an order made under paragraph (a) or (b) of subsection (1) of section 86 to disclose the existence or operation of the order to any person except to an officer of a law enforcement authority named in the order or an officer or agent of a financial institution, for the purposes of ensuring that the order is complied with or a legal practitioner, for the purpose of obtaining legal advice or representation in relation to the order.

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

PART XI—PECUNIARY PENALTY ORDERS

89. (1) Subject to this section, where the competent authority applies to the court for a pecuniary penalty order against a person in respect of that person's conviction for an unlawful activity or offence the court shall, if it is satisfied that the person has benefited from that unlawful activity or offence, order him to pay to the Government an amount equal to the value of his benefit from the unlawful activity or offence or such lesser amount as the court certifies in accordance with subsection (2) of section 92 to be the amount that might be realized at the time the pecuniary penalty order is made. Pecuniary penalty order on conviction.

(2) The Court shall assess the value of the benefits derived by a person from the commission of an unlawful activity or offence in accordance with sections 92 to 96.

(3) The Court shall not make a pecuniary penalty order under this section—

- (i) until the period allowed by the rules of court for the lodging of an appeal against conviction has expired without the appeal having been lodged; or
- (ii) where an appeal against conviction has been lodged, until the appeal lapses in accordance with the rules of court or is finally determined, whichever is later.

90. (1) Where a person obtains property as the result of or in connection with the commission of an offence, his benefit is the value of the property so obtained. Rules of determining benefit and assessing value.

(2) Where a person derives a reward or advantage as a result of or in connection with the commission of an unlawful activity or offence, his reward or advantage shall be deemed to be a sum of money equal to the value of the reward or advantage so derived.

(3) The Court, in determining whether a person has benefited from the commission of an unlawful activity or offence or from that offence taken together with other offences shall, unless the contrary is proved, deem—

- (a) all property appearing to the Court to be held by the person on the day on which the application is made; and
- (b) all property appearing to the Court to be held by the person at any time—
 - (i) within the period between the day the unlawful activity or offence, or the earliest unlawful activity or offence was committed and the day on which the application is made;
 - (ii) within the period of six years immediately before the day on which the application is made,

whichever is the longer, to be property that came into the possession or under the control of the person by reason of the commission of that unlawful activity or offence or those unlawful activities or offences for which the person was convicted;

- (c) any expenditure by the person since the beginning of that period to be expenditure met out of payments received by him as a result of or in connection with, the commission of that unlawful activity or offence or those unlawful activities or offences; and
- (d) any property received or deemed to have been received by the person at any time as a result of or in connection with the

commission by him of that unlawful activity or offence or those unlawful activities or offences as property received by him free of any interest in it.

(4) Where a pecuniary penalty order has been previously made against a person, in assessing the value of any benefit derived by him from the commission of the unlawful activity or offence, the Court shall leave out of account any benefits that are shown to the Court to have been taken into account in determining the amount to be recovered under that order.

(5) If evidence is given at the hearing of the application that the value of the person's property at any time after the commission of the unlawful activity or offence exceeded the value of the person's property before the commission of the unlawful activity or offence, then the Court shall, subject to subsection (6) treat the value of the benefit as being not less than the amount of that excess.

(6) If, after evidence of the kind referred to in subsection (5) is given, the person satisfies the Court that the whole or part of the excess was due to causes unrelated to the commission of the unlawful activity or offence, subsection (5) does not apply to the excess or, as the case may be, that part.

91. (1) Where—

- (a) a person has been convicted of an unlawful activity or offence and the competent authority tenders to the court a statement as to any matters relevant to-
 - (i) determining whether the person has benefited from the unlawful activity or offence or from any other unlawful activity or offence of which he is convicted in the same proceedings or which is taken into account in determining his sentence; or

Statements relating to benefits from commission of unlawful activity or offence.

- (ii) an assessment of the value of the person's benefit from the unlawful activity or offence or any other unlawful activity or offence of which he is convicted in the same proceedings or which is taken into account; and

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

the Court may, for the purposes of so determining or making that assessment, treat his acceptance as conclusive of the matters to which it relates.

(2) Where—

- (a) a statement is tendered under paragraph (a) of subsection (1); and
- (b) the court is satisfied that a copy of that statement has been served on the person,

the Court may require the person to indicate to what extent he accepts each allegation in the statement and, so far as the person does not accept any allegation, to indicate any matters he proposes to reply on.

(3) Where the person fails in any respect to comply with a requirement under subsection (2), he may be treated for the purposes of this section as having accepted every allegation in the statement other than—

- (a) an allegation in respect of which he complied with the requirement; and
- (b) an allegation that he has benefited from the unlawful activity or offence or that any property or advantage was obtained by him as a result of or in connection with the commission of the unlawful activity or offence.

(4) Where—

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

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

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

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

(6) An acceptance by a person under this section that he received any benefits from the commission of an unlawful activity or offence is admissible in any proceedings for an offence.

92. (1) Subject to subsection (2), the amount to be recovered in the person's case under a pecuniary penalty order shall be the amount which the court assesses to be the value of the person's benefit from the unlawful activity or offence, or if more than one, all the unlawful activities or offences in respect of which the order may be made. Amount recovered under pecuniary penalty order.

(2) Where the Court is satisfied as to any matter relevant for determining the amount which might be realized at the time the pecuniary penalty order is made, the court may issue a certificate giving the court's opinion as to the matters concerned, and shall do so if satisfied that the amount that might be realized at the time the pecuniary penalty order is made is less than the amount that the court assesses to be the value of the person's benefit from the offence, or if more than one, all the offences in respect of which the pecuniary penalty order may be made.

Variation of pecuniary penalty order.

93. Where—

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

the competent authority may apply to the court for a variation of the pecuniary penalty order to increase the amount of the order by the value of the property not so forfeited and the court may, if it considers it appropriate to do so, vary the order accordingly.

Enforcement of pecuniary penalty order.

94. Where the court orders a person to pay an amount under a pecuniary penalty order, section 81 shall apply with such modifications as the court may determine, for the purpose of empowering the court to impose a term of imprisonment on a person in default of compliance by him with a pecuniary penalty order.

Discharge of pecuniary penalty order.

95. A pecuniary penalty order is discharged—

- (a) if the conviction of the unlawful activity or offences in reliance on which the order was made is or is taken to be quashed and no conviction for the unlawful activity or offences is substituted;
- (b) if the order is quashed; or
- (c) on the satisfaction of the order by payment of the amount due under the order.

96. A reporting entity shall comply with the requirement of this Act notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by any enactment or otherwise.

Overriding of confidentiality.

97. (1) Any act done or omitted by a person as an employee or agent shall, for the purposes of this Act, be treated as done or omitted by that person's employer or principal, if it was done 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; and in the case of an agent, that he acted within the terms of his agency or contract.

Liability of employers and principals.

98. Where a body corporate is convicted of an offence under this Act, every 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.

Liability of directors, controllers or officers of bodies corporate.

99. Any property confiscated as a result of an investigation or conviction of a money laundering or financing of terrorism offence shall be vested in the Government subject to the following: —

Sharing of confiscated property.

- (a) the Government shall decide to allocate not less than one-third to the Unit, of the assets confiscated and not less than one-third to any other agency engaged in the fight against money laundering or the financing of terrorism; or
- (b) where the asset has been confiscated as a result of joint investigation with a foreign investigation agency, it shall be shared on a mutually agreed basis between the home state and the foreign investigating agency and the share of the home state shall be distributed in accordance with paragraph (a).

PART XII–MUTUAL ASSISTANCE IN RELATION TO
MONEY LAUNDERING

International
cooperation.

100. Subject to section 106, where a foreign state requests for assistance in the investigation or prosecution of money laundering the competent authority shall–

- (a) execute the request forthwith; or
- (b) inform the foreign State making the request of any reason-
 - (i) for not executing the request forthwith; or
 - (ii) for delaying the execution of the request.

Mutual
assistance.

101. (1) Where for the investigation or prosecution of an unlawful activity or money laundering offence or financing of terrorism offence or for the making or execution of any orders or directions made under this Act in respect of these offences, any assistance is required from a foreign country, the competent authority may request mutual assistance from that foreign country as if the investigation, prosecution, making or execution is a criminal matter within the meaning of this Act.

(2) Where a request is made by a foreign country in the investigation or prosecution of any offence under this Act in that country or for the making or execution of any order or direction made in that country in respect of the offence, the competent authority may provide assistance as if the investigation, prosecution, making or execution is a criminal matter within the meaning of this Act.

Competent
authority's
power to
obtain search
warrant.

102. The competent authority, upon application to the court and upon production to the court of a request, may obtain a search warrant–

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

- (b) to search the person of any person named, document, material or other thing for the purpose of executing the request as directed in the warrant.

103. (1) Subject to section 107, the competent authority upon application to the court and production to the court of a request for the freezing or forfeiture of property in the possession or under the control of a person named in the request, may obtain an order–

Freezing and
forfeiture of
property in
international
cooperation.

- (a) freezing the property of or in the possession or under the control of the person named in the request for such period as is indicated in the order;
- (b) giving directions as to the disposal of the property for the purpose of–
 - (i) determining any dispute as to ownership of or other interest in the property or any part of the property;
 - (ii) its proper administration during the period of freezing;
 - (iii) the payment of debts, incurred in good faith, due to creditors prior to the request;
 - (iv) the payment of moneys to that person and his family;
 - (v) the payment of costs and other expense to defend any criminal proceeding referred to in the request;
- (c) forfeiting the property of or in the possession or under the control of any person named in the request.

Request to be accompanied by evidence order.

104. (1) Subject to section 105, the competent authority may upon application to the court and upon production to the court of a request accompanied by an order issued by a court of the requesting State directed to any person within the jurisdiction of the court to deliver himself or any document or material in his possession or under his control to the jurisdiction of the court of the requesting State for the purpose of giving evidence in specified proceedings in that court, obtain an order directed to that person in the same terms as in the order accompanying the request.

(2) Upon being served with an order issued in accordance with subsection (1), the person served shall, for the purposes of the order either—

- (a) deliver himself to the jurisdiction of the court; or
- (b) deliver himself to the jurisdiction of the court of the requesting State, in accordance with the directions in the order.

(3) If a person served with an order issued in accordance with subsection (1) elects to deliver himself to the jurisdiction of the court of the requesting State and fails to comply with any direction in the order, he shall be deemed immediately to have delivered himself to the jurisdiction of the court as provided in paragraph (a) of subsection (2).

(4) The court shall conduct such proceedings as are necessary to take the evidence of any person delivering himself to the jurisdiction of the court under paragraph (a) of subsection (2) and the evidence shall subsequently be transmitted to the competent authority of the foreign State.

Limitations on compliance with request.

105. The competent authority may refuse to comply with a request if—

Act No. 6 of 1991.

- (a) the action sought by the request is contrary to a provision of the Constitution of Sierra Leone, 1991;

- (b) the execution of the request is likely to prejudice the national interest; or
- (c) if under the law of the requesting State, the grounds for refusing to comply with a request from another State is substantially different from paragraph (a) or (b).

106. The competent authority may issue to a foreign State a request accompanied, if required, by an order issued in accordance with section 107. Request to States.

107. The competent authority upon application to the court may in respect of any proceedings for unlawful activity, money laundering and financing of terrorism, apply for an order directed to any person resident in a foreign State to deliver himself or any document or material in his possession or under his control to the jurisdiction of the court or, subject to the approval of the foreign State, to the jurisdiction of the court of the foreign State for the purpose of giving evidence in relation to those proceedings. Issuing evidence against foreign resident.

108. Evidence taken pursuant to a request in any proceedings in a court of a foreign State shall be received as *prima facie* evidence in any proceedings to which such evidence relates. Evidence pursuant to request.

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

110. The request shall— Contents of requests.

- (a) confirm either that an investigation or prosecution is being conducted into or for a suspected unlawful activity, money laundering offence or financing of terrorism, or that a person has been convicted of unlawful activity, money laundering or financing of terrorism offence;
- (b) state the grounds on which any person is being investigated or prosecuted for the unlawful activity, money laundering or financing of terrorism offence referred to in paragraph (a) or give details of the conviction of the person referred to in paragraph (a);

- (c) give particulars sufficient to identify a person referred to in paragraph (b);
- (d) give particulars sufficient to identify any reporting entity or other person believed to have information, documents or material of assistance to the investigation or prosecution referred to in paragraph (a);
- (e) request the competent authority to whom the request is addressed to obtain from a reporting entity or other person referred to in paragraph (d) all or any information, documents or material of assistance to the investigation or prosecution referred to in paragraph (a);
- (f) specify the manner in which and to whom any information, documents or materials obtained, pursuant to the request is to be produced;
- (g) state whether or not a freezing or forfeiture order is required and identify the property to be the subject of the order; and
- (h) contain such other information as may assist the execution of the request.

Request for forfeiture.

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

Request not to be invalidated.

112. A request shall not be invalidated for the purpose of any proceedings by virtue of any failure to comply with section 110 if the competent authority is satisfied that there is sufficient compliance to enable it properly to execute the request.

Offence of interference with mutual assistance.

113. It is an offence—

- (a) for any person to falsify, conceal, destroy or otherwise dispose of or cause or permit the falsification, concealment, destruction or disposal of any document or material which he knows or has reasonable grounds for believing that it is or is likely to be relevant to the execution of any order made in accordance with this Part;
- (b) for any person who knows or has reasonable grounds for believing that an investigation into money laundering has been, is being or is about to be made, or that an order has been made or may be made requiring the delivery or production of any document under this Part to divulge that fact or other information to another person whereby the investigation is likely to be prejudiced.

PART XIII—OFFENCES AND PENALTIES

114. (1) It is an offence for any person who knows or suspects that an investigation into an unlawful activity, money laundering or financing of terrorism has been, is being or is about to be made, or that an order has been made or may be made requiring the delivery or production of any document—

Interference with investigation.

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

(2) A person who commits an offence under subsection (1), shall, on conviction, be liable to a fine not less than thirty million Leones and to imprisonment for a term not less than five years or to both the fine and imprisonment.

- Further measure to avoid unlawful activity, money laundering or financing of terrorism.
- 115.** A person who has been convicted of an unlawful activity, money laundering or financing of terrorism, may not be licensed to carry on the business of a reporting entity.
- Obstruction of official in performance of functions.
- 116.** A person, who willfully obstructs, hinders or threatens an official or representative of the Unit or of a competent authority in the performance of his duties or exercise his powers under this Act, commits an offence.
- Failure to comply with monitoring and restraint order.
- 117.** A reporting entity or other person that fails to comply with an order by a court in accordance with section 76 or 86, commits an offence.
- Failure to establish and verify identity of persons and transactions
- 118.** A reporting entity that performs any act to give effect to a business relationship or transaction in contravention of subsection (1), (2), (3) or (4) of section 21 commits an offence.
- Failure to maintain records.
- 119.** A reporting entity that fails to keep records or fails to comply with section 30 commits an offence.
- Failure to maintain accounts in true name.
- 120.** A reporting entity that fails to comply with section 19, commits an offence.
- Failure to report suspicious transaction.
- 121.** (1) A reporting entity that fails, within the prescribed period, to report to the Unit the prescribed information in respect of a suspicious transaction in accordance with section 33, 41 or 42 commits an offence.

(2) A reporting entity that fails to comply with a direction by the Unit in terms of paragraph (d) of subsection (1) of section 33 commits an offence.

122. A person who in making a report under section 33, 41 or 42 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 is false or misleading in a material particular, commits an offence.

Providing false or misleading statement.

123. (1) A person referred to in subsection (1) of section 45 who discloses a fact or information contemplated in that section, otherwise than in the circumstances or for the purposes authorized in that section commits an offence.

Unauthorized disclosure of suspicious transaction reports and other information.

(2) A person referred to in subsection (1) of section 45, who with intent to prejudice an investigation of an unlawful activity, a money laundering offence or an offence of financing of terrorism or for the purpose of obtaining directly or indirectly an advantage or a pecuniary gain for himself or herself or any other person contravenes that subsection, commits an offence.

124. A reporting entity that fails to formulate and implement internal rules in accordance with subsection (1) of section 36 commits an offence.

Failure to formulate and implement internal rules.

- 125.** A reporting entity that fails to—
- (a) appoint the person referred to in subsection (1) of section 35; or
 - (b) provide training to its employees in accordance with section 36,
- Failure to appoint compliance officer or provide training.

commits an offence.

Opening account in fictitious, false or incorrect name.

126. A person who opens, operates or authorizes the opening or the operation of an account with a reporting entity in a fictitious, false or incorrect name commits an offence.

Penalties.

127. (1) A person convicted of an offence mentioned section 16 is liable on conviction:—

- (a) in the case of an individual, to a fine of not less than Le30,000,000.00 to a term of imprisonment not less than 10 years or to both the fine and imprisonment; and
- (b) in the case of a body corporate to a fine of not less than Le50,000,000.00 or loss of authority to do business or to both the fine and loss of authority.

(2) A person convicted of an offence under sections 116 and 117 is liable on conviction:—

- (a) in the case of an individual, to a fine of not less than Le15,000,000.00 to imprisonment for not less than 5 years or both the fine and imprisonment; and
- (b) in the case of a body corporate to a fine of not less than Le30,000,000.00 or loss of authority to do business or both.

(3) A person convicted of an offence under sections 118 to 126 is liable on conviction:—

- (a) in the case of an individual to a fine not less than Le15,000,000.00 or to imprisonment for 5 years; and
- (b) in the case of a body corporate to a fine of not less than Le30,000,000.00 Leone or loss of authority to do business or both.

PART XIV – MISCELLANEOUS PROVISIONS

128. A request for extradition of an offender shall be subject to the Extradition Act, 1974 which shall be applied as if the unlawful activity, money laundering or financing of terrorism is an offence for which extradition may be granted. Extradition.

129. An attempt or conspiracy to commit unlawful activity, money laundering or financing of terrorism, abetting, counseling, commanding or procuring the commission of unlawful activity, money laundering or financing of terrorism shall be punishable as if the offence had been completed. Attempts, aiding and abetting.

130. Where an offence under this Act is committed by a body of persons— Offence by body of persons

- (a) if the body of persons is a body corporate, every director or officer of that body shall be deemed to have committed that offence;
- (b) if the body of persons is a firm, every partner of that firm shall be deemed to have committed that offence.

but no person referred to in paragraph (a) or (b) shall be deemed to have committed an offence under this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence.

131. Any person who contravenes any requirement of this Act for which no offence is specifically created commits an offence and is liable on conviction to a fine not exceeding thirty million Leones or to imprisonment for a term not exceeding five years or to both the fine and imprisonment. General offence and penalty.

132. A court may, in addition to any other penalty, permanently or for a maximum period of five years, ban any person convicted of an offence under section 15 or section 16 from pursuing the trade or occupation which provided the opportunity for the commission of the offence. Court banning order.

Regulations. **133.** (1) The Unit may, issue guidelines, directives or by statutory instrument make Regulations for carrying out the provisions of this Act and may, where necessary by statutory instrument amend the Schedules.

(2) Guidelines and directives issued under subsection (1) shall have the force of law.

Money laundering and financing of terrorism offences for extradition purposes. **134.** For the purpose of any enactment relating to extradition of fugitive offenders, money laundering and financing of terrorism shall be offences for which extradition may be granted.

Repeal and savings. Act No. 6. **135.** (1) The Anti-Money Laundering Act, 2005 is repealed. of 2005

(2) Notwithstanding the repeal, anything done under the repealed Act shall be deemed to have been done or continue to be done under the relevant provision of this Act.

FIRST SCHEDULE (Section 1)

PART I—ACTIVITIES OF FINANCIAL INSTITUTIONS

Act No. 10 of 2000. 1. Deposit-taking business as defined in the Banking Act 2000

Act No. 7 of 2001. 2. Financial activity as defined in the Other Financial Services Act, 2001.

3. Finance leasing
4. Providing venture risk capital
5. Money transmission services
6. Issuing and administering such means of payment e.g. credit cards, travellers' cheques, drafts or other similar means
7. Providing financial guarantees and commitments
8. Underwriting share issues and participation in such issues
9. Money brokering
10. Money and currency changing
11. Investment business
12. Bullion dealing
13. Insurance business

14. Credit services or credit unions
15. Merchant or investment banking
16. Safe custody services
17. Stock brokerage and dealing in securities and commodities

PART II—RELATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

1. Casinos (which also include internet casinos)
2. Real estate agents
3. Dealers in precious metals
4. Dealers in precious stones
5. Legal practitioners, notaries, other independent legal professionals and accountants (this refers to sole practitioners, partners or employed professionals within professional firms). It is not meant to refer to "internal" professionals that are employees of other types of businesses, nor to professionals working for Government agencies, who may already be subject to measures that would combat money laundering or financing of terrorism.
6. Trust and company service providers which refers to all persons or businesses that provide any of the following services to third parties: –
 - (a) acting as a formation agent of legal persons;
 - (b) acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
 - (c) providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal persons or arrangement;
 - (d) acting as (or arranging for another person to act as) a trustee of an express trust;
 - (e) acting as (or arranging for another person to act as) nominee shareholder for another person.

SECOND SCHEDULE

DISQUALIFYING CATEGORIES OF OFFENCES

1. Participation in an organized criminal group and racketeering
2. Terrorism, including terrorist financing
3. Trafficking in human beings and migrant smuggling

-
4. Sexual exploitation, including sexual exploitation of children
 5. Illicit trafficking in narcotic drugs and psychotropic substances
 6. Illicit arms trafficking
 7. Illicit trafficking in stolen and other goods
 8. Corruption and bribery
 9. Fraud
 10. Counterfeiting of currency
 11. Counterfeiting and piracy of products
 12. Environmental crime
 13. Murder, grievous bodily injury
 14. Kidnapping, illegal restraint and hostage-taking
 15. Robbery or theft
 16. Smuggling
 17. Extortion
 18. Forgery
 19. Piracy
 20. Insider trading and market manipulation

Passed in Parliament this 9th day of *February*, in the year of our Lord two thousand and twelve.

IBRAHIM S. SESAY,
Clerk of Parliament.

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

IBRAHIM S. SESAY,
Clerk of Parliament.