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Act

No. 23 of 2023

I assent

DR. LAZARUS MCCARTHY CHAKWERA
PRESIDENT
7th June, 2023

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of s. 2 of Cap. 7:07
3. Insertion of s. 2A into the principal Act
4. Amendment of s. 5 of the principal Act
5. Amendment of s. 16 of the principal Act
6. Amendment of s. 17 of the principal Act
7. Amendment of s. 19 of the principal Act
8. Amendment of s. 20 of the principal Act
9. Amendment of s. 21 of the principal Act
10. Amendment of s. 24 of the principal Act
11. Amendment of s. 27 of the principal Act
12. Amendment of s. 28 of the principal Act
13. Amendment of s. 30 of the principal Act
14. Amendment of s. 31 of the principal Act
15. Amendment of s. 33 of the principal Act
16. Amendment of s. 35 of the principal Act
17. Amendment of s. 36 of the principal Act
18. Amendment of s. 39 of the principal Act
19. Amendment of s. 40 of the principal Act
20. Amendment of s. 42 of the principal Act
21. Amendment of s. 43 of the principal Act
22. Amendment of s. 44 of the principal Act
23. Amendment of s. 46 of the principal Act
24. Substitution of s. 47 of the principal Act
25. Amendment of s. 54 of the principal Act
26. Amendment of s. 55 of the principal Act
27. Amendment of s. 56 of the principal Act

SECTION

28. Amendment of s. 59 of the principal Act
29. Amendment of s. 62 of the principal Act
30. Amendment of s. 63 of the principal Act
31. Amendment of s. 65 of the principal Act
32. Amendment of s. 66 of the principal Act
33. Amendment of s. 70 of the principal Act
34. Amendment of s. 71 of the principal Act
35. Amendment of s. 74 of the principal Act
36. Amendment of s. 75 of the principal Act
37. Amendment of s. 76 of the principal Act
38. Amendment of s. 78 of the principal Act
39. Amendment of s. 81 of the principal Act
40. Amendment of s. 82 of the principal Act
41. Amendment of s. 83 of the principal Act
42. Amendment of s. 86 of the principal Act
43. Amendment of s. 87 of the principal Act
44. Amendment of s. 90 of the principal Act
45. Amendment of s. 93 of the principal Act
46. Amendment of s. 94 of the principal Act
47. Amendment of s. 96 of the principal Act
48. Amendment of s. 99 of the principal Act
49. Amendment of s. 101 of the principal Act
50. Amendment of s. 102 of the principal Act
51. Amendment of s. 107 of the principal Act
52. Amendment of s. 108 of the principal Act
53. Amendment of s. 110 of the principal Act
54. Amendment of s. 111 of the principal Act
55. Amendment of s. 112 of the principal Act
56. Amendment of s. 113 of the principal Act
57. Amendment of s. 114 of the principal Act

An Act to amend the Financial Crimes Act

ENACTED by the Parliament of Malaŵi as follows—

Short title

1. This Act may be cited as the Financial Crimes (Amendment) Act, 2023.

Amendment of s. 2 of Cap. 7:07

2. The Financial Crimes Act (hereinafter referred to as the "principal Act") is amended, in section 2—

(*a*) by inserting, in the correct alphabetical order, the following new definition—

""funds" means a medium of exchange or store of value, whether corporeal or incorporeal, and includes—

(i) money;

(ii) digital currency;

(iii) share certificates; and

(iv) bearer negotiable instruments, or any other similar instruments;";

(*b*) by deleting the definition of "correspondent banking" and substituting therefor the following new definition—

""correspondent banking" means the provision of, and participation in, financial services by one financial service provider (the "correspondent financial service provider") to another financial service provider (the "respondent financial service provider"), and includes any other similar arrangement;";

(*c*) in paragraph (*b*) of the definition of the word "gift", by inserting the words "no consideration, or" immediately after the word "for"; and

(*d*) in the definition of the word "terrorist", by deleting the word "willfully" and substituting therefor the word "wilfully".

Insertion of s. 2A into the principal Act

3. The principal Act is amended, by inserting, immediately after section 2, a new section 2A as follows—

"Application of Part VI and VII

2A. Nothing in this Act shall be construed to exclude the application of any provision of Part VI or Part VII on account of the fact that—

(*a*) any offence concerned occurred; or

(*b*) any proceeds of crime were derived, received or retained,

before the commencement of this Act.".

Amendment of s. 5 of the principal Act

4. Section 5 of the principal Act is amended—

(*a*) in paragraph (i), by deleting the word "anticipated" immediately after the word "investigation"; and

(*b*) in paragraph (*j*), by inserting the words "or international" immediately after the words "any local".

Amendment of s. 16 of the principal Act

5. Section 16 of the principal Act is amended—

(*a*) in paragraph (*c*) of subsection (2), by inserting the words "or legal arrangement" immediately after the word "person";

(*b*) by deleting subsection (5) and substituting therefor a new subsection as follows—

"(5) Every reporting institution shall, in respect of a trust, take reasonable measures to verify the identity of—

(*a*) the settlor, trustees and beneficiaries or class of beneficiaries of the trust; and

(*b*) any other natural person exercising ultimate effective control over the trust, including through a chain of control or ownership.";

(*c*) by deleting subsection (6) and substituting therefor a new subsection as follows—

"(6) Every reporting institution shall, in respect of other types of legal arrangements, identify and take reasonable measures to verify the identity of persons in equivalent or similar positions referred to in subsection (4) (*a*), (*b*) and (*c*)."; and

(*d*) by deleting subsection (8) and substituting therefor a new subsection as follows—

"(8) Subject to section 21(5), in case of a non face-to-face relationship, a reporting institution shall apply the same identification and verification measures, and ongoing monitoring standards as for face-to-face business relationships.".

Amendment of s.17 of the principal Act

6. Section 17 of the principal Act is amended, by inserting a new subsection (3) as follows—

"(3) A person who contravenes this section shall, on conviction, be liable—

(*a*) in the case of a natural person, to imprisonment for five years and to a fine of K10,000,000; and

(*b*) in the case of a legal person, to a fine of K50,000,000 and revocation of a business licence.".

Amendment of s. 19 of the principal Act

7. Section 19 of the principal Act is amended, in subsection (1)—

(*a*) by inserting the word "to" immediately after the word "produced";

(*b*) paragraph (*b*), by deleting the word "and" immediately after the words "days;";

(*c*) by deleting paragraph (*c*) and substituting therefor new paragraphs (*c*) and (*d*) as follows—

"(*c*) not proceed any further with the transaction, unless directed to do so by the Authority; and

(*d*) where there is an existing business relationship, terminate the business relationship.".

Amendment of s. 20 of the principal Act

8. Section 20 of the principal Act is amended, in subsection (4), by deleting the word "of" immediately after the words "the name".

Amendment of s. 21 of the principal Act

9. Section 21 of the principal Act is amended, by inserting, immediately after subsection (6), new subsections (7) and (8) as follows—

"(7) Every reporting institution that develops new products, business practices or technologies shall—

(*a*) prior to the launch of the new products, business practices or technologies, identify and assess the money laundering and terrorist financing risks that may arise from the use of the new products, business practices or technologies for both new and existing products; and

(*b*) take appropriate measures to manage and mitigate the risks.

(8) A person who contravenes this section commits an offence and shall, on conviction, be liable—

(*a*) in the case of a natural person, to imprisonment for five years and to a fine of K10,000,000; and

(*b*) in the case of a legal person, to a fine of K50,000,000 and revocation of a business licence.".

Amendment of s. 24 of the principal Act

10. Section 24 of the principal Act is amended, in subsection (3), by inserting the word "a" immediately after the word "in".

Amendment of s. 27 of the principal Act

11. Section 27 of the principal Act is amended, in subsection (1)—

(*a*) in paragraph (*c*), by deleting the word "and" immediately after the words "operations;";

(*b*) by renumbering paragraph (*d*) as paragraph (*e*); and

(*c*) by inserting a new paragraph (*d*) as follows—

"(*d*) allow for external auditors to review and provide independent assessment of the compliance function; and"

Amendment of s. 28 of the principal Act

12. Section 28 of the principal Act is amended by—

(*a*) renumbering subsection (6) as subsection (7); and

(*b*) inserting a new subsection (6) as follows—

"(6) Every money or value transfer service provider that controls both the ordering and the beneficiary side of a wire transfer shall—

(i) consider all the information from both the ordering and beneficiary sides in order to determine whether a suspicious transaction report has to be filed;

(ii) file a suspicious transaction report in any country affected by the suspicious wire transfer; and

(iii) make relevant transaction information available to the Authority.".

Amendment of s. 30 of the principal Act

13. Section 30 of the principal Act is amended, in paragraph (*a*) of subsection (3), by inserting the words "or any other written law" immediately after the word "Act".

Amendment of s.31 of the principal Act

14. Section 31 of the principal Act is amended by deleting subsection (4) and substituting therefor a new subsection as follows—

"(4) Where a reporting institution operates a branch or subsidiary in a country which does not permit the implementation of measures under this Act, the reporting institution shall apply appropriate additional measures to manage the risks of money laundering, terrorist financing and handling of proceeds of crime.".

Amendment of s. 33 of the principal Act

15. Section 33 of the principal Act is amended—

(*a*) in paragraph (*a*) of subsection (1), by inserting the word "currency" immediately after the word "large"; and

(*b*) in paragraph (*b*) of subsection (2), by inserting the word "currency" immediately after the word "large".

Amendment of s. 35 of the principal Act

16. Section 35 of the principal Act is amended—

(*a*) in the marginal note, by deleting the word "authority" and substituting therefor the word "Authority";

(*b*) in subsection (2), by deleting the word "authority" immediately after the word "The" and substituting therefor the word "Authority"; and

(*c*) in subsection (3), by deleting the word "authority" immediately after the word "the" and substituting therefor the word "Authority".

Amendment of s. 36 of the principal Act

17. Section 36 of the principal Act is amended—

(*a*) in subsection (6), by deleting the word "authority" immediately after the word "the" and substituting therefor the word "Authority"; and

(*b*) in subsection (7), by deleting the word "authority" and substituting therefor the word "Authority".

Amendment of s. 39 of the principal Act

18. Section 39 of the principal Act is amended, in subsection (1), by deleting the word "authority" and substituting therefor the word "Authority".

Amendment of s. 40 of the principal Act

19. Section 40 of the principal Act is amended—

(*a*) by deleting the words "For offences" and substituting therefor the words "An offence"; and

(*b*) by deleting the word "offences" immediately after the word "considered" and substituting therefor the words "an offence".

Amendment of s. 42 of the principal Act

20. Section 42 of the principal Act is amended by deleting subsection (2) and substituting therefor a new subsection as follows—

"(2) For purposes of proving an offence under subsection (1), it is not necessary that a person be convicted of the predicate offence.".

Amendment of s.43 of the principal Act

21. Section 43 of the principal Act is amended—

(*a*) in subsection (1), by inserting the words "or property" immediately after the word "funds";

(*b*) in paragraph (*b*) of subsection (2), by inserting the words "or property" immediately after the word "funds"; and

(*c*) in subsection (3), by deleting paragraph (d) and substituting therefor new paragraphs (*d*) and (*e*) as follows—

"(*d*) provide financial support for the training, upkeep, recruitment, radicalization or travel of a terrorist, or for the commission of a terrorist act; and

(*e*) finance any person to travel to a State, other than a person's State of residence or nationality, for the purpose of planning, perpetrating, or participating in a terrorist act or providing or receiving of terrorist training.".

Amendment of s. 44 of the principal Act

22. Section 44 of the principal Act is amended, in subsection (2), by inserting the words "or property" immediately after the word "funds".

Amendment of s. 46 of the principal Act

23. Section 46 of the principal Act is amended, in subsection (3), by inserting the words "or property," immediately after the word "funds".

Substitution of s. 47 of the principal Act

24. Section 47 of the principal Act is deleted and substituted therefor a new section as follows—

"Dealing in terrorist property

47.—(1) Any person who, knowingly or having reasonable cause to suspect, enters into, or becomes concerned in an arrangement which facilitates the retention or control of terrorist property, in any manner, including by—

(*a*) acting on behalf of another person;

(*b*) concealing or removing the property from the jurisdiction; or

(*c*) transferring the property to another person,

commits an offence.

(2) A person who commits an offence under subsection (1) shall, on conviction, be liable—

(*a*) in the case of a natural person, to imprisonment for life; and

(*b*) in the case of a legal person, to a fine of K500,000,000 or the value of the property whichever is greater, and revocation of a business licence.".

Amendment of s. 54 of the principal Act

25. Section 54 of the principal Act is amended, in subsection (3), by deleting the words "The Authority" and substituting therefor the words "A competent authority".

Amendment of s. 55 of the principal Act

26. Section 55 of the principal Act is amended—

(*a*) in paragraph (*b*) of subsection (2), by deleting the words "subsection (1)" and substituting therefor the words "this section"; and

(*b*) in subsection (3) by inserting the words "or any other written law" immediately after the word "Act".

Amendment of s. 56 of the principal Act

27. Section 56 of the principal Act is amended, in paragraph (*c*) by inserting the words "or any other written law" immediately after the word "Act".

Amendment of s. 59 of the principal Act

28. Section 59 of the principal Act is amended—

(*a*) in the marginal note, by deleting the word "authority" and substituting therefor the word "Authority";

(*b*) in subsection (1), by deleting the word "authority" wherever it appears and substituting therefor the word "Authority"; and

(*c*) in paragraph (*b*) of subsection (2), by deleting the words "of money laundering or financing terrorism" and substituting therefor the words "under this Act".

Amendment of s. 62 of the principal Act

29. Section 62 of the principal Act is amended—

(*a*) in the marginal note, by deleting the words "Preservation or assets freezing orders" and substituting therefor the words "Power of the Authority to issue restraining or asset freezing orders"; and

(*b*) in subsection (4), by deleting the word "authority" and substituting therefor the word "Authority".

Amendment of s. 63 of the principal Act

30. Section 63 of the principal Act is amended, in subsection (4), by deleting the word "Monitoring" and substituting therefor the words "A monitoring".

Amendment of s. 65 of the principal Act

31. Section 65 of the principal Act is amended, in subsection (1), by deleting the words "realizable or" immediately after the word "any".

Amendment of s. 66 of the principal Act

32. Section 66 of the principal Act is amended—

(*a*) in subsection (1), by deleting the word "Authority" wherever it appears and substituting therefor the words "competent authority"; and

(*b*) in subsection (4), by deleting the words "Director General" and substituting therefor the words "competent authority".

Amendment of s. 70 of the principal Act

33. Section 70 of the principal Act is amended, in subsection (3), by deleting the word "conviction" and substituting therefor the word "forfeiture".

Amendment of s. 71 of the principal Act

34. Section 71 of the principal Act is amended—

(*a*) by deleting subsection (1) and substituting therefor a new subsection as follows—

"(1) A court which makes a preservation order may, on application by a person affected by that order, vary or rescind the preservation order or an order authorizing the seizure of the property concerned or other ancillary order, if it is satisfied that—

(*a*) the operation of the order concerned will deprivethe applicant of the means to provide for reasonable living expenses and cause undue hardship to the applicant;

(*b*) the hardship that the applicant will suffer as a result of the order, outweighs the risk that the property

concerned may be destroyed, lost, damaged, concealed or transferred; and

(*c*) in the case of a variation, the variation will not result in substantial dissipation of the property."; and

(*b*) by deleting subsection (4) and substituting therefor a new subsection as follows—

"(4) The court that made an order in respect of immovable property may at any time, if it deems it necessary in the interest of justice, rescind the order.".

Amendment of s. 74 of the principal Act

35. Section 74 of the principal Act is amended, by deleting subsection (5) and substituting therefor a new subsection as follows—

"(5) Where a forfeiture order is obtained, the competent authority shall, within thirty days of the date of the order, publish the order in the *Gazette* and at least two newspapers of wide circulation in Malaŵi.".

Amendment of s. 75 of the principal Act

36. Section 75 of the principal Act is amended, in subsection (2), by deleting the words "twelve months" and substituting therefor the words "thirty days".

Amendment of s. 76 of the principal Act

37. Section 76 of the principal Act is amended—

(*a*) by deleting subsection (1) and substituting therefor a new subsection as follows—

"(1) When making a forfeiture order on an application in accordance with section 75 or section 78, a court may make an order excluding certain interests in property which is subject to the order, from the operation of the order.";

(*b*) in subsection (4), by deleting the word "Authority" and substituting therefor the words "competent authority"; and

(*c*) in subsection (5), by deleting the word "Authority" and substituting therefor the words "competent authority".

Amendment of s. 78 of the principal Act

38. Section 78 of the principal Act is amended—

(*a*) in subsection (1), by deleting the words "section 75 (2)" and substituting therefor the words "section 72 (2)"; and

(*b*) by deleting subsection (4) and substituting therefor a new subsection as follows—

"(4) The provisions of section 72 (4) shall apply to all proceedings under this section.".

Amendment of s. 81 of the principal Act

39. Section 81 of the principal Act is amended, in subsection (1), by deleting the words "75 (1)" and "75 (3)" and substituting therefor the words "76 (1)" and "78 (3)" respectively.

Amendment of s. 82 of the principal Act

40. Section 82 of the principal Act is amended, in paragraph (*a*), by deleting the words "under this Part" immediately after the word "order".

Amendment of s. 83 of the principal Act

41. Section 83 of the principal Act is amended by—

(*a*) deleting subsection (5) and substituting therefor a new subsection as follows—

"(5) Where a person makes an application under subsection (1), the person shall give the relevant competent authority written notice of the application within fourteen days of the application being made.";

(*b*) renumbering subsection (6) as subsection (7); and

(*c*) inserting a new subsection (6) as follows—

"(6) Where a person makes an application under subsection (3), the person shall give the Attorney General, who shall be a party to the proceedings, written notice of the application within fourteen days of the application being made.".

Amendment of s. 86 of the principal Act

42. Section 86 of the principal Act is amended—

(*a*) in paragraph (*a*) of subsection (3), by deleting the words "other serious offences" and substituting therefor the words "any other offence"; and

(*b*) by deleting subsections (5) and (6) and substituting therefor new subsections (5) and (6) as follows—

"(5) A court shall, at the hearing of an application for an order under section 48, consider the difference in value of the property of a person at any time after the commission of the applicable offence and the value of the property before the commission of the offence as the minimum value of the benefit.

(6) Subsection (5) shall not apply to the whole or any part of the benefit, as the case may be, where the person satisfies the court that the whole or the part of the benefit was due to causes unrelated to the commission of the offence.".

Amendment of s. 87 of the principal Act

43. Section 87 of the principal Act is amended, in section (2), by deleting the words "and so far" immediately after the word "statement" and substituting therefor the words "in so far".

Amendment of s. 90 of the principal Act

44. Section 90 of the principal Act is amended—

(*a*) in subsection (3), by deleting the words "pecuniary order" and substituting therefor the words "confiscation order or a pecuniary penalty order"; and

(*b*) in subsection (4), by inserting the words "confiscation order or" immediately after the words "satisfy a".

Amendment of s. 93 of the principal Act

45. Section 93 of the principal Act is amended by deleting subsection (1) and substituting therefor the following new subsection (1)—

"(1) A competent authority may, with the consent of a person or the occupier of land or premises, as the case may be, or under a warrant issued under section 94—

(*a*) search the person for tainted property; or

(*b*) enter upon the land or upon or into the premises and search the land or premises for tainted property,

and in either case, seize any property found in the course of the search that the competent authority believes, on reasonable grounds, to be tainted property.".

Amendment of s. 94 of the principal Act

46. Section 94 of the principal Act is amended—

(*a*) by deleting subsection (1) and substituting therefor the following new subsection—

"(1) Where a competent authority has reasonable grounds for suspecting that there is, or may be within the next seventy-two hours, tainted property of a particular kind—

(*a*) on a person;

(*b*) otherwise in the immediate control of the person; or

(*c*) upon land or upon or in any premises,

the competent authority may lay information under oath before a magistrate setting out those grounds, and apply for a warrant to search the person, the land or the premises, as the case may be, for tainted property of that kind.";

(*b*) in subsection (3) by deleting the words "the relevant offence" and substituting therefor the words "any offence"; and

(*c*) by deleting subsection (4) and substituting therefor the following new subsection—

"(4) Where information has not been laid in respect of the relevant offence at the time when the application for the warrant is made, a magistrate shall not issue a warrant under subsection (2), unless the magistrate is satisfied that—

(*a*) information will be laid in respect of the relevant offence within forty-eight hours; and

(*b*) the property is tainted property.".

Amendment of s. 96 of the principal Act

47. Section 96 of the principal Act is amended, in subsection (2), by—

(*a*) inserting the word "to" immediately after the word "referred"; and

(*b*) deleting the word "monthly" and substituting therefor the word "quarterly".

Amendment of s. 99 of the principal Act

48. Section 99 of the principal Act is amended, in subsection (3), by deleting the words "subsection (1)" and substituting therefor the words "subsection (2)".

Amendment of s. 101 of the principal Act

49. Section 101 of the principal Act is amended, in paragraph (a) of subsection (3), by deleting the word "receiver's" and substituting therefor the word "administrator's".

Amendment of s.102 of the principal Act

50. Section 102 of the principal Act is amended, in subsection (1), by deleting the word "is" immediately before the word "excluded" and substituting therefor the words "shall be".

Amendment of s.107 of the principal Act

51. Section 107 of the principal Act is amended—

(*a*) in the marginal note, by deleting the words "preservation and";

(*b*) in subsection (1), by deleting the word "preservation" and substituting therefor the word "restraining"; and

(*c*) in paragraph (*b*) of subsection (2), by deleting the word "serious" immediately before the word "offence".

Amendment of s. 108 of the principal Act

52. Section 108 of the principal Act is amended—

(*a*) in the marginal note by deleting the word "Preservation" and substituting therefor the word "Restraining";

(*b*) in subsection (1), by deleting the word "preservation" and substituting therefor the word "restraining";

(*c*) in subparagraph (ii) of subsection (2) (*b*), by deleting the word "requiring" and substituting therefor the word "direct";

(*d*) in paragraph (*a*) of subsection (3), by deleting the word "dependents" and substituting therefor the words "immediate family";

(*e*) in paragraph (*b*) of subsection (3), by deleting the word "Division" and substituting therefor the word "Act";

(*f*) in subsection (4), by deleting the words "section 66" and substituting therefor, the words "section 90";

(*g*) by deleting subsection (5) and substituting therefor the following new subsection—

"(5) A person appointed under subsection (2) (*b*) (i) may apply to the court for directions on any question respecting the management or preservation of the property under his control."; and

(*h*) by deleting subsection (6) and substituting therefor the following new subsection—

"(6) A restraining order obtained under subsection (1) shall be served on all persons known to the competent authority to have an interest in the order or any number of persons that the court thinks expedient and all persons so served shall have the right to appear at the hearing and be heard.".

Amendment of s. 110 of the principal Act

53. Section 110 of the principal Act is amended—

(*a*) in the marginal note, by deleting the word "preservation" and substituting therefor, the word "restraining"; and

(*b*) in subsection (2), by deleting the word "preservation" and substituting therefor, the word "restraining".

Amendment of s. 111 of the principal Act

54. Section 111 of the principal Act is amended—

(*a*) in the marginal note, by deleting the word "preservation" and substituting therefor the word "restraining";

(*b*) in subsection (1), by deleting the word "preservation" and substituting therefor the word "restraining"; and

(*c*) in paragraph (*b*) of subsection (1), by deleting the words "body corporate" and substituting therefor the words "legal person".

Amendment of s.112 of the principal Act

55. Section 112 of the principal Act is amended—

(*a*) in the marginal note, by deleting the word "preservation" and substituting therefor, the word "restraining"; and

(*b*) by deleting the word "preservation" and substituting therefor, the word "restraining".

Amendment of s. 113 of the principal Act

56. Section 113 of the principal Act is amended—

(*a*) in the marginal note by deleting the word "preservation" and substituting therefor, the word "restraining"; and

(*b*) in subsection (1) by deleting the word "preservation" and substituting therefor the word "restraining".

Amendment of s. 114 of the principal Act

57. Section 114 of the principal Act is amended—

(*a*) in the marginal note, by deleting the word "preservation" and substituting therefor the word "restraining"; and

(*b*) in subsection (1), by deleting the word "preservation" and substituting therefor the word "restraining".

Passed in Parliament thirteenth day of April, two thousand and twenty-three.

FIONA KALEMBA
Clerk of Parliament