MALAWI GOVERNMENT

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Act

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I assent

PRO. ARTHUR PETER MUTHARIKA
PRESIDENT
14th February, 2017

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An Act to establish an independent and autonomous Financial Intelligence Authority; to better prevent, investigate and combat financial and related or consequential crimes; to enable the tracing, identification, tracking, freezing, seizure or confiscation of proceeds of crimes; and to provide for connected and incidental matters

Part I—Preliminary

Short title and commencement

1. This Act may be cited as the Financial Crimes Act, 2016 and shall come into force on a date the Minister may, by notice published in the *Gazette*, appoint.

Interpretation

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

"account" means any facility or arrangement by which a financial institution does at least one of the following,—

(*a*) accepts deposits of currency;

(*b*) allows withdrawals of currency or transfers of currency into or out of the account;

(*c*) pays cheques or payment orders drawn on a financial institution by, or collects cheques or payment orders on behalf of, a person;

(*d*) supplies a facility or arrangement for a safe deposit box;

"administrator" means a person appointed under section 99;

"Authority" means the Financial Intelligence Authority established pursuant to section 3;

"authorized officer" means an officer the Minister may, by notice published in the *Gazette*, designate;

"bearer negotiable instrument" includes monetary instruments in bearer form such as traveller's cheques; negotiable instruments, including cheques, promissory notes and money orders, that are either in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in a form that title thereto passes upon delivery; incomplete instruments, including cheques, promissory notes and money orders, signed but with the payee's name omitted;

"beneficial owner" means a natural person who ultimately owns or controls a customer or a person on whose behalf, a transaction is conducted and includes a natural person who exercises ultimate effective control over a legal person or arrangement;

"business relationship" means an arrangement or proposed arrangement between a person and a reporting institution where the purpose or effect of the arrangement is to facilitate a frequent, habitual or a regular course of dealing between the person and the institution; even if the total amount of a payment to be made by a person to another in the course of that arrangement is not known or not capable of being ascertained, at the time the arrangement is made;

"close associate" includes a controlling party, beneficial owner, a subsidiary of the legal person or arrangement and in relation to an individual includes a close relation of the individual or a partner or a close relation of the partner, of the individual and includes a beneficial owner;

"collective investment scheme" has the same meaning as defined in the Securities Act; Cap. 46:06

"competent authority" means where appropriate, office of the Attorney General, office of the Director of Public Prosecutions, office of the Registrar General, office of the Administrator General, a police officer, an immigration officer, a revenue officer, the Anti-Corruption Bureau, the Authority, the Reserve Bank of Malawi, the Registrar of Financial Institutions as defined in the Financial Services Act, and includes any person authorized by any Cap. 44:05 of them in that behalf and any other person the Minister may, by notice published in the *Gazette*, designate;

"correspondent banking" is the provision of banking services by one bank ("the correspondent bank") to another bank ("the respondent bank") and includes other similar relationships or arrangements;

"counter-terrorism conventions" means any of the United Nations counter-terrorism conventions set out in the First Schedule;

"court" has the meaning ascribed to it under the Courts Act; Cap. 3:02

"currency" means the coin and paper money of Malawi or of a foreign country that is designated as legal tender and which is customarily used and accepted as a medium of exchange in the country of issue and may be represented in coin, paper or electronic form;

"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 on behalf of another; or

(*e*) a person the Minister may, by notice published in the *Gazette*, prescribe;

"designated non-financial businesses and professions" include—

(*a*) a safe deposit or custody services provider;

(*b*) a gambling house;

(*c*) a casino or lottery;

(*d*) a trust or company service provider not otherwise covered by this definition, which, as a business, provides any of the following services to third parties—

(i) acting as an agent for the establishment of legal persons;

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

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

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

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

(*e*) legal practitioners, notaries, other independent legal professionals and accountants when they prepare for or carry out transactions for their client concerning the following activities—

(i) buying and selling of real estate;

(ii) managing of client money, securities or other assets;

(iii) management of bank, savings or securities accounts on behalf of clients;

(iv) organization of contributions for the creation, operation or management of companies; or

(iv) creation, operation or management of legal persons or arrangements, and buying and selling of business entities;

(*f*) estate agents dealing in real estate, when the person dealing

is involved in transactions for a client concerning the letting, buying and selling of real estate;

(*g*) dealers in precious metals, stones and bullion;

(*h*) any other business as the Minister may, by notice published in the *Gazette*, prescribe;

"Director General" means the chief executive officer of the Authority appointed pursuant to section 6;

"document" means any record of information and includes—

(*a*) anything on which there is writing;

(*b*) anything on which there are marks, figures, symbols, or perforations having meaning for persons qualified to interpret them;

(*c*) anything from which sounds, images or writing can be produced, with or without the aid of anything else; and

(*d*) a map, plan, drawing, photograph or similar thing;

"financial crime" means a criminal offence whether or not arising under a financial services law or relating to a financial institution, that involves—

(*a*) fraud or dishonesty;

(*b*) financing or facilitating a criminal offence;

(*c*) dealing with proceeds of a criminal offence; and

includes offences under this Act;

"financial institution" bears the meaning ascribed to it under the Financial Services Act and includes money transfer service providers; Cap. 44:05

"financial services laws" has the same meaning ascribed to it under the Financial Services Act; Cap. 44:05

"Fund" means the Confiscation Fund established under section 128;

"gift" includes a direct or indirect transfer of property by a person to another person—

(*a*) after the commission of an offence by the first person;

(*b*) for a consideration the value of which is significantly less than the value of the consideration provided by the first person; and

(*c*) to the extent of the difference between the market value of the property transferred and the consideration provided by the transferee;

"interest", in relation to property, means—

(*a*) a legal or equitable interest in the property;

(*b*) a right, power or privilege in connection with the property;

"politically exposed persons" includes, in Malawi or a foreign country, the President; the Vice-President; persons appointed into public office by the President or other public body or directed officers; elected officers, persons holding management positions in public institutions including state owned corporations; members of governing bodies of political parties; independent politicians; persons entrusted with a prominent function in an international organization and individuals having family, social or business connexions with the aforementioned persons;

"possession" has the meaning ascribed to it under the Penal Code;

"proceedings" means any civil or criminal procedure conducted by or under the supervision of a judge or judicial officer, however described, in relation to an alleged or proven offence, or property derived from such offence, and includes an inquiry, investigation, preliminary or final determination of facts;

"proceeds of crime, proceeds of an offence or proceeds of predicate offence" means any property directly or indirectly derived or realized from an offence, and includes, on a proportional basis, property into which any property derived or realized directly from the offence was later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived or realized from the property at any time since the commission of the offence;

"property" means an asset of every kind, whether corporeal or incorporeal, moveable or immovable, whether situated in Malawi or elsewhere and whether tangible or intangible, and includes any legal or equitable interest in any such property;

"Public Appointments Committee" bears the meaning ascribed to it under section 56 (7) of the Constitution;

"realizable property" means property of corresponding value—

(*a*) held by a defendant;

(*b*) possessed by a person to whom a defendant has directly or indirectly made a gift as defined in this Act; or

(*c*) to which a defendant is a beneficiary entitled.

"Registrar" means the Registrar of Financial Institutions established under the Financial Services Act; Cap. 44:05

"reporting institution" means a financial institution or a designated non-financial business or profession;

"self-regulatory bodies" means any professional body made up of members of the profession which has a role in regulating persons qualified to enter and practice the profession and performs certain supervisory or monitoring functions;

"shell bank" means a bank that has no physical presence in the country in which it is incorporated and licensed, and which is unaffiliated with a regulated financial group that is subject to effective consolidated supervision;

"supervisory authority" means an authority having oversight over a reporting institution or profession as the Minister may designate by notice in the *Gazette* and includes the Reserve Bank of Malawi and the Registrar;

"tainted property" means proceeds, including income or other benefits derived from the proceeds or instrumentalities used for or intended for use of, in money laundering or predicate offences;

'terrorist' means a natural person who, directly or indirectly, unlawfully and willfully, commits or attempts to commit a terrorist act, and includes a natural person who participates as an accomplice, organizes or directs others to commit a terrorist act; or otherwise contributes to the commission of a terrorist act by another individual or a group of persons;

"terrorist act" means—

(*a*) an act or omission whether committed in or outside Malawi, which constitutes an offence within the scope of United Nations counter-terrorism conventions; or

(*b*) an act, or threat of action in or outside Malawi 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 thereof of, or distributing or exposing the public or any part thereof, to any dangerous, hazardous, radio-active or harmful

substance; any toxic chemical; or 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) prejudices national security or public safety; or

(x) involves participating in the activities of a terrorist group, including the supplying of information or material resources, or the funding of its activities in any way, with knowledge of the fact that such 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 intimidate the public or a section of the public; or compel a government or an international organization to do, or refrain from doing, an act; or seriously destabilize or destroy the fundamental political, constitutional, economic or social structures of a country or an international organization, and for the purpose of advancing a political, ideological, or religious cause; but does not include an act which disrupts any services, and is committed in pursuance of a protest, demonstration or stoppage of work, as long, and as long only, as the act is not intended to result in any harm referred to in this paragraph;

"terrorist organization" means a legal person or any group of terrorists that, directly or indirectly,—

(*a*) unlawfully and willfully, commits or attempts to commit, a terrorist act by any means;

(*b*) participates as an accomplice in a terrorist act;

(*c*) organizes or directs others to commit a terrorist act; or

(*d*) contributes to the commission of a terrorist act by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act;

"terrorist property" means—

(*a*) proceeds from the commission of a terrorist act;

(*b*) money or other property which has been, or is likely to be used to commit a terrorist act; or

(*c*) money or other property which has been, is being, or is likely to be used by a terrorist group;

"ultimately owns or controls" and "ultimate effective control" refer to situations in which ownership or control is exercised through a chain of ownership or by means of control other than direct control and also includes beneficial ownership under a life or other investment linked insurance policy.

(2) Any reference in this Act to a person being charged or about to be charged with an offence is a reference to a procedure, however described, in Malaŵi or elsewhere by which criminal proceedings may be commenced.

(3) For the purposes of this Act, a person shall be taken to be convicted of an offence if—

(*a*) the person is convicted of the offence;

(*b*) a charge is proved against a person, but the person is discharged without any conviction being recorded; and

(*c*) a court, with the consent of the convicted person, takes the offence, of which the person has not been found guilty, into account in passing sentence on the person for another offence.

(4) For the purposes of this Act, a conviction of a person for an offence shall be taken to be quashed in any case—

(*a*) where subsection 3(*a*) applies, if the conviction is quashed or set aside;

(*b*) where subsection 3(*b*) applies, if the finding of guilt is quashed or set aside;

(*c*) where subsection 3(*c*) applies, if either—

(i) the conviction of the person for the other offence referred to in that section, is quashed or set aside;

(ii) the decision of a court to take the offence into account in passing sentence for that other offence is quashed or set aside.

(5) (*a*) Subject to paragraphs (*b*) and (*c*), for the purposes of this Act, the value of property, other than cash, in relation to any person holding the property is—

(i) the market value of the property; or

(ii) where any other person holds an interest in the property, the market value of the beneficial interest of first mentioned person in the property less the amount required to discharge any encumbrance, other than a charging order, on that interest.

(*b*) subject to subsection 7(*b*), references in this Act to the value, at any time referred to in paragraph (*c*) as "the material time" of a gift or of any payment or reward, are references to—

(i) the value of the gift, payment or reward to the recipient when he or she received it, adjusted to take account of subsequent changes in the value of money; or

(ii) where paragraph (*c*) applies, the value therein mentioned, whichever is the greater;

(*c*) subject to subsection 7(*b*), if at the material time the recipient holds—

(i) the property which he or she received (not being cash); or

(ii) property which in whole or in part indirectly represents, in the recipient's hands, the property which he or she received,

the value referred to in paragraph (*b*)(ii) is the value to him or her at the material time of the property mentioned in paragraph (*b*)(i) or, as the case may be, paragraph (*b*)(ii) so far as it represents the property which he or she received, but disregarding in either case any charging order.

(6) For purposes of this Act, dealing with property held by any person includes—

(*a*) where the property is a debt owed to that person, making a payment to any person in reduction or full settlement of the amount of the debt;

(*b*) making or receiving a gift of the property; or

(*c*) removing the property from Malaŵi.

(7) (*a*) A gift is caught by this Act if—

(i) it was made by the defendant at any time after the commission of an offence, or if more than one, the earliest of the offences, to which the proceedings for the time being relate; and

(ii) the court considers it appropriate in all the circumstances to take the gift into account;

(*b*) For the purposes of this Act, the circumstances in which the defendant is to be treated as making a gift include those where the defendant transfers property to another person, directly or indirectly, for a consideration, the value of which is significantly less than the value of the consideration provided by the defendant; and the provisions of sections 6 (2) and (3) shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between

the values referred to under this subsection of the consideration provided by the defendant.

(8) A reference to a benefit derived or obtained by or otherwise accruing to a person includes a reference to a benefit derived or obtained by, or otherwise accruing to, another person at the request or direction of the first person.

(9) For the purposes of this Act—

(*a*) a person has benefited from an offence if the person has at any time received any payment or other reward in connexion with, or derived any pecuniary advantage from, the commission of an offence, whether committed by that person or another person;

(*b*) proceeds of crime of a person are any payments or other awards received by him or her in connexion with, and any pecuniary advantage derived by him or her at any time from, the commission of an offence; and

(*c*) the value of the proceeds of crime of a person is the aggregate of the values of the payments, rewards or pecuniary advantages received by him or her in connexion with, or derived by him or her from, the commission of an offence.

(10) For purposes of this Act, any offence shall be considered a predicate offence.

Part II—The Financial Intelligence Authority

Establishment of Financial Intelligence Authority

3.—(1) There is hereby established a public body to be known as the Financial Intelligence Authority (in this Act, referred to as "the Authority") which shall be the principal national agency responsible for preventing and combating financial crimes.

(2) The Authority shall be a body corporate with perpetual succession and a common seal with power to enter into contracts, capable of suing and being sued in its own name; hold land; and do or perform all other things or acts as a body corporate for the proper administration of this Act.

(3) The Authority shall not, in the performance of its functions, be subject to the direction of, control or influence from any other person, authority or entity which may compromise its operational independence

Functions of the Authority

4. The functions of the Authority are to—

(*a*) request, receive and analyze reports submitted by reporting institutions pursuant to this Act;

(*b*) report, spontaneously or upon request, to the relevant law enforcement authorities, or a supervisory authority if, on the basis of its analysis and assessment, the Authority determines that there is an element of any offence under this Act or any relevant written law;

(*c*) create and maintain a database of statistics and records on matters relevant to the effectiveness and efficiency of the implementation of the objectives of this Act;

(*d*) conduct research into trends, techniques and developments in the area of financial crimes, including money laundering, tracing proceeds of crime and terrorist financing in order to improve the detection, prevention and deterrence of money laundering and terrorist financing;

(*e*) cooperate with local and international institutions, organizations or agencies in realizing the objects of this Act;

(*f*) advise and apprise the Minister on trends, patterns and developments emerging in relation to the provisions of this Act;

(*g*) offer training and support on any matter pursuant to objectives of and compliance with this Act;

(*h*) conduct public awareness on matters relating to the offences under this Act or any relevant law;

(*i*) design, develop and implement internal systems, controls, policies and procedures with respect to security of its personnel, documents and information, including procedures for handling, storage, dissemination, and protection of, and access to, information; and

(*j*) do any other things as are necessary or incidental to the performance of its functions under this Act.

Powers of the Authority

5. The Authority shall have power to—

(*a*) issue, in writing, instructions, directions, directives, guidelines or rules to reporting institutions as it may consider necessary for the better carrying out of its functions under this Act or regarding the application of this Act;

(*b*) impose and enforce administrative sanctions and penalties for breach of this Act;

(*c*) investigate any matter in relation to implementation of this Act;

(*d*) inspect any record, document or information kept pursuant to this Act and upon demand, obtain or compel the production of or access to any record, document or information and make notes

and take copies of whole or any part of the record, document or information;

(*e*) where appropriate, in consultation with a supervisory authority or self-regulatory body,—

(i) issue instructions, directions, guidelines or rules to a supervisory authority or self-regulatory body as it may consider necessary for the better carrying out of its functions under this Act or regarding the application of this Act;

(ii) delegate powers to a supervisory authority or self-regulatory body to issue instructions, directions, guidelines or rules regarding the application of this Act:

Provided that a supervisory authority or self-regulatory body shall consult the Authority prior to issuing any instructions, directions, guidelines or rules under this section;

(*f*) access the widest possible range of financial, administrative and law enforcement information from any supervisory authority, financial regulatory authority, fiscal or tax agency, competent authority or fraud investigations agency for the proper discharge of the functions of the Authority under this Act or for purposes of achieving the objectives of the Act;

(*g*) request and receive information or additional information, as the case may be, from any person, institution or agency, whether local or international, for purposes of this Act;

(*h*) request and receive progress and outcome reports from law enforcement or prosecutorial agents on matters referred to them;

(*i*) instruct a reporting institution to take such steps as may be appropriate to facilitate any investigation anticipated by the Authority;

(*j*) enter into any agreements or arrangements with any local institution or agency regarding the exchange of information; and

(*k*) do any act it is authorized to do under this Act for the better carrying out of its functions or application of this Act .

Appointment and qualifications of Director General

6.—(1) There shall be a Director General of the Authority who shall be appointed by the President, for a five year term, renewable once, upon terms and conditions as may be specified in the instrument of appointment.

(2) The Director General shall be a public officer and the appointment to the office shall be subject to confirmation by the Public Appointments Committee of the National Assembly:

Provided that the Public Appointments Committee shall have the power to request particulars relating to the recruitment process itself as provided for under section 7 of this Act.

(3) The Director General shall be the chief executive officer of the Authority and shall perform any functions and duties, and exercise powers, as are conferred upon him by this Act or any other written law.

(4) A person shall not be appointed or remain Director General who, upon appointment, is or remains—

(*a*) a member of Parliament;

(*b*) a minister or Deputy Minister;

(*c*) a serving member of the Judiciary;

(*d*) a holder of office in a political party or its affiliate;

(*e*) a minor or a person under legal disability;

(*f*) a person who has been responsible for a loss suffered by a licensed financial institution in Malawi or elsewhere;

(*g*) a person who has been removed by a court of competent jurisdiction, whether in Malawi or elsewhere, from an office of trust on account of misconduct in the exercise of his duties in that office;

(*h*) a person who provides or is engaged to provide, whether as a member of a firm or not, professional services to a financial institution;

(*i*) a director or holder of five percent or more shares in a reporting institution;

(*j*) in terms of any law in force in any country, adjudged or otherwise declared bankrupt or insolvent and has not been rehabilitated or discharged, made an assignment to, or arrangement or composition with, his or her creditors, which has not been rescinded or set aside;

(*k*) convicted of an offence, the punishment of which has no option of a fine;

(*l*) in a position where there is a conflict of interest between the office of the Director General and his business interest; or

(*m*) not a citizen of Malawi.

(5) The Director General shall be a person of integrity with recognized, relevant qualifications, and experience in matters of finance, law or law enforcement.

(6) The Director General may delegate to any person, subject to any terms and conditions that the Director General may specify, any power, duty or function conferred on the Director General under this Act.

(7) In the event of incapacity of the Director General, or if the office of Director General is vacant, the Deputy Director General shall act in his place and have all of the powers, duties and functions of the Director General:

Provided that the Deputy Director General, shall not act as Director General for a period exceeding six months.

(8) In the event of incapacity of the Director General and Deputy Director General or if the offices of the Director General and Deputy Director General are vacant, the President shall appoint a suitably qualified person to act as Director General for a period not exceeding six months or until the vacancy is filled.

Recruitment process for Director General

7.—(1) In the event of a vacancy in the office of the Director General, the Minister shall advertise the position in the *Gazette* and at least two newspapers of widest circulation in Malawi and carry out short listing and interviews in order to select a minimum of two and a maximum of three candidates for the position:

(2) The Minister shall send the list to the President for the appointment of one of the candidates as Director General.

(3) The shortlisted candidates for the position of Director General shall undergo necessary security clearance and vetting procedures.

(4) The President shall, subject to section 6(2), appoint a Director General only from the names on the list recommended by the Minister:

Provided that if the President rejects all the names on the said list, he shall send the list back to the Minister with reasons for the rejection and the Minister shall advertise the position again and carry out fresh interviews.

Vacation from office of Director General

8.—(1) Subject to this Act, where the President is satisfied that the Director General—

(*a*) is incapacitated by physical or mental illness; or

(*b*) has become bankrupt or made arrangements with his creditors;

(*c*) misconducted himself in a manner that brings his position or office into disrepute; or

(*d*) is otherwise unable or unfit to discharge the functions of the office, the President shall appoint a committee to inquire into the information and furnish its findings to the President.

(2) The committee appointed under subsection (1) shall consist of—

(*a*) a person, who has sufficient knowledge of the law, who shall be the chairperson of the committee; and

(*b*) two other persons of good character, high integrity and with at least ten years' experience in the field of economics or finance.

(3) At the time of appointing the committee under subsection (1), the President may send the Director General on leave, or suspend the Director General from office, pending—

(*a*) the determination of any inquiry as to whether grounds of misconduct, incapacity or incompetence exist; or

(*b*) an investigation of alleged violation of section 10.

(4) The committee in discharging its functions under this section shall give the Director General an opportunity to be heard.

(5) Where the committee, on the basis of its findings, advises the President that the Director General concerned ought to be removed from office, the President shall terminate the appointment of the Director General.

(6) Seeks the decision to terminate the appointment referred to in subsection (5), shall not take effect unless confirmed by the Public Appointments Committee.

(7) The Director General may, at any time, by notice in writing, to the Minister, resign his office.

Appointment of Deputy Director General and other staff of the Authority

9.—(1) The Minister, in consultation with the Director General, shall appoint the Deputy Director General who shall be a person of integrity with recognized, relevant qualifications, and experience in matters of finance, law or law enforcement.

(2) The Director General shall appoint and employ at such remuneration and subject to such terms and conditions as the Minister may approve, suitably qualified and experienced persons as members of staff of the Authority, for the purpose of ensuring the proper performance of its functions and the attainment of its objectives.

(3) The Authority shall, in its human resource policies and procedures, prescribe qualifications and competency requirements for each position.

(4) The Authority shall ensure that its staff members have the necessary security clearance, vetting procedures and understanding of their responsibilities in handling and disseminating sensitive and confidential information.

(5) A person appointed under this section shall be an officer in the public service.

Disclosure of information

10.—(1) This section applies to an officer, employee, consultant or agent of the Authority while the person is or after the person ceases to be an officer, employee, consultant or agent of the Authority.

(2) Except for the purpose of the performance of his duties or the exercise of his functions under this Act or when lawfully required to do so by a court, any person referred to in subsection (1) shall not disclose any information or matter or source of information or matter which has been obtained by him, in the performance of his duties or the exercise of his functions under this Act or which he has knowledge except for purposes of implementing and enforcing this Act.

(3) An employee or agent of the Authority shall not disclose any information that would directly or indirectly identify an individual who provided a report or information to the Authority, or a person or an entity about whom a report or information was provided under this Act.

(4) The Director General, the Deputy Director General and every member of staff, consultant or agent of the Authority shall, before he assumes office, take the oath or make an affirmation specified in the Second Schedule.

(5) Notwithstanding this section, the Director General may, for the purpose of an enquiry into any matter under this Act, impart to any agency in Malawi or abroad, any piece of information, as may appear to him to be necessary to assist an investigation or prosecution of an offence under this Act.

(6) A person who, without lawful excuse, contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for fifteen years and a fine of K30,000,000.

Immunity of the Authority and officials

11. An action shall not lie against the Authority, the Director General, or the Deputy Director General, officer or employee of the Authority or any person acting under the direction of the Authority for anything done in good faith in the administration or discharge of any powers, duties or functions under this Act.

Funds of the Authority

12.—(1) The funds of the Authority shall consist of—

(*a*) money appropriated annually by the National Assembly for the purposes of the Authority;

(*b*) penalties the Authority may impose for breach of this Act; and

(*c*) fees charged by the Authority;

(*d*) grants, gifts and donations made to the Authority with prior approval of the Minister.

(2) The financial year of the Authority shall be the financial year of Government.

Annual budget

13. The Authority shall prepare for each new financial year an annual budget of revenue and expenditure which shall be submitted to the Minister at least three months prior to the commencement of the financial year.

Accounts and audit

Cap. 37:02

14.—(1) The Authority shall cause to be kept proper books and other records of accounts in respect of receipts and expenditures of the Authority in accordance with the Public Finance Management Act.

(2) The Authority shall cause to be prepared, as soon as practicable, but not later than six months after the end of the financial year, an annual report on all the financial transactions of the Authority.

(3) The report referred to in subsection (2) shall include a balance sheet, an income and expenditure account and may include the report of the Auditor General and shall be laid by the Minister before the National Assembly.

(4) The Authority shall be subject to examination and audit by the Auditor General.

(5) The Auditor General and every person acting on behalf of or under the direction of the Auditor-General shall not use or disclose any information relating to the work of the Authority that they have obtained, or to which they have had access, in the course of an audit.

Annual or other reports

15.—(1) The Authority shall—

(*a*) prepare and submit to the Minister on or before 30th September in each year an annual report of the Authority.

(*b*) from time to time advise the Minister on the work of the Authority and in particular on matters that could affect public policy or the priorities to be set by the Authority;

(2) The Minister shall lay or cause to be laid a copy of the annual report of the Authority on the table of Parliament.

Part III—Reporting Obligations

Verification of customers' identity

16.—(1) Every reporting institution shall, before or after entering into a business relationship with a customer, whether on behalf of himself or a beneficial owner, identify the customer or the beneficial owner, on the basis of an official document and verify the identification through reliable and independent source documents, data or information or other evidence as is reasonably capable of verifying the identity of the customer or beneficial owner when—

(*a*) opening an account or otherwise establishing a continuing business relationship with a customer;

(*b*) a customer who is neither an account holder nor in an established business relationship with the reporting institution, wishes to carry out a transaction in an amount prescribed in a regulation or directive, either generally or in relation to any class of reporting institution, whether conducted as a single transaction or several transactions that appear to be linked;

(*c*) a customer who is neither an account holder nor in an established business relationship with the reporting institution, wishes to carry out a domestic or international wire transfer of monetary amounts prescribed in a regulation or directive, either generally or in relation to any class of reporting institution;

(*d*) there is a suspicion of commission of an offence under this Act; or

(*e*) the reporting institution has doubts about the veracity or adequacy of the customer identification and verification documentation or information it had previously obtained.

(2) Without limiting the generality of subsection (1), every reporting institution shall—

(*a*) when establishing a business relationship, seek, and where necessary, obtain information on the purpose and intended nature of the business relationship;

(*b*) if the customer is a natural person, adequately identify and verify the identity of the person, including information relating to—

(i) the name, address and occupation of the person;

(ii) the national identity card or passport or other applicable official identifying document of the person; and

(iii) the source of wealth and source of property of the person determined through the use of reasonable measures.

(*c*) if the customer is a legal person, every reporting institution shall—

(i) understand the nature of the customer's business and its ownership and control structure;

(ii) identify the customer and verify his identity through the following information—

(*aa*) name, legal form and proof of existence;

(*bb*) the powers that regulate and bind the legal person, as well as the names of the relevant persons having a senior management position in the legal person; and

(*cc*) the address of the registered office and, if different, a principal place of business;

(*d*) if the customer is a politically exposed person, in addition to the requirements in paragraph (1) and (2) (*a*), (*b*), and (*c*) a reporting institution shall—

(i) establish risk management systems to determine whether a customer or the beneficial owner is a politically exposed person;

(ii) obtain senior management approval prior to establishing (or continuing, in respect of existing customers) the business relationships;

(iii) take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as a politically exposed person;

(iv) conduct enhanced ongoing monitoring on that relationship;

(v) take reasonable measures to identify family members and close associates of politically exposed persons;

(vi) take reasonable measures to determine whether the beneficiary of a life insurance policy or, where the beneficiary is not a natural person, the beneficial owner of the beneficiary is a politically exposed person before a payout is made;

(vii) where higher risks are determined, inform senior management before the payout of the policy proceeds is made, conduct enhanced scrutiny of the entire business relationship and consider submitting a suspicious transaction report.

(3) Every reporting institution shall identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner, using relevant information or data obtained from a reliable source, such that the reporting institution is satisfied that it knows who the beneficial owner is.

(4) Every reporting institution shall identify and take reasonable measures to verify the identity of beneficial owners of legal persons through the following information—

(*a*) the identity of the natural person who ultimately has a controlling ownership interest in a legal person;

(*b*) the identity of the natural person exercising control of the legal person through other means; or

(*c*) the identity of the relevant natural person who holds a senior management position.

(5) In respect of a trust, the identity of a settlor, a trustee, the protector, if any, a beneficiary or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust, including through a chain of control or ownership.

(6) For other types of legal arrangements, the identity of persons in equivalent or similar positions referred to in subsection 4 (*a*), (*b*) and (*c*) above.

(7) Notwithstanding the provisions of subsections (1), (2), (3) and (4) above, reporting institutions may, after carrying out risk management procedures, complete verification after the establishment of the business relationship:

Provided that—

(*a*) the verification of identity may be completed as soon as reasonably practicable after the commencement of the business;

(*b*) the risk of money laundering or financing of terrorism is effectively managed;

(*c*) a delay in verification is unavoidable in the interest of not interrupting the normal conduct of business.

(8) Subject to provisions of section 21(5), in case of non-face to face business relationships, a reporting institution shall—

(*a*) apply same identification and verification measures and on-going monitoring standards as for face to face customers;

(*b*) accept non face-to-face business only from non-resident customers.

(9) Every reporting institution shall—

(*a*) take reasonable measures to ascertain the purpose of any transaction in excess of an amount the Director General may prescribe, from time to time, by notice published in the *Gazette*, and the origin and ultimate destination of the funds involved in the transaction;

(*b*) where it appears to a reporting institution that a person requesting to enter into any transaction, whether or not in the course of a continuing business relationship, is acting on behalf of another person, verify that the person purporting to act on behalf of the customer has the necessary authority, identify and verify the identity of the person.

(10) Subsection (1), (2) and (9)(*a*) do not apply, unless the reporting institution has reason to suspect that the transaction is suspicious or unusual,—

(*a*) when the transaction is part of an existing and regular business relationship with a person who has already produced satisfactory evidence of identity;

(*b*) when the transaction is an occasional transaction not exceeding an amount the Minister prescribes, by notice published in the *Gazette*; or

(*c*) subject to an adequate analysis of money laundering and terrorist financing risk, to such other customer or reporting institution as the Minister may prescribe by notice published in the *Gazette*;

(11) The Minister, may by notice published in the *Gazette*, prescribe—

(*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 the circumstances in which, the provisions of this section shall apply in relation to any particular customer or class of customers.

(12) In respect of customer accounts and business relationships that existed before the coming into force of this Act, a reporting institution shall apply measures set out under this section on the basis of materiality and risk within a period the Minister may prescribe, by notice published in the *Gazette*.

(13) The customer due diligence shall be conducted on any existing relationships, at appropriate times, taking into account whether and when the identification and verification measures were previously undertaken and the adequacy of information obtained.

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

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

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

Reliance on intermediaries or third parties

17.—(1) Where a reporting institution relies on an intermediary or third party to undertake its obligations under section 16 to introduce business to it, the ultimate responsibility for identification and verification measures shall remain with the reporting institution relying on the third party or intermediary and shall—

(*a*) obtain immediately the necessary information concerning the identity and nature of customer's business;

(*b*) ensure that copies of identification data and other relevant documentation relating to the applicable requirements in section 16 will be made available to it from the intermediary or the third party upon request without delay;

(*c*) satisfy itself that the third party or intermediary is regulated and supervised for, and has measures in place to comply with customer due diligence and record keeping requirements;

(*d*) obtain and evaluate information concerning the level of country risk in the country in which the third party is domiciled before engaging the third party.

(2) If the third party is part of the same financial group, the home and host competent authorities must satisfy themselves that the requirements in subsection (1) are met in the following circumstances—

(*a*) the group applies same or stricter customer due diligence and record-keeping, and internal control requirements against money laundering and terrorist financing;

(*b*) the implementation of those customer due diligence, record-keeping requirements and programmes to counter money laundering and terrorist financing is supervised at a group level by a competent authority; and

(*c*) any higher national risk is adequately mitigated by the group's anti-money laundering or combating financing of terrorism policies.

Insurance companies to identify and verify beneficiaries

18.—(1) In addition to the provisions under section 16, insurance companies shall be required to take the following measures on the beneficiary of life insurance and other investment related insurance policies, as soon as the beneficiary is identified or designated—

(*a*) for a beneficiary that is identified as specifically named natural or legal persons or legal arrangements taking the name of the person;

(*b*) for a beneficiary that is designated by characteristics or by class or by other means obtaining sufficient information concerning the beneficiary to satisfy the reporting institution that it will be able to establish the identity of the beneficiary at the time of the payout;

(2) The verification of the identity of the beneficiary shall occur at the time of the payout.

(3) The insurance company shall include the beneficiary of a life insurance policy as a relevant risk factor in determining whether on-going due diligence is applicable.

(4) If the insurance company determines that a beneficiary who is a legal person or a legal arrangement presents a higher risk, it shall take enhanced measures which should include reasonable measures to identify and verify the identity of the beneficial owner of the beneficiary, at the time of payout.

Customer's failure to produce evidence of identity

19.—(1) If satisfactory evidence of the identity of a customer is not produced, or obtained by a reporting institution in accordance with section 16, the reporting institution shall—

(*a*) not open the account, commence business relations or perform the transaction;

(*b*) submit a suspicious transaction report to the Authority within three days; and

(*c*) shall not proceed any further with the transaction, unless directed to do so by the Authority.

(2) A person who contravenes this section shall be liable—

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

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

Maintenance of accounts in true name

20.—(1) A reporting institution that maintains accounts, shall maintain them in the true name of the account holder.

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

(3) The reporting institution who contravenes this section shall be liable—

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

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

(4) For the purposes of this section, "true name" means the name of that appears on the identifying document that a customer presents at the time of commencing a business relationship.

Risk based approach

21.—(1) Every reporting institution shall identify, assess, and understand the money laundering, and terrorist financing risks with regard to its products, services, delivery channels as well as its customers, geographical locations and country risk.

(2) Based on the assessment in subsection (1), each reporting institution shall apply a risk-based approach to ensure that measures

to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified.

(3) In relation to subsection (1), every reporting institution shall—

(*a*) document its risk assessments;

(*b*) consider all the relevant risk factors before determining the level of overall risk and the appropriate level and type of mitigation to be applied; and

(*c*) keep the assessments up to date.

(4) A reporting institution shall ensure that it adopts measures and procedures commensurate with its money laundering and terrorist financing risks.

(5) Where the reporting institution identifies lower risks, the reporting institution may decide to allow simplified measures for customer due diligence and where the risk is identified as high, enhanced customer due diligence measures shall be applied.

(6) Every reporting institution shall—

(*a*) apply risk-based countermeasures against any country when called upon to do so by the Authority or any duly delegated competent authority, as communicated from time to time;

(*b*) apply enhanced due diligence, proportionate to the risks, to business relationships and customer transactions with natural or legal persons, including financial institutions, from countries which have been designated as high risk by the Authority or any duly delegated competent authority, as communicated from time to time.

Establishment and maintenance of customers' records

22.—(1) Every reporting institution shall establish and maintain records of—

(*a*) the identity of a person obtained in accordance with section 16;

(*b*) all transactions carried out by it and correspondence relating to the transactions as is necessary to enable the transaction to be readily reconstructed at any time by the Authority or competent authority;

(*c*) all reports made to the Authority under section 23 and 33;

(*d*) all reports of investigations by a reporting institution but not reported to the Authority; and

(*e*) enquiries relating to money laundering and financing of terrorism made to it by the Authority.

(2) Notwithstanding any other law, the records mentioned in subsection (1) shall be kept for a minimum period of seven years from the last date—

(*a*) the evidence of a person's identity was obtained;

(*b*) of any transaction or correspondence;

(*c*) when the account is closed or business relationship ceases, whichever is later.

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

(*a*) sufficient to enable the transaction to be readily reconstructed at any time by the Authority or competent authority to provide, if necessary, evidence for prosecutions of any offence or for purposes of civil proceedings under this Act;

(*b*) maintained in a manner and form that will enable the reporting institution to comply immediately with requests for information from a competent authority.

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

(5) The records maintained under subsection (1) shall be made available upon request to the Authority, law enforcement agency, supervisory authorities or competent authority for purposes of ensuring compliance with this Act and for purposes of an investigation and prosecution of an offence or civil proceedings under this Act.

(6) A person who contravenes this section shall 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.

Reporting suspicious transactions

23.—(1) Whenever a reporting institution suspects or has reasonable grounds to suspect or confirms, that a transaction or an attempted transaction is related to the commission of an offence under this Act, it shall as soon as possible but not later than three days after forming that suspicion and, wherever possible, before the transaction is carried out—

(*a*) take reasonable measures to ascertain the purpose of the transaction, the origin and ultimate destination of the funds involved and the identity and address, of any ultimate beneficiary;

(*b*) prepare a report of the transaction in accordance with subsection (2), and communicate the information contained in the report to the Authority in writing and in a manner the Director General may prescribe.

(2) A report required under subsection (1) shall be submitted regardless of the amount involved and shall—

(*a*) where applicable, contain particulars of the matters specified in subsection (1) and in sections 16 (2), (3) ,(4), (5), (6) or 18;

(*b*) contain a statement of the grounds on which the reporting institution holds the suspicion; and

(*c*) be signed or otherwise authenticated by the reporting institution.

(3) A reporting institution which has reported a suspicious transaction in accordance with this section shall, if requested to do so by the Authority, give such further information as it has in relation to the transaction.

(4) After receipt of a suspicious transaction report required under subsection (1) or whenever the Authority has reasonable grounds to suspect that funds in a particular customer account maintained at any reporting institution may be proceeds of an offence or related to terrorist financing, the Authority may direct the reporting institution in writing or by telephone to be followed up in writing within one working day, not to proceed with the carrying out of that transaction or proposed transaction or any other transaction immediately and where appropriate, freeze any funds or reverse any transaction in respect of the funds affected by that transaction or proposed transaction for a period not exceeding ninety working days in order to allow the Authority—

(*a*) to make necessary inquiries concerning the transaction; and

(*b*) if deemed appropriate, to inform and advise a competent authority.

(5) The court may, upon the application of the Authority, order the extension of the direction under subsection (4), for a period of not less than three months:

Provided that a party affected or likely to be affected by the order, may apply on notice to all parties concerned to court to be heard on the matter.

(6) A person who contravenes this section shall be liable—

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

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

Disclosure of suspicious transaction reports and other information

24.—(1) A person or institution shall not disclose to any person—

(*a*) that a report to the Authority under sections 23 (1) or 37 and 39 has been or may be made, or further information has been given under section 23 (3);

(*b*) that the person or institution has formed a suspicion in relation to a transaction for purposes of sections 23 (1), 37 and 39; or

(*c*) any other information from which the person to whom the information is disclosed could reasonably be expected to infer that a suspicion has been formed or that a report has been or may be made.

(2) A person who contravenes subsection (1) 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; or

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

(3) Any person who knows or suspects that a report under sections 23 (1), 37 and 39 is being prepared or has been sent to the Authority; and discloses to another person such information in manner which is likely to prejudice any investigation commits an offence and shall be liable, on conviction, to imprisonment for ten years.

Protection of identity of persons and information in suspicious transaction reports

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

(*a*) any person who has handled a transaction in respect of which a suspicious transaction report has been made;

(*b*) any person who has prepared a suspicious transaction report;

(*c*) any person who has made a suspicious transaction report; or

(*d*) information provided pursuant to section 23 (3), except for the following purposes, namely, the supervisory authority in the course of carrying out official functions, the investigation or prosecution of a person or persons for an offence under this Act and the enforcement of this Act.

(2) Nothing in this section prohibits the disclosure of any information for the purposes of prosecution of any offence under this Act.

(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; or

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

Protection of persons reporting suspicious transactions

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

(*a*) a supervisory authority;

(*b*) a reporting institution; or

(*b*) director, officer, employee or agent of the supervisory authority or the reporting institution, acting in the course of that person's employment or agency, in relation to any action by the supervisory authority or reporting institution, or its officer, employee or agent taken under this Act, if carried out in good faith or in compliance with directions given by the Authority pursuant to this Act, regardless of whether the criminal activity occurred or not.

(2) Subsection (1) shall not apply in respect of proceedings for an offence against section 24.

Compliance officer and internal reporting procedures

27.—(1) Every reporting institution shall—

(*a*) appoint a compliance officer;

(*b*) establish and maintain compliance management programme which shall include but not limited to the following requirements set out in this Act—

(i) risk based approach;

(ii customer identification;

(iii) record keeping and retention;

(iv) reporting;

(v) confidentiality;

(vi) transaction monitoring systems;

(vii) making its officers and employees aware of the laws and regulations relating to money laundering and financing of terrorism as well as procedures, policies and audit systems adopted by it to deter money laundering and financing of terrorism;

(viii) screening persons before hiring them as employees;

(ix) screening customers against relevant sanctions lists;

(*c*) conduct on-going training of its directors, 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 financial institution's products, services and operations; and

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

(2) The policies, procedures and systems to be established under subsection (1) above must be written and approved by the person or body exercising ultimate effective control of the reporting institution and must be accessible to the Authority and the supervisory authority any time they request to see the same.

(3) A compliance officer appointed pursuant to this section, shall—

(*a*) be a senior officer at management level, as defined in the regulations with relevant qualifications and experience to enable him to respond sufficiently well to enquiries relating to the reporting institution and the conduct of its business;

(*b*) be responsible for establishing and maintaining a manual of compliance procedures in relation to its business as the Authority or the supervisory authority may, from time to time, require;

(*c*) be responsible for ensuring compliance, by staff, of the reporting institution with the provisions of this Act and any other law relating to money laundering or financing of terrorism and the provisions of any manual of compliance procedures established pursuant to this section; and

(*d*) act as the liaison between the reporting institution and Authority or the supervisory authority and in matters relating to compliance with the provisions of this Act and any other law or directive with respect to money laundering or financing of terrorism.

(4) Subsection 1(*a*) and 1(*d*) does not apply to a reporting institution which in the course of carrying out its business does not employ more than five employees.

(5) A person who contravenes this section shall be liable—

(*a*) in the case of a natural person, to imprisonment for five years and to a fine of K5,000,000; or

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

Inclusion of originator information
Cap. 44:05

28.—(1) Every institution or person that is licensed to do business in Malawi as a financial institution under the Financial Services Act, or as a money transmission service provider shall include accurate

originator and beneficiary information and other related messages when conducting domestic and international electronic funds transfers and such information shall remain with the transfer.

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

(*a*) payments that result from a transaction carried out using a credit or debit card:

Provided that the credit or debit card number is included in the information accompanying such a transfer; and

(*b*) electronic funds transfers and settlements between financial institutions where the originator and beneficiary of the funds transfer are financial institutions acting on their own behalf.

(3) All records and information collected under subsection (1) shall be maintained in accordance with section 22.

(4) Where the required originator or beneficiary information accompanying a cross-border wire transfer does not remain with a related domestic wire transfer, the intermediary financial institution shall keep a record, for at least seven years, of all the information received from the ordering financial institution or another intermediary financial institution.

(5) Every financial institution, person or money transmission service provider whether acting as an originator, intermediary or beneficiary institution shall consider all information received in order to determine whether a suspicious transaction has to be filed:

Provided that where a name designated on a prescribed sanctions list is encountered and confirmed, the financial institution, person or money transmission service provider shall freeze the transaction.

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

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

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

Monitoring transactions and on-going due diligence

29.—(1) Every reporting institution shall pay special attention to—

(*a*) any complex, unusual or large transactions that have no apparent or visible economic or lawful purpose;

(*b*) business relations and transactions with persons in jurisdictions that do not have adequate systems in place to prevent or deter money laundering or terrorist financing;

(*c*) electronic fund transfers that do not contain complete originator information.

(2) In relation to subsection (1), every reporting institution shall—

(*a*) verify the background and purpose of the transactions or business relations and record its findings, in writing;

(*b*) upon request, shall make available such findings to the Authority or to the supervisory authority.

(3) Every reporting institution shall conduct on-going due diligence and monitor its business relationships and the transactions undertaken throughout the course of the relationship to ensure that its obligations under sections 16 and 18 are met, and that the transactions conducted are consistent with the information that the reporting institution has of its customer and the risk profile of the business of the customer including where necessary, the source of funds.

(4) Every reporting institution shall ensure that documents, data or information collected under sections 16 and 18 is kept up-to-date and relevant, by undertaking reviews of existing records.

(5) Every reporting institution shall apply a risk based approach when monitoring its business relationships and customer transactions.

(6) Every reporting institution shall ascertain the purpose of any transaction in excess of an amount that the Director General may, from time to time, prescribe, by notice published in the *Gazette*, and the origin and ultimate destination of the funds involved in the transaction.

(7) 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; or

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

Correspondent banking

30.—(1) Every financial institution shall, in relation to its correspondent banking and other similar relationships—

(*a*) adequately identify and verify the identity of the correspondent or respondent institution with which it seeks to enter into a business relationship;

(*b*) gather sufficient information about a respondent institution to understand the nature of the respondent's business;

(*c*) determine from publicly available information on the reputation of the institution and the quality of supervision including whether it has been subject to a money laundering or terrorist financing investigation or regulatory action;

(*d*) obtain approval from senior management before establishing a new correspondent relationship;

(*e*) clearly understand and document the responsibilities of the financial institution and the correspondent or respondent institution;

(*f*) assess the respondent institution's controls against money laundering and terrorist financing.

(2) A financial institution shall not enter into, or continue, correspondent banking relationships with shell banks and shall satisfy themselves that respondent financial institutions do not permit their accounts to be used by shell banks.

(3) Before a financial institution enters into a correspondent banking relationship with another financial institution, the financial institution shall—

(*a*) carry out an assessment of the risk the financial institution may reasonably face if the correspondent banking relationship might whether inadvertently or otherwise involve or facilitate an offence under this Act;

(*b*) carry out an assessment of such matters as are specified in the regulations; and

(*c*) prepare a written record of the assessment as soon as practicable after the completion of the assessment, if carrying out the assessment is warranted by the risk identified in the assessment carried out by the financial institution under subsection (1).

(4) Where the relationship is a payable-through account, a financial institution shall ensure that the institution with which it has established the relationship—

(*a*) has verified the identity of, and performed on-going due diligence on the customers of that institution that have direct access to accounts of the correspondent bank; and

(*b*) is able to provide the relevant customer due diligence information upon request to the correspondent bank.

(5) 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; or

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

Foreign branches subsidiaries or head office

31.—(1) A reporting institution which is part of a group shall implement group wide programmes against money laundering, terrorist financing and handling of proceeds of crime.

(2) The obligations set out in section 27 shall apply to all foreign branches and majority-owned subsidiaries of a reporting institution and shall include—

(*a*) policies and procedures for sharing information within the group for money laundering and terrorist financing purposes;

(*b*) the provision, at group-level compliance, audit, or money laundering and terrorist financing functions, of customer, account, and transaction information from branches and subsidiaries when necessary for money laundering and terrorist financing purposes; and

(*c*) adequate safeguards on the confidentiality and use of information exchanged.

(3) A reporting institution shall ensure that its foreign branches and majority owned subsidiaries apply measures against money laundering, terrorist financing and handling of proceeds of crime that are not less stringent than those of the home country requirements.

(4) Every reporting institution shall apply appropriate additional measures to manage the money laundering, terrorist financing and handling of proceeds of crime risks, if the country in which the branch or subsidiary does not permit the proper implementation of the measures.

(5) The provisions of subsection (2) apply to Malawi branches of foreign reporting institutions mutatis mutandis.

(6) The provisions of the subsections (2) and (3) notwithstanding obligations imposed by this Act must be complied with by all financial institutions.

(7) 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; or

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

Secrecy obligations overridden

32.—(1) A duty of secrecy or confidentiality or any other restriction on the disclosure of information, whether imposed by legislation or arising from the common law or other agreement, shall not affect compliance, by reporting institutions, with the provisions of this Act.

(2) Subsection (1) does not apply if the obligation of secrecy or other restriction is based on the common law right to professional privilege between a legal practitioner and his client in respect of

information communicated to the legal practitioner so as to enable him to—

(*a*) provide advice to the client;

(*b*) defend the client; or

(*c*) render other legal assistance to the client, in connection with an offence under any law in respect of which—

(i) the client is charged;

(ii) the client has been arrested or summoned to appear in court; or

(iii) in respect of which an investigation with a view to institute criminal proceedings is being conducted against the client.

(3) Notwithstanding any other law, a court may, on application being made in relation to an investigation under this Act, order a legal practitioner to disclose information available to him in respect of any transaction or dealing relating to the matter under investigation.

(4) Nothing in subsection (3) shall require a legal practitioner to comply with an order under that subsection to the extent that the compliance would be in breach of subsection (2).

Other reports

33.—(1) A reporting institution shall, as guided by the Authority, report to the Authority on various matters, whether a suspicious transaction report was made already or not, as follows—

(*a*) large transaction reports;

(*b*) domestic and international electronic funds transfer reports:

Provided that the Authority may seek more detailed particulars on a particular report in which case, the detailed particulars must be submitted to the Authority within a period specified by the Authority in the request.

(2) A reporting institution shall—

(*a*) file reports under this section to the Authority on all transactions equivalent to or exceeding the amount prescribed in the regulations, whether they appear to be suspicious or not;

(*b*) monitor and report, on an ongoing basis, all large transactions, domestic and international electronic funds transfer or any other transactions as may be specified in the regulations, whether completed or not;

(*c*) pay attention to all unusual patterns of transactions, and to insignificant but periodic patterns of transactions when preparing the reports mentioned in subsection (1);

(*d*) as directed by the Authority, examine the background and purpose of the transactions referred in subsections (1) and shall set out its findings in writing;

(*e*) retain its findings under subsection (2) for at least seven years from the date of making the report thereof, and shall, on request, make them available to the Authority and to the respective supervisory authority or auditors.

(3) A report under this section shall be accompanied by copies of all documentation directly relevant to the transaction as directed by the Authority.

(4) The Authority may, in writing, require the person making the report under this section to provide the Authority with—

(*a*) particulars or further particulars of any matter concerning the transaction to which the report relates and the grounds upon which it is based; and

(*b*) copies of all available documents concerning such particulars or further particulars.

(5) When a reporting institution receives a request under subsection (4), the reporting institution shall furnish the Authority with the required particulars or further particulars and copies of documents to the extent that the particulars or documents are available to that person within a reasonable time, but in any case not later than seven days from the date of the receipt of the request:

Provided that the Authority may, upon written application by the reporting institution responding to a request and with the approval of the Director General, grant the reporting institution an extension of the time within which to respond.

Penalties and sanctions

34.—(1) Except for offences under Part V of this Act, if the Authority or supervisory authority, is satisfied on reasonable grounds that a person or reporting institution has contravened the provisions of this Act, the Authority may impose administrative penalties on that person or institution by doing one or more of the following—

(*a*) giving the person a written warning;

(*b*) directing that person to do a specified act or refrain from doing a specified act for one or more of the following specified purposes—

(i) to remedy the effects of the contravention;

(ii) to compensate persons who have suffered loss because of the contravention;

(iii) to ensure that the person does not commit further contraventions of this Act;

(*c*) requiring the director, officer, employee of the reporting institution or reporting institution to pay a monetary penalty as may be prescribed in regulations;

(*d*) publication of the non-compliant reporting institution in newspapers of widest circulation or the website of the Authority or supervisory authority website if it persistently breaches this Act or regulations;

(*e*) to recommend to the supervisory authority or self-regulatory body for sanctions under the respective law governing that person as a professional or employment or business authority misconduct.

(2) Where the administrative penalty imposed by the Authority or supervisory authority is a monetary penalty and the director, officer, or employee of the reporting institution or reporting institution on whom the monetary penalty has been imposed does not pay the monetary penalty within twenty-one days from the date of demand the amount thereof shall be recovered as a civil debt with interest at the ruling Lombard rate.

(3) Where the need for criminal proceedings arises, the Authority shall recommend the commencement of criminal proceedings against a reporting institution to the Director of Public Prosecutions.

(4) In this section, "Lombard rate" means to the interest rate at which banks borrow from the Reserve Bank of Malawi in respect to short term loans.

Part IV—Supervisory Authorities

Supervisory duties of the authority

35.—(1) The Authority shall ensure that all reporting institutions comply with the provisions of this Act.

(2) The authority may delegate powers to a supervisory authority or a self-regulatory body to regulate and supervise reporting institutions under its purview.

(3) On matters arising under this act, the supervisory authority or a self-regulatory body shall consult with the authority, before any action is taken against any reporting institution in terms of this act or any order, determination, directive, instruction or rule made under this Act.

Duties of supervisory authorities

36.—(1) Each supervisory authority shall be responsible for regulating, supervising and enforcing compliance with this Act or any regulation, instruction, direction, guideline or rule made pursuant to or in terms of this Act, by all reporting institutions regulated or supervised by it and to whom the provisions of this Act apply.

(2) The obligation referred to in subsection (1) shall form part of the legislative mandate of any supervisory authority and shall constitute a core function of that supervisory authority.

(3) Any law which regulates a supervisory authority to supervise or regulate any reporting institution to whom the provisions of this Act apply, shall take account of subsection (1), and a supervisory authority may utilize any fees or charges it is authorized to impose or collect to defray expenditure incurred in performing its obligations under this Act or any order, determination or directive made in terms of this Act.

(4) A supervisory authority, in meeting its obligation referred to in subsection (1), shall—

(*a*) in addition to any powers it has under any other Act, exercise any power afforded to it in this Act;

(*b*) take any measures it considers necessary or expedient to meet its obligations as imposed by this Act or any order, determination, instruction, directive or rule made under this Act, or achieve the objectives of this Act;

(*c*) require a reporting institution supervised or regulated by it and to whom the provisions of this Act apply, to report on that institution's compliance with this Act or any order, determination, instruction, directive or rule made under this Act in the form manner and within the period determined by the supervisory authority;

(*d*) renew or amend any licence, registration, approval or authorization that the supervisory authority may issue or grant in accordance with any Act, to include the following conditions—

(i) compliance with this Act;

(ii) the continued availability of human, financial, technological and other resources to ensure compliance with this Act or any order, determination or directive made under this Act;

(*e*) in making a determination in accordance with any Act applicable to it as to whether a person is fit and proper to hold office in a reporting institution, take into account any involvement, whether directly or indirectly, by that person in any non-compliance with this Act or any order, determination, instruction, directive or rule made in terms of this Act, or has been convicted of any offence punishable by a term of imprisonment in excess of twelve months, or any involvement in any money laundering, or terrorist financing activity.

(*f*) compel production of any records, documents and information relevant to monitoring compliance with this act and relevant regulations or directives;

(*g*) have sufficient operational independence and autonomy to ensure freedom from any undue influence or interference in the performance of its duties;

(*h*) review the money laundering and terrorist financing risk profiles and risk assessments prepared by reporting institutions and take the result of this review into consideration;

(*i*) review the adequacy and implementation of reporting institutions policies, internal controls and procedures, taking into account the money laundering and terrorist financing risk profile and size of the institution;

(5) Each supervisory authority shall develop and implement a risk based approach to supervision.

(6) A supervisory authority shall submit to the authority, within ten working days a written report on any action taken against any reporting institution in terms of this Act or any order, determination, directive, instruction, or rule made under this Act.

(7) The authority and each supervisory body shall co-ordinate the exercising of their powers and performance of their functions under this act to ensure consistent application of the act, and may for that purpose, enter into a written memorandum of understanding in respect thereof.

Supervisory authority or external auditor to report suspicious transactions

37.—(1) Where the supervisory authority or an external auditor of a reporting institution comes across information during the normal course of their duties or suspect or have reasonable grounds to suspect that information that they have concerning any transaction or attempted transaction may be—

(*a*) related to the commission of an offence under this Act;

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

(*c*) relevant to an act preparatory to the offence under this Act,

shall within three working days report the transaction or attempted transaction to the authority.

(2) Any person who, deliberately or with intention to deceive, does not make a report in accordance with this section commits an offence.

Duties of self-regulatory bodies

38. Every self-regulatory body shall—

(*a*) ensure that designated non-financial businesses and professions are subject to effective systems for monitoring and ensuring compliance with requirements set out under this Act on the basis of risk sensitivity;

(*b*) ensure that its members comply with their obligations to prevent the commission of offences under this Act.

(*c*) take the necessary measures to prevent criminals or their associates from being professionally accredited, or holding or being the beneficial owner of a significant or controlling interest or holding a management function, and have effective, proportionate, and dissuasive sanctions for any member who does not comply with this Act.

Self-regulatory bodies to report suspicious transactions

39.—(1) A self-regulatory body shall, within three days of forming the suspicion, report to the authority any suspicious transaction that the self-regulatory body may encounter during the normal course of their duties.

(2) Any person who, deliberately or with intention to deceive, does not make a report in accordance with this section commits an offence.

(3) a person who contravenes this section shall, on conviction, be liable to imprisonment for five years and to a fine of K10,000,000.

Part V—OFFENCES

Extra territorial application

40. For Offences under this Part shall be considered offences whether—

(*a*) wholly or partially committed in Malawi or;

(*b*) committed by or against a malawian person.

False or misleading statements

41. A person or reporting institution which in relation to Part IV and V makes any statement that the person or reporting institution knows is false or misleading in a material particular or omits from any statement any matter or thing without which the person knows that the statement is false or misleading in a material particular commits an offence and shall be liable on conviction—

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

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

Money laundering

42.—(1) A person who, knowingly or who has reasonable grounds to believe that any property, including his own property, in whole or in part, directly or indirectly, represents proceeds of a predicate offence,—

(*a*) converts or transfers property with the aim of concealing or disguising the illicit origin of that property, or of aiding any person, including himself, involved in the commission of the offence to evade the legal consequences thereof;

(*b*) conceals or disguises the true nature, origin, location, disposition, movement or ownership of the property;

(*c*) acquires, possesses or uses that property; or

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

commits an offence.

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

(3) A person who commits an offence under this section shall, on conviction, be liable—

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

(*b*) in the case of a legal person, a fine of K500,000,000 and revocation of a business licence.

Terrorist financing

43.—(1) Any person who by any means, directly or indirectly, provides or receives funds, or attempts to do so, with the intention that they should be used or in the knowledge that they are to be used, in whole or in part,—

(*a*) in order to carry out a terrorist act;

(*b*) by a terrorist; or

(*c*) by a terrorist organization, commits an offence.

(2) An offence under subsection (1) is committed—

(*a*) even if the act of terrorism thereto referred does not occur;

(*b*) even if the funds were not actually used to commit or attempt the act of terrorism thereto referred; and

(*c*) regardless of the State or territory in which the act of terrorism is intended or does occur.

(3) It shall also be an offence to, knowingly and intentionally,—

(*a*) participate as an accomplice in an offence within the meaning of subsection (1);

(*b*) organize or direct others to commit an offence within the meaning of subsection (1);

(*c*) contribute to the commission of an offence under subsection (1) by a group of persons acting with a common purpose, where the contribution is to further the criminal activity or purpose of the group that includes commission of an offence under subsection (1) or where the contribution is made knowing the intention of the group is to commit an offence under subsection (1);

(*d*) provide financial support for training or upkeep of a terrorist or for commission of a terrorist act.

(4) Any person who commits an offence under this section shall, on conviction, be liable—

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

(*b*) in the case of a legal person, to a fine of K500,000,000 and revocation of a business licence.

Other terrorist financing offences

44.—(1) Any person who solicits, receives, provides or possesses money or other property, enters into, or becomes concerned in, an arrangement as a result of which money or other property is made available or is to be made available, for the purposes of commission of a terrorist act, or for a terrorist or proscribed organization, commits an offence and shall be liable, on conviction—

(*a*) in the case of a natural person, to imprisonment for twenty-five years;

(*b*) in the case of a legal person, to a fine of K250,000,000 and revocation of a business licence.

(2) For the purpose of proving the offence under this section, it is an irrelevant fact whether the funds were actually used in carrying out a terrorist act.

General penalty for financial crimes

45. Any person convicted of a financial crime for which a penalty has not been prescribed under this Act shall be liable, on conviction,—

(*a*) in the case of an individual to imprisonment of ten years and a fine of K20,000,000; or

(*b*) in the case of a legal person, to a fine of K100, 000,000 and revocation of a business licence.

Financing of proliferation of weapons of mass destruction

46.—(1) Any person who, alone or in association with others, directly or indirectly, finances the proliferation of weapons of mass destruction within the meaning of this Act commits an offence.

(2) any person convicted of the offence of financing the proliferation of weapons of mass destruction shall be liable to—

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

(*b*) in the case of a legal person, a fine of K500,000,000 and revocation of a business licence.

(3) For purposes of this Part, "financing of proliferation of weapons of mass destruction" refers to the act of providing funds or financial services which are used, in whole or in part, for the manufacture, acquisition, possession, development, export, trans-shipment, brokering, transport, transfer, stockpiling or use of nuclear, chemical or biological weapons and their means of delivery and related materials, including both technologies and dual use goods used for

non-legitimate purposes, in contravention of any written law or, where applicable, an international obligation.

Dealing in terrorist property

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

(*a*) concealment;

(*b*) removal from the jurisdiction; or

(*c*) transfer to any other person,

commits an offence and shall be liable, on conviction, to imprisonment for fifteen years.

Confiscation and compensation on conviction Cap. 8:01

48.—(1) Section 149 of the Criminal Procedure and Evidence Code shall apply to proceedings under this Part with such modifications as are necessary.

(2) Without limiting the generality of subsection (1), a court, upon conviction of an accused person, shall order forfeiture or confiscation of tainted property of the convicted person as one of the penalties to be imposed in sentencing the convicted person.

(3) The court may order compensation of the victims of the crime by the convicted person.

Confiscation order on conviction

49.—(1) Where, property is tainted property in respect of an offence of which a person has been convicted, the court shall order that specified property be confiscated.

(2) In determining whether property is tainted property the court may infer, in the absence of evidence to the contrary,—

(*a*) that the property was used in or in connection with the commission of an offence, if it was in the possession of the person at the time of, or immediately after the commission of the offence for which the person was convicted;

(*b*) that the property was derived, obtained or realized as a result of the commission of the offence if it was acquired by the person during or within a reasonable time after the period of the commission of the offence of which the person was convicted, and the court is satisfied that the income of that person from sources unrelated to criminal activity of that person cannot reasonably account for the acquisition of that property.

(3) where the court orders that property, other than money, be confiscated, the court shall specify, in the order, the amount that it considers to be the value of the property at the time when the order is made.

(4) Where the court makes a confiscation order, the court may give any directions as it may deem necessary or convenient for giving effect to the order.

Effects of confiscation order on conviction

50.—(1) Subject to subsection (2), where a court makes a confiscation order against any property under this Part, the property, by virtue of the order, vests absolutely with the government.

(2) Where property ordered to be confiscated is registerable property,—

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

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

(*c*) the Attorney General has power on behalf of the Government to do or authorize 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 property under this Part—

(*a*) the property shall not, except with the leave of the court, be disposed of, or otherwise dealt with, by or on behalf of the Government before an appeal process is concluded; and

(*b*) if, after the appeal process, the order has not been discharged, the property may be disposed of and the proceeds applied or otherwise dealt with in accordance with the provisions of this Act.

(4) For purpose of this section—

"registerable property" means property, the title to which is passed by registration in accordance with the provisions of a written law;

"relevant appeal date" in relation to a confiscation order made in consequence of a conviction of a person of an offence means—

(*a*) the date on which the period allowed by rules of court for the lodging of an appeal against the conviction of a person or for the lodging of an appeal against the making of a confiscation order expires without an appeal having been lodged, whichever is the latter; or

(*b*) where an appeal against the conviction of a person or against the making of a confiscation order is lodged, the date on

which the appeal lapses in accordance with the rules of court or is finally determined, whichever is later.

Pecuniary penalty order on conviction

51.—(1) Subject to this section, where a competent authority applies to the court for a pecuniary penalty order against a person in respect of the conviction of that person for an offence under this Act, the court shall, if it is satisfied that the person has benefitted from the offence, order him to pay to the Government an amount equal to the value of his benefit from the offence or a lesser amount certified by the court in accordance with this Act to be the amount that might be realized at the time the pecuniary penalty order is made.

(2) The Court shall assess the value of the benefit derived by a person from the commission of an offence under this Act.

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

(*a*) until the period allowed by the rules of court for the lodging of an appeal against conviction has expired without the appeal being lodged; or

(*b*) 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.

Procedure for enforcement of fines

52. Where the court orders a person to pay an amount under this Part, that amount shall be treated as if it were a fine imposed upon him in respect of a conviction for an offence under this Act, and the court may—

(*a*) notwithstanding anything contained in any other written law, impose in default of the payment of the amount, a term of imprisonment—

(i) of five years, where the amount does not exceed K10,000,000;

(ii) of ten years, where the amount exceeds K20,000,000 but does not exceed K40,000,000;

(iii) of twenty years, where the amount exceeds K40,000,000;

(*b*) direct that the term of imprisonment imposed pursuant to paragraph (a) be served consecutively to any other form of

imprisonment imposed on that person or that the person is then serving.

Confiscation where a person dies or absconds

53.—(1) Where an application is made to the court for a confiscation order against any tainted property in consequence of a person having died or absconded in connection with an offence under this Act and the court is satisfied that—

(*a*) any property is tainted property in respect of an offence under this Act;

(*b*) proceedings in respect of an offence under this act committed in relation to that property were commenced; and

(*c*) the defendant charged with the offence referred to in paragraph (*b*) has died or absconded, the court may order that confiscation proceedings proceed under Part VII of this Act.

(2) The provisions of Part VII and Part VIII of this act shall apply with such modifications as are necessary to give effect to this section.

Part VI—Civil Forfeiture, Seizure, Detention, Freezing and Preservation of Assets

Civil proceedings

54.—(1) All proceedings under this Part, except where the section creates an offence, shall be civil proceedings.

(2) The rules of evidence applicable in civil proceedings shall apply to proceedings under this Part.

(3) The Authority shall take all necessary measures to ensure that the application of provisions under this Part do not unduly hamper trade activities.

(4) Any application made under this Part shall be heard by the High Court.

Seizure and detention of suspicious imports or exports of currency

55.—(1) Any person who leaves or arrives in Malawi, transports, sends or receives currency or bearer negotiable instruments to or from Malawi, shall report, in a prescribed manner, to an authorized officer at the port of departure or entry, as carrying, sending, receiving or transporting the amount of currency or bearer negotiable instruments, as the case maybe; and the authorized officer shall, without delay, send a copy of the report if it is in excess of the amount prescribed in regulations to the Authority.

(2) Where a person is about to leave Malawi or has arrived in Malawi, or is about to board or leave, or has boarded or left, any ship or aircraft or car or bus or train, and in the case of a parcel, it is about to be sent across the borders or received in Malawi either by mail or containerized cargo, an authorized officer may, with reasonable and necessary assistance and with use of force as is necessary—

(*a*) examine any article which a person has with him or in his luggage;

(*b*) if the authorized officer has reasonable grounds to suspect that an offence under subsection (1) may have been or is being committed, he shall search the person for the purpose of

determining whether the person has, in his possession, any currency or negotiable bearer instruments in respect of which a report under subsection (1) is required; and

(*c*) the authorized officer and any person assisting the officer, may stop, board and search any ship, aircraft, bus, car, train or other conveyance for the purposes of exercising the powers conferred by this subsection.

(3) Where the authorized officer has reasonable grounds to believe that currency or negotiable bearer instruments found in the course of an examination or search, conducted under subsection (2) may afford evidence as to the commission of an offence under this Act, the officer shall seize the currency or negotiable bearer instruments.

(4) The authorized officer who has seized currency and negotiable bearer instruments under subsection (3) shall report such seizure to the Authority.

(5) An authorized officer shall, upon discovery of a false declaration or non-declaration, enquire from the person in whose possession, the currency or negotiable bearer instrument(s) is found regarding its origin and intended use, and shall record the same in writing signed by the person in possession of the currency or negotiable bearer instrument(s) and countersigned by the authorized officer.

(6) A person who fails to declare or makes a false declaration commits an offence and shall be liable, on conviction, to a fine of K5,000,000 and ten percent of non-declared amount.

Seizure of currency or bearer negotiable instruments

56. An authorized officer may seize and detain any currency or bearer negotiable instruments imported into or about to be exported from Malawi, in any form or manner if he has reasonable grounds for suspecting that—

(*a*) the currency is derived from an offence under any written law;

(*b*) the person carrying the currency carries it in breach of the exchange control laws; or

(*c*) the currency is intended for use by any person in the commission of an offence under this Act.

Detention and release of currency or bearer negotiable instruments seized

57.—(1) Currency and bearer negotiable instruments seized under section 55 or section 56 shall not be detained for more than fourteen days after seizure, unless a court grants an order of continued detention for a period not exceeding three months from the date of seizure, upon being satisfied that—

(*a*) there are reasonable grounds to suspect that the currency or bearer negotiable instrument was derived from an offence under this Act or is intended by any person for use in the commission of any such offence; and

(*b*) the continued detention of the currency or bearer negotiable instrument is justified while its origin or derivation is further investigated.

(2) The court may subsequently order, after hearing all parties concerned, the continued detention of the currency and bearer negotiable instruments, if the court satisfied of 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), currency and bearer negotiable 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 currency or bearer negotiable instrument—

(*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 competent authority to the contrary; or

(*b*) by an authorized officer, if satisfied that its continued detention is no longer justified.

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

(5) Any car, cash or bearer negotiable instruments detained under this section shall not be released where—

(*a*) an application is made under this Part VII or Part VIII for the purpose of—

(i) the forfeiture or confiscation of the whole or any part of the currency or negotiable bearer instrument; or

(ii) the continued detention of the currency or negotiable bearer instrument pending determination of its liability to forfeiture or confiscation; or

(*b*) proceedings are instituted in Malawi or elsewhere against any person for an offence with which the currency or bearer negotiable instrument is connected, unless and until the proceedings relating to the relevant application or the proceedings for the offence, as the case may be, have been concluded.

Seizure of terrorist cash

58.—(1) Where a competent authority has reasonable grounds to suspect that any cash—

(*a*) is intended to be used for commission of a terrorist act;

(*b*) belongs to, or is held on trust for, a proscribed terrorist individual or organization; or

(*c*) is or represents property obtained through acts of terrorism,the competent authority shall seize the cash.

(2) The competent authority shall seize cash under subsection (1) even if it reasonably suspects part only of the cash to be terrorist cash, where it is not reasonably practicable to seize that part only of the cash.

(3) The competent authority may exercise its powers under subsection (1), whether or not any proceedings have been brought for an offence in connection with the terrorist cash.

(4) The competent authority shall, as soon as is reasonably practicable, apply to a judge in chambers for a detention order with respect to the cash seized under subsection (1).

(5) The judge in chambers shall not make an order for detention of the cash unless he is satisfied that there are reasonable grounds for suspecting that the cash—

(*a*) is intended to be used for the purposes of terrorism;

(*b*) consists of resources of a proscribed terrorist individual or organization; or

(*c*) is or represents property obtained through act of terrorism.

(6) Subject to subsection (8), any order made under subsection (5) shall remain valid for a period of ninety days, and may be renewed for further periods of ninety days by the judge in chambers, until production of the cash before the court in proceedings against any person for an offence with which the cash is connected.

(7) Any cash detained under this section shall be deposited by the competent authority in an interest-bearing account.

(8) The cash, with the interest, may be released by order of the judge in chambers—

(*a*) where the conditions under subsection (5) are no longer met; or

(*b*) where no proceedings are brought in connection with the cash detained.

(9) For the purposes of this section, “cash” means—

(*a*) currency;

(*b*) bearer negotiable instruments; or

(*c*) any other monetary instruments the minister may, by notice published in the *Gazette*, specify.

Power of the authority to obtain search warrant

59.—(1) The authority may apply to court for a warrant to enter any premises belonging to or in the possession or control of a reporting institution, or any employee thereof, and to search the premises and remove any document, material or other thing therein for the purpose of the authority, as ordered by the court and specified in the warrant.

(2) The court may grant the application, if it is satisfied that there are reasonable grounds to believe that—

(*a*) the reporting institution has failed to keep a transaction record or report a suspicious transaction or provide other documents as required by this Act; or

(*b*) an officer or employee of a reporting institution is committing, has committed or is about to commit an offence of money laundering or financing terrorism.

Property tracing, tracking and monitoring orders

60. For purposes of determining whether any property belongs to or is in the possession or under the control of any person, a competent authority may, upon application to the court, obtain an order—

(*a*) that any document relevant to—

(i) tracing, identifying, locating or quantifying the property; or

(ii) identifying or locating any document necessary for the transfer of the property, belonging to, or in the possession or control of that person be delivered forthwith to the competent authority; and

(*b*) that the reporting institution produce forthwith to the competent authority all information obtained about any transaction conducted by or for that person during the period before or after the order as the court directs.

Orders to enforce compliance with obligations under this Act

61.—(1) The Authority may, upon application to the court, after satisfying the court that a reporting institution has failed to comply with any obligation under this Act, obtain an order against all or any officers or employees of the institution on terms as the court deems necessary, in order to enforce compliance with the obligation.

(2) In granting the order pursuant to subsection (1), the court may order that where the reporting institution fails to comply with all or any provision of the order, the institution, officer or employee shall

pay a financial penalty in the sum and in the manner directed by the court.

(3) All officers and employees of a reporting institution shall take all reasonable steps to ensure the compliance by that reporting institution with its obligations under this Act.

Preservation or assets freezing orders

62.—(1) Where a reporting institution has reason to believe or suspects that funds or property it is holding belongs to a terrorist individual or organization, it shall immediately freeze the funds or the property, in a prescribed manner, and report the fact to the Authority, as the case may be, within twenty four hours.

(2) Where the supervisory authority has reason to believe or suspects that a reporting institution holds an account or property on behalf of a terrorist, it shall within forty eight hours issue a written direction to the reporting institution requiring it to restrain or freeze any account or other property held by that reporting institution on behalf of the terrorist and the reporting institution shall—

(*a*) comply with the directive; and

(*b*) report the matter to the Authority within twenty-four hours.

(3) Subject to subsection (4), a decision to freeze funds or property pursuant to subsection (1) or a directive given by the supervisory authority pursuant to subsection (2) shall be effective for three months unless sooner revoked by authority.

(4) The Court may upon the application of the authority order the extension of the decision freezing the funds or property or restraining or refreezing directive need pursuant to subsection (3)

(5) Any person affected by the decision or directive made under subsection (3) may apply to the court for a revocation of the decision or directive in relation to him.

Monitoring orders

63.—(1) A competent authority may apply to a judge for an order (in this section otherwise called a "monitoring order") directing a reporting institution to give information and the application shall be supported by an affidavit.

(2) A monitoring order shall—

(*a*) direct a reporting institution to disclose information obtained by the institution about transactions conducted through an account held by a particular person with the institution;

(*b*) not have retrospective effect; and

(*c*) only apply for a period of a maximum of three months from the date of the making of the order.

(3) A judge shall not issue a monitoring order unless he is satisfied that there are reasonable grounds for suspecting that the person, in respect of whose account the order is sought,—

(*a*) has committed or was involved in the commission, or is about to commit or be involved in the commission of, an offence under this Act; or

(*b*) has benefited, directly or indirectly, or is about to benefit, directly or indirectly from the commission of an offence under this Act.

(4) monitoring order shall specify—

(*a*) the name or names in which the account is or is believed to be held; and

(*b*) the class of information that the institution is required to give.

(5) Where a reporting institution, which has been given notice of a monitoring order, knowingly—

(*a*) contravenes the order; or

(*b*) provides false or misleading information in purported compliance with the order, the institution commits an offence and shall be liable, on conviction, in the case of a natural person responsible for the commission of the offence, to imprisonment for five years and a fine of K10,000,000 and, in the case of a legal person, to a fine of K50,000,000.

Monitoring orders not to be disclosed

64.—(1) A reporting institution that is, or has been, subject to a monitoring order shall not disclose the existence or operation of the order to any person except—

(*a*) an officer or agent of the institution for the purpose of ensuring compliance with the order;

(*b*) a legal adviser for the purpose of obtaining legal advice or representation in respect of the order; or

(*c*) a police officer or an authorized officer of the Authority authorized, in writing, to receive the information.

(2) Any person who contravenes subsection (1) is commits an offence and shall be liable, on conviction,—

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

(*b*) in the case of a legal person, to a fine of K50,000,000.

(3) A person described in subsection (1) shall not disclose the existence or operation of a monitoring order except to another person described in that subsection and may do so only for the purposes of the performance of the person's duties or functions.

(4) Nothing in this section prevents the disclosure of information concerning a monitoring order for the purposes of, or in connection with, legal proceedings or in the course of proceedings before a court:

Provided that nothing in this section shall be construed as requiring a legal practitioner to disclose to any court the existence or operation of a monitoring order.

Preservation orders

65.—(1) A competent authority may apply to the court for an order prohibiting any person, subject to the conditions and exceptions specified in the order, from dealing in any manner with any realizable or tainted property.

(2) The court shall make an order under subsection (1) if there are reasonable grounds to believe that the property concerned—

(*a*) has been used or is intended for use in the commission of an offence; or

(*b*) constitutes proceeds of an offence.

(3) A court making a preservation order shall, at the same time, make an order authorizing the seizure of the property concerned by the competent authority, and any other ancillary orders that the court considers appropriate for the proper, fair and effective execution of the order.

(4) Property seized under subsection (3) shall be dealt with in accordance with the directions of the court that made the relevant preservation order.

Notice of preservation order to be given to persons with interest in the property

66.—(1) If a court makes a preservation order, the Authority shall, within twenty one days after the making of the order, give notice of the order to all persons known to the Authority to have an interest in property which is subject to the order; and publish a notice of the order in the *Gazette* or two newspapers of widest circulation in Malawi.

(2) A notice under subsection (1) shall be served in the same way as any other civil court process.

(3) A person who has an interest in the property which is subject to a preservation order may give notice of his intention to oppose the making of a forfeiture order, or to apply for an order excluding his interest in the property concerned from the operation thereof.

(4) A notice under subsection (3) shall be served upon the Director General, in the case of—

(*c*) a person upon whom a notice has been served under subsection (1), within fourteen days after service; or

(*d*) any other person, within fourteen days after the date upon which a notice under subsection (1) is published in the *Gazette* or newspaper of wide circulation.

(5) A notice served under subsections (3) or (4) shall contain full particulars of the address for the delivery of documents concerning further proceedings under this Part and shall be accompanied by an affidavit stating—

(*a*) full particulars of the identity of the person entering the appearance;

(*b*) the nature and extent of his interest in the property concerned; and

(*c*) the reasons which the person intends to rely on in opposing a forfeiture order or applying for the exclusion of his interest from the operation thereof.

Duration of preservation orders

67. A preservation order shall expire ninety days after the date on which notice of the making of the order is published in the *Gazette* or two newspapers of widest circulation in Malawi, unless—

(*a*) there are criminal proceedings pending before a court in respect of property subject to a preservation order;

(*b*) there is an application for a forfeiture order pending before the court in respect of the property subject to the preservation order;

(*c*) there is an unsatisfied forfeiture order in force in relation to the property subject to the preservation order; or

(*d*) the order is rescinded before the expiry of that period.

Seizure of property subject to preservation orders

68.—(1) In order to prevent property subject to a preservation order from being disposed of or removed contrary to that order, the competent authority may instruct a police officer to seize any such property if the competent authority has reasonable grounds to believe that the property may be disposed of or removed.

(2) Property seized under subsection (1) shall be dealt with in accordance with the directions of the court that made the relevant preservation order.

Orders in respect of immovable property subject to preservation orders

69.—(1) A court that has made a preservation order in respect of immovable property may at any time, on application by a competent authority, order the Registrar of Lands to place a restriction on the land register in respect of that immovable property.

(2) An order under subsection (1) may be made in respect of the following restrictions—

(*a*) that the immovable property shall not, without the consent of the court, be encumbered;

(*b*) that the immovable property shall not without the consent of the court, be attached or sold in execution; and

(*c*) that the immovable property shall not, without the consent of the court,—

(i) vest in an Administrator when the estate of the owner of that immovable property is sequestrated;

(ii) where the owner of the immovable property is a corporate body which is being wound-up, form part of the assets of that corporate body.

(3) In order to give effect to subsection (1), the Registrar of Lands concerned shall make the necessary entries in his registers and thereupon any such restriction shall be effective against all persons except, in the case of a restriction contemplated in subsection (2)(*b*), against any person in whose favour a mortgage bond or other charge was registered against the title deed of immovable property prior to the endorsement of the restriction on the title deed of the immovable property, but shall lapse on the transfer of ownership of the immovable property concerned.

(4) Unless the court directs otherwise, the custody of immovable property on the title deed of which a restriction contemplated in subsection (2)(*c*) was endorsed shall, from the date on which—

(*a*) the estate of the owner of the immovable property is sequestrated; or

(*b*) where the owner of the immovable property is a company or other corporate body, that company or corporate body is being wound up, vest in the person or persons in whom the said custody would have vested if such a restriction were not so endorsed.

(5) Where the court granted its consent in respect of a restriction contemplated in subsection (2)(*c*) and endorsed on the title deed of immovable property, the immovable property shall be deemed, if the—

(*a*) estate of the owner of the immovable property was sequestrated, to have vested in the Registrar of the High Court or Official Receiver concerned, as the case may be, as if such a restriction were not so endorsed; or

(*b*) owner of the immovable property is a company or other legal entity which is being wound-up, to have formed part of the assets of such company or legal entity as if such a restriction were not so endorsed.

(6) A person affected by an order contemplated in subsection (1) may at any time apply for the rescission of the order.

Living expenses of a person with interest in property subject to preservation order

70.—(1) A preservation order may make a provision as the court deems fit for reasonable living expenses of a person holding an interest in property subject to a preservation order and his immediate family.

(2) A court shall not make provisions for any expenses under subsection (1) unless it is satisfied that—

(*a*) the person cannot meet the expenses concerned out of his property which is not subject to the preservation order; and

(*b*) the person has disclosed under oath all his interest in the property and has submitted to that court an affidavit.

(3) Upon conviction, the court may order refund of the expenses referred to in subsections (1) and (2) and the refund may be recovered as a civil debt against the person.

Variation or rescission of preservation order

71.—(1) A court which makes a preservation order—

(*a*) 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—

(i) that the operation of the order concerned will deprive the applicant of the means to provide for his reasonable living expenses and cause undue hardship for the applicant;

(ii) that 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

(*b*) shall rescind the preservation order when the criminal proceedings against the defendant concerned are concluded.

(2) When a court orders the rescission of an order authorizing the seizure of property under paragraph (*a*) of subsection (1), the court shall make such other order as it considers appropriate for the proper, fair and effective execution of the preservation order concerned.

(3) A person affected by an order in respect of immovable property may, at any time, apply for the rescission of the order.

(4) The court that made an order in respect of immovable property—

(*a*) may, if it deems it necessary in the interests of justice, at any time rescind the order; or

(*b*) shall rescind the order, if the relevant preservation order is rescinded.

(5) If an order in respect of immovable property is rescinded, the court shall direct the Registrar of Lands concerned to lift any caveat

entered by virtue of that order on the land register in respect of that immovable property, and the Registrar shall give effect to the direction.

Forfeiture of property subject to preservation order

72.—(1) If a preservation order is in force, a competent authority may apply to a court for an order forfeiting to Government all or any of the property that is subject to the preservation order.

(2) The competent authority shall give a notice of fourteen days of an application under subsection (1) to every person who has served notice in terms of section 66(3).

(3) A notice under subsection (2) shall be served in accordance with the law relating to service of civil process.

(4) A person who served notice under section 66(3) may appear at the hearing of the application under subsection (1) to—

(*a*) oppose the making of the order; or

(*b*) apply for an order—

(i) excluding his interest in that property from the operation of the order; or

(ii) varying the operation of the order in respect of that property, and may adduce evidence at the hearing of the application.

Leave to serve notice out of time

73.—(1) A person who, for any reason, does not serve notice in terms of section 66(3) may, within fourteen days of his becoming aware of the existence of a preservation order, apply to the court for leave to serve that notice out of time.

(2) An application under subsection (1) may be made before or after the date on which an application for a forfeiture order is made, but shall be made before judgment is given in respect of such an application for a forfeiture order.

(3) The court may grant an applicant referred to in subsection (1) leave to serve notice in terms of section 66(3) within the period which the court deems appropriate, if the court is satisfied on good cause shown that the applicant—

(*a*) has for sufficient reason failed to serve notice in terms of section 66(3); and

(*b*) has an interest in the property which is subject to the preservation order.

(4) when a court grants an applicant leave to serve notice out of time, the court—

(*a*) shall make any order as to costs against the applicant; and

(*b*) may make any order to regulate the further participation of the applicant in proceedings concerning an application for a forfeiture order, which it deems appropriate.

(5) a notice served after leave has been obtained under this section shall contain full particulars of the chosen address of the person who serves the notice for the delivery of documents concerning further proceedings under this part and shall be accompanied by the affidavit referred to in section 66(5).

Forfeiture orders

74.—(1) a court shall, subject to this act, make an order of forfeiture, if it finds on a balance of probabilities that the property concerned—

(*a*) has been used or is intended for use in the commission of an offence under this act; or

(*b*) constitutes proceeds of crime.

(2) The court may, when it makes a forfeiture order or at any time thereafter, make ancillary orders that it considers appropriate, including orders for and with respect to facilitating the transfer to government of property forfeited to it under the order.

(3) The absence of a person whose interest in property may be affected by a forfeiture order does not prevent the court from making the order.

(4) The validity of an order under subsection (1) is not affected by the outcome of criminal proceedings, or of an investigation with a view to institute the proceedings, in respect of an offence with which the property concerned is in some way associated.

(5) The competent authority applying for a forfeiture order shall publish a notice thereof in the *Gazette* or two newspapers of widest circulation in malawi as soon as practicable but not more than thirty days after the order is made.

(6) A forfeiture order shall not take effect—

(*a*) before the period allowed for an application under sections 75(2) and 78(1) or an appeal under section 75(5) has expired; or

(*b*) before the application or appeal has been disposed of.

A person with an interest in property subject of forfeiture

75.—(1) Where an application is made for a forfeiture order against property, a person who claims an interest in the property may apply to the court, before the forfeiture order is made and the court, if satisfied on a balance of probabilities—

(*a*) that the person was not in any way involved in the commission of the offence; and

(*b*) where the person acquired the interest during or after the commission of the offence, that he acquired the interest—

(i) for sufficient consideration; and

(ii) without knowing, and in circumstances that could not arouse a reasonable suspicion that the property was, at the time he acquired it, tainted property,

the court shall make an order declaring the nature, extent and value (at the time the order was made) of the person's interest.

(2) Subject to subsection (3), where a forfeiture order has already been made directing the forfeiture of property, a person who claims an interest in the property may, before the end of the period of twelve months commencing on the day on which the forfeiture order is made, apply under this subsection to the court for an order under subsection (1).

(3) a person who—

(*a*) had knowledge of the application for the forfeiture order before the order was made; or

(*b*) appeared at the hearing of that application,

shall not be permitted to make an application under subsection (2), except with leave of the court.

(4) A person who makes an application under subsection (1) or (2) shall give not less than fourteen days' written notice of the making of the application to the competent authority who shall be a party to any proceedings in the application.

(5) An applicant or the competent authority may in accordance with court rules, appeal against an order made under subsection (1).

(6) A person appointed by the court under this Act as an Administrator shall, on application by any person who has obtained an order under subsection (1), and where the period allowed by the rules of court with respect to the making of appeals has expired and any appeal against that order has been determined—

(*a*) direct that the property or part thereof to which the interest of the applicant relates, be returned to the applicant; or

(*b*) direct that an amount, equal to the value of the interest of the applicant, as declared in the order, be paid to the applicant.

Bona fide purchaser for sufficient consideration

76.—(1) A court may, on application under section 75 or by a person referred to in section 78, and when it makes a forfeiture order, make an order excluding certain interests in property which is subject to the order, from the operation of the order.

(2) The court may make an order under subsection (1) in relation to the forfeiture of the proceeds of crime if it finds, on a balance of probabilities, that the applicant for the order—

(*a*) has acquired the interest concerned legally and for a consideration, the value of which is not significantly less than the value of that interest; and

(*b*) where the applicant had acquired the interest concerned after the commencement of this Act, that the person neither knew nor had reasonable grounds to suspect that the property in which the interest is held constitutes proceeds of crime.

(3) The court may make an order under subsection (1), in relation to the forfeiture of property which has been used or is intended for use in the commission of an offence, if it finds, on a balance of probabilities, that the applicant for the order had acquired the interest concerned legally and—

(*a*) neither knew nor had reasonable grounds to suspect that the property in which the interest is held has been used or is intended for use in the commission of an offence; or

(*b*) where the offence concerned had occurred before the commencement of this Act, the applicant has since the commencement of this Act taken all reasonable steps to prevent the use of the property concerned in connection with the commission of an offence.

(4) If an applicant for an order under subsection (1) adduces evidence to show that he did not know or did not have reasonable grounds to suspect that the property in which the interest is held is tainted property, the Authority may submit a return of the service on the applicant in rebuttal of that evidence in respect of the period since the date of the service.

(5) Where the Authority submits a return of the service on the applicant under subsection (4), the applicant shall, in addition to the facts referred to in subsections (2)(*a*) and (*b*), also prove on a balance of probabilities that, since the service, he has taken all reasonable steps to prevent the further use of the property concerned in the commission of an offence.

(6) The court making an order for the exclusion of an interest in property under subsection (1) may, in the interest of the administration of justice or in the public interest, make that order upon the conditions that the court deems appropriate, including a condition requiring the person who applied for the exclusion to take all reasonable steps, within a period that the court may determine, to prevent the future use of the property in connection with the commission of an offence.

Forfeiture order by default

77.—(1) If a competent authority applies for a forfeiture order, and the court is satisfied that no person has appeared on the date upon which an application under section 76(1) is to be heard and, on the grounds of sufficient proof or otherwise, that all persons who served notices in terms of section 73(3) have knowledge of notices given under section 76 (2), the court may—

(*a*) make any order by default which the court could have made under sections 72(1) and (2);

(*b*) make an order as the court may consider appropriate in the circumstances; or

(*c*) make no order.

(2) The court may, before making an order in terms of subsection (1), call upon the competent authority to adduce further evidence, either in writing or orally, in support of this application as the court may consider necessary.

(3) A person whose interest in the property concerned is affected by the forfeiture order or other order made by the court under subsection (1) may, within twenty days after that person has acquired knowledge of the order or direction, set the matter down for variation or rescission by the court.

(4) The court may, upon good cause shown, vary or rescind the default order or give any other direction on such terms as it deems appropriate.

Failure to serve notice of application for forfeiture

78.—(1) A person affected by a forfeiture order who was entitled to receive notice of the application for the order under section 75(2), but did not receive the notice, may, within forty five days after the notice is published in the *Gazette* or newspaper aforesaid, apply to court for an order excluding his interest in the property concerned from the operation of the order, or varying the operation of the order in respect of the property.

(2) The hearing of the application shall, to the extent practicable and consistent with the interests of justice be held within thirty days of the filing of the application.

(3) The court may make an order under subsection (1) if it finds on a balance of probabilities that the applicant for the order falls within the provisions of section 72(2) or section 73(1).

(4) The provisions of subsection (4) and section 72(5) shall apply to all proceedings under this section.

Status of orders pending appeal

79. Any preservation order and any order authorizing the seizure of the property concerned or other ancillary order which is in force at the time of any decision regarding the making of a forfeiture order

under section 75(1) shall remain in force pending the outcome of any appeal against the decision concerned.

Administrator to take possession of forfeited property

80.—(1) Where the Court has made a forfeiture order and an Administrator has not been appointed in respect of any of the property concerned, the court may appoint an Administrator to perform any of the functions referred to in section 81 in respect of that property.

(2) On the date when a forfeiture order takes effect the property subject to the order shall be forfeited to Government and vest in the Administrator on behalf of Government.

(3) Upon a forfeiture order taking effect, the Administrator may take possession of the property subject to the order on behalf of Government from any person in possession, or entitled to possession, of the property.

Disposal of forfeited property

81.—(1) An Administrator shall, subject to any order for the exclusion of interests in forfeited property under sections 75(1), 76(2)(*a*) or 78(1) or section 75(3) and in accordance with the directions of the Authority—

(*a*) deposit any moneys forfeited into the Fund; or

(*b*) dispose of property forfeited by sale or any other means and deposit the proceeds of the sale or disposition into the Fund.

(2) Any right or interest in forfeited property not exercisable by or transferable to the Government, shall expire and shall not revert to the person who has possession, or was entitled to possession, of the property immediately before the forfeiture order took effect.

(3) A person who has possession, or was entitled to possession, of forfeited property immediately before the forfeiture order took effect, or any person acting together with, or on behalf of that person, shall not be eligible to purchase forfeited property at any sale held by the Administrator.

(4) The expenses incurred in connection with the forfeiture and the sale, including expenses of seizure, maintenance and custody of the property pending its disposition, advertising and the court costs shall be defrayed out of the Fund.

PART VII—CONFISCATION OR FORFEITURE OF ASSETS GENERALLY

Voidable transfers

82. The court may—

(*a*) before making a confiscation ordct, subsection (5) does not apply to the excess or, as the case may be, that part.

(*b*) in the case of property in respect of which a preservation order was made, where the order was served in accordance with

Part VI, set aside any conveyance or transfer of the property that occurred after the seizure of the property or the service of the restraining order, unless the conveyance or transfer was made for valuable consideration to a person acting in good faith and without notice.

Protection of third parties

83.—(1) where an application is made for a confiscation order against property under this act, a person who claims an interest in the property may apply to the court, before the confiscation order is made, for an order under subsection (2).

(2) If a person applies to the court for an order under this section in respect of property and the court is satisfied on a balance of probabilities that—

(*a*) the person was not in any way involved in the commission of an offence under this act; and

(*b*) where the person acquired the interest during or after the commission of the offence, he acquired the interest—

(i) for sufficient consideration; and

(ii) without knowing, and in circumstances such as not to arouse a reasonable suspicion that the property was, at the time he acquired it, tainted property, the court shall make an order declaring the nature, extent and value at the time the order is made of the interest of the person.

(3) Subject to subsection (4), where a confiscation order has already been made directing the confiscation of property, a person who claims an interest in the property may, before the end of the period of twelve months commencing on the day on which the confiscation order is made, apply to the court for an order under subsection (2).

(4) A person who—

(*a*) had knowledge of the application for the confiscation order before the order was made; or

(*b*) appeared at the hearing of that application,

shall not be permitted to make an application under subsection (3), except with leave of the court.

(5) A person who makes an application under subsection (1) or (3) shall give no less than fourteen days' written notice of the making of the application to the Attorney General who shall be a party to the proceedings in the application.

(6) An applicant or the attorney general may in accordance with the rules of court, appeal against an order made under subsection (2).

Discharge of confiscation order on appeal and quashing of conviction

84.—(1) Where the court makes a confiscation order under this act against property in reliance on a conviction of a person and the conviction is subsequently quashed, the quashing of the conviction discharges the order.

(2) Where a confiscation order against property is discharged as provided for in subsection (1), or by the court hearing an appeal against the making of the order, any person who claims to have an interest in the property immediately before the making of the confiscation order may apply to the court in writing for the transfer of the interest to the person.

(3) On receipt of an application under subsection (2), the court shall—

(*a*) if the vested interest is in Malawi, give directions that the property or part thereof to which the interest of the applicant relates be transferred to the person; or

(*b*) in any other case, direct that there be payable to the person an amount equal to that of the interest as at the time the order is made.

Payment in lieu of a confiscation order

85. Where a court is satisfied that a confiscation order shall be made in respect of the property of a person convicted of an offence under this Act but that the property or any part thereof or interest therein cannot be made subject to the order and, in particular, the property—

(*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 Malawi;

(*d*) has been substantially diminished in value or rendered worthless; or

(*e*) has been commingled with other property that cannot be divided without difficulty, the court may, instead of ordering the property or part thereof or interest therein to be confiscated, order the convicted person to pay to Government an amount equal to the value of the property, or part interest.

Rules of determining benefit and assessing value

86.—(1) Where a person obtains property as the result of, or in connection with, the commission of an offence under this Act, his benefit is the value of the property so obtained.

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

(3) In determining whether a person has benefited from the commission of an offence under this act or from the offence taken together with another offence, the court 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, to be property that came into the possession or under the control of the person by the reason of the commission of that offence or other serious offences for which the person was convicted; and

(*b*) 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 offence or those offences as property received by him free of any interest therein.

(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 offence, the court shall leave out of account any of the 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 property of a person at any time after the commission of an offence under this Act exceeded the value of the property of that person before the commission of the 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 of the value of property was due to causes unrelated to the commission of an offence under this act, subsection (5) does not apply to the excess or, as the case may be, that part.

Statements relating to benefit from commission of an offence

87.—(1) Where—

(*a*) a person has been convicted of an offence and the competent authority tenders to the court a statement as to any matters relevant to—

(i) determine whether the person has benefited from the offence or from any other offence of which he is convicted in the same proceedings or which is taken into account in determining his or her sentence; or

(ii) an assessment of the value of the benefit of the person from the offence or any other 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 referred to in paragraph (*a*), 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 subsection (1) (*a*); 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 he does not accept any allegation, to indicate any matters he proposes to rely 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 offence or that any property or advantage was obtained by him as a result of or in connection with the commission of the 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 benefit from the commission of an offence is admissible in proceedings for any offence.

Amount recovered under pecuniary penalty order

88.—(1) Subject to subsection (2), the amount to be recovered from a person under a pecuniary penalty order shall be the amount which the court assesses to be the value of the benefit of the person from an offence, or if more than one, all the offences in respect of which the order may be made.

(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, whether by acceptance under section 87 or otherwise, the court may issue a certificate giving its 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 it assesses to be the value of the benefit of the person 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

89. Where—

(*a*) the court makes a pecuniary penalty order against a person in relation to an offence under this Act;

(*b*) in calculating the amount of the pecuniary penalty order, the court took into account a confiscation order of the property or proposed confiscation order in respect of property; and

(*c*) an appeal against confiscation or a confiscation order is allowed or the proceedings from the proposed confiscation order terminate without the proposed confiscation order being made, a competent authority may apply to court for variation of the pecuniary penalty order to increase the amount of the order by the value of the property not so confiscated and the court may, if it considers it appropriate to do so, vary the order accordingly.

Lifting the corporate veil

90.—(1) In assessing the value of benefit derived by a person from the commission of an offence under this Act, the court may treat as property of the person, any property that, in the opinion of the court, is subject to the effective control of the person whether or not he has—

(*a*) any legal or equitable interest in the property; or

(*b*) any right, power or privilege in connection with the property.

(2) Without prejudice to the generality of subsection (1), the court may have regard to—

(*a*) shareholdings in, debentures over or directorships in any company that has an interest, whether direct or indirect, in the property, and for this purpose the court may order the investigation and inspection of the books of a named company;

(*b*) any trust that has any relationship to the property; and

(*c*) any relationship whatsoever between the persons having an interest in the property or in companies of the kind referred to in paragraph (*a*) or trust of the kind referred to in paragraph (*b*), and any other persons.

(3) Where the court, for the purposes of making a pecuniary order against a person, treats particular property as the property of a person pursuant to subsection (1), the court may, on application by the competent authority make an order declaring that the property is available to satisfy the order.

(4) Where, under subsection (3), the court declares that property is available to satisfy a pecuniary penalty order—

(*a*) the order may be enforced against the property as if the property were the property of the person against whom the order is made; and

(*b*) a restraining order may be made in respect of the property as if the property were property of the person against whom the order is made.

(5) Where the competent authority makes an application for an order under subsection (3) that property is available to satisfy a pecuniary penalty order against a person—

(*a*) the competent authority shall give written notice of the application to the person and to any person who the competent authority has reason to believe may have an interest in the property; and

(*b*) the person and any person who claims an interest in the property may appear and adduce evidence at the hearing of the application.

Enforcement of pecuniary penalty order

91. Where the court orders a person to pay an amount under a pecuniary penalty order, section 52 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 with a pecuniary penalty order.

Discharge of pecuniary penalty order

92. A pecuniary penalty order is discharged—

(*a*) if the conviction of the offences in reliance on which the order was made is or is taken to be quashed and no conviction for the offence or offences is substituted;

(*b*) if the order is quashed on appeal; or

(*c*) on the satisfaction of the order by payment of the amount due under the order.

Powers to search for and seize tainted property

93.—(1) A competent authority may—

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

(*b*) enter upon land or upon or into premises and search the land 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:

Provided that the search or seizure is made—

(*a*) with the consent of the person or the occupier of the land or premises, as the case may be;

(*b*) under warrant issued under section 94.

(2) Where the competent authority searches a person under subsection (1), the competent authority may also search any property in, or apparently in, the immediate control of that person.

Search warrant in relation to tainted property

94.—(1) Where the 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*) in the clothing that is being worn by a person;

(*c*) otherwise in the immediate control of the person;

(*d*) upon land or upon or in any premises, the competent authority may lay before a magistrate an information on oath 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.

(2) Where an application is made under subsection (1) for a warrant to search a person, land or premises, the magistrate may, subject to subsection (4), issue a warrant authorizing the competent authority, with assistance and by such force as is necessary and reasonable, to—

(*a*) search the person for tainted property of that kind;

(*b*) enter upon the land or in or upon any premises and to search the land or premises for tainted property of that kind; and

(*c*) seize property found in the course of the search that the competent authority believes on reasonable grounds to be tainted property of that kind.

(3) A warrant may be issued under subsection (2) in relation to tainted property whether or not, an information has been laid in respect of the relevant offence.

(4) A magistrate shall not issue a warrant under subsection (2) unless, where an information has not been laid in respect of the

relevant offence at the time when the application for the warrant is made, the magistrate is satisfied that—

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

(*b*) the property is tainted property.

(5) A warrant issued under this section shall state—

(*a*) the purpose for which it is issued, including a reference to the nature of the relevant offence;

(*b*) a description of the kind of property authorized to be seized;

(*c*) a time at which the warrant ceases to be in force; and

(*d*) whether entry is authorized to be made at any time of the day or night or during specified hours.

(6) If during the course of searching under a warrant issued under this section, the competent authority finds—

(*a*) property that the competent authority believes on reasonable grounds to be tainted property either of a type not specified in the warrant or tainted property in relation to another offence; or

(*b*) anything the competent authority believes on reasonable grounds will afford evidence as to the commission of an offence,

the competent authority may seize that property or thing and the warrant shall be deemed to authorize such seizure.

Searching in emergencies

95.—(1) Where the competent authority suspects, on reasonable grounds, that—

(*a*) particular property is tainted property;

(*b*) it is necessary to exercise the power of search and seizure in order to prevent the concealment, loss or destruction of the property; and

(*c*) the circumstances are so urgent that they require immediate exercise of the power without the authority of a warrant or the order of a court,

the competent authority may search a person, enter upon land, or upon or into premises and search for the property; and if property is found, seize the property.

(2) If during the course of a search conducted under this section, the competent authority finds—

(*a*) property that the competent authority believes, on reasonable grounds, to be tainted property; or

(*b*) anything the competent authority believes, on reasonable grounds, will afford evidence as to the commission of an offence,

the competent authority may seize that property or thing.

Record of property seized

96.—(1) The competent authority which seizes property under section 94 or section 95 shall detain the property seized, taking reasonable care to ensure that the property is preserved.

(2) The competent authority referred under subsection (1) shall be required to report to the Authority, on a monthly basis, on the status of all seized property.

Return of seized property

97.—(1) Where property has been seized under section 94 or section 95 otherwise than because it may afford evidence of the commission of an offence, a person who claims an interest in the property may apply to the court for an order that the property be returned to the person.

(2) Where a person makes an application under subsection (1) and the court is satisfied that—

(*a*) the person is entitled to possession of the property;

(*b*) the property is not tainted property; and

(*c*) the person in respect of conviction, charging or proposed charging the seizure of the property was made has no interest in the property, the court shall order the return of the property to the person.

Restitution of restrained property

98. Where an investigation has begun against a person for an offence under this Act and, property was restrained under this Act in relation to that offence, and any of the following occurs—

(*a*) the person is not charged in Malawi with the offence;

(*b*) the person is charged with the offence in Malawi but not convicted of that offence;

(*c*) a conviction for the offence in Malawi is taken to be quashed and no conviction for such an offence substituted,

the court shall order restitution of the restrained property.

Appointment of an administrator

99.—(1) The Minister shall, by notice published in the *Gazette*, appoint a suitably qualified person as an Administrator for purposes of this Act.

(2) Subject to the directions of the court or the Authority, the Administrator shall do any one or more of the following in respect of property subject of a preservation order—

(*a*) assume control over the property;

(*b*) care for the property;

(*c*) administer the property and to do any act necessary for that purpose;

(*d*) where the property is a business or undertaking, to carry on, with due regard to any law which may be applicable, the business or undertaking; and

(*e*) in the case of property that is perishable, or liable to deterioration, decay or injury by being detained in custody to sell or otherwise dispose of the property;

(*f*) comply with an order of the court;

(*g*) order any person holding property subject to the preservation order to surrender the property forthwith, or within a period the court may determine, into the custody of the Administrator.

(3) The court that made an order under subsection (1) may make the order relating to the fees and expenditure of the Administrator as it deems fit—

(*a*) from the forfeited property, if a forfeiture order is made; or

(*b*) by the Government, if no forfeiture order is made.

Realization of property

100.—(1) Where—

(*a*) a pecuniary penalty order is made;

(*b*) the order is not subject to appeal; and

(*c*) the order is not discharged,

the court may, on an application by the competent authority, exercise the powers conferred upon the court by this section.

(2) The court has, under this section, power to—

(*a*) empower the Administrator to take possession of any realizable property subject to conditions or exceptions specified by the court;

(*b*) order any person having possession of realizable property to give possession of it to the Administrator;

(*c*) empower the Administrator to realize any realizable property in a manner the court may direct;

(*d*) order any person holding an interest in realizable property to make payment to the Administrator in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Act as the court may direct, and

(*e*) on the payment being made, by order, transfer, grant or extinguish any interest in the property.

(3) The court shall not, in respect of any property, exercise the powers conferred by subsection (2) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the court.

Application of proceeds of realization and other sums

101.—(1) Subject to subsection (2), the following property in the hands of an Administrator, that is to say—

(*a*) the proceeds of the realization of any property; and

(*b*) any other sums, being property held by the defendant, shall, after the payments, if any, as the court may direct, have been made out of those sums, be payable to the Registrar or the clerk of the court and be applied on the defendant's behalf towards the satisfaction of the pecuniary penalty order in the manner provided by subsection (3).

(2) If after the amount payable under the pecuniary penalty order has been fully paid, any sums that remain in the hands of the Administrator, the Administrator shall distribute those sums among persons who held property which has been realized under this Part, and in such proportions, as the court may direct after giving a reasonable opportunity for those persons to make representations to the court.

(3) Property received by the court on account of an amount payable under a confiscation order shall be applied as follows—

(*a*) if received by him from an administrator under subsection (1), it shall first be applied in payment of the receiver's remuneration and expenses; and

(*b*) the balance shall be paid or, as the case may be, transferred to the Fund.

Paramountancy of this Act in bankruptcy or winding-up

102.—(1) Where a person who holds realizable property is adjudged bankrupt—

(*a*) property for the time being subject to a restraining order made before the order adjudging him bankrupt; and

(*b*) any proceeds of property realized by virtue of this Act for the time being in the hands of the Administrator is excluded from the property of the bankrupt for the purposes of the Insolvency Act.

Act No. 9 of 2016

(2) Where a person has been declared bankrupt, the powers conferred on the court by this Act or on a person appointed as Administrator shall not be exercised in relation to property for the time being comprised in the property of the bankrupt for the purposes of the Insolvency Act.

Act No. 9 of 2016

Act No. 9 of 2016

(3) Where, in the case of a debtor, a receiver stands appointed under the Insolvency Act and any property of the debtor is subject to a restraining order, the powers conferred on the receiver by virtue of that Act, do not apply to property for the time being subject to a restraining order.

(4) Where a person is declared bankrupt and has directly or indirectly made a gift as defined in this Act—

Act No. 9 of 2016

(*a*) an order shall not be made by virtue of the Insolvency Act in respect of the making of the gift at any time when the person has been charged with an offence and the proceedings have not been concluded by the acquittal of the defendant or discontinuance of the proceedings, or when property of the person to whom the gift was made is subject to a restraining order or a charging order; and

Act No. 9 of 2016

(*b*) any order made under the Insolvency Act after the conclusion of the proceedings shall take into account any realization under this Act of property held by the person to whom the gift was made.

Functions of a liquidator etc.

103.—(1) Where realizable property is held by a legal person and an order for the winding-up receivership or reorganization of the legal person has been made or a resolution has been passed by the legal person for its voluntary winding-up, reorganization or receivership. The functions of the liquidator, administrator or receiver shall not be exercisable in relation to—

(*a*) property for the time being subject to a preservation order made before the relevant time; or

(*b*) any proceeds of property realized by virtue of this Act for the time being in the hands of the Administrator but there shall be payable out of such property any expenses, including the remuneration of the liquidator, administrator or receiver, properly incurred in the winding-up reorganization or receivership in respect of the property.

(2) Where, in the case of a legal person, an order for winding-up, reorganization or receivership has been made or a resolution for winding-up has been passed, the powers conferred on the court by this Act or the Administrator shall not be exercised in relation to any realizable property held by the legal person in relation to which the functions of the liquidator, administrator or receiver are exercisable, so as to—

(*a*) inhibit him from exercising those functions for the purpose of distributing any property held by the legal person to the legal person's creditors; or

(*b*) prevent the payment out of any property of expenses including the remuneration of the liquidator, administrator or receiver properly incurred in the winding-up in respect of the property.

(3) Subsection (2) does not affect the enforcement of a charging order—

(*a*) made before the relevant time; or

(*b*) on property which was subject to a preservation order at the relevant time.

(4) In this section—

(*a*) "Administrator" when used in reference to a legal person in reorganization, bears the meaning ascribed to it under the Insolvency Act;

Act No. 9 of 2016

(*b*) "liquidator" bears the same meaning ascribed to it under the Insolvency Act; and

Act No. 9 of 2016

(*c*) "receiver" bears the same meaning ascribed to it under the Insolvency Act; and

Act No. 9 of 2016

(*d*) "the relevant time" means—

(i) where no order for the winding-up, reorganization or receivership of the legal person has been made, the time of the passing of the resolution for voluntary winding-up, reorganization or receivership;

(ii) where an order for the winding-up of legal person has been made and before the presentation of the petition for the winding-up of the legal person by the court, such resolution having been passed by the legal person, the time of the passing of the resolution; and

(iii) in any other case where an order for the winding-up, reorganization or receivership of a legal person has been made, the time of the making of the order.

Production orders

104.—(1) Where a person has been charged with or convicted of an offence under this Act, and the competent authority or an authorized officer of the Authority has reasonable grounds for suspecting that any person has possession or control of—

(*a*) a document relevant to identifying, locating or quantifying property of the person or to identifying or locating a document necessary for the transfer of property of such person; or

(*b*) a document relevant to identifying, locating or quantifying tainted property in relation to the offence or to identifying or locating a document necessary for the transfer of tainted property in relation to the offence,

the competent authority may apply, in writing, to a judge or magistrate in chambers for an order against the person suspected of having possession or control of a document of the kind referred to, and the application shall be supported by an affidavit.

(2) The judge or magistrate may, if he considers there are reasonable grounds for so doing, make an order that the person produce to the competent authority, at a time and place specified in the order, any documents of the kind referred to in subsection (1):

Provided that an order under this subsection may not require the production of bank books.

(3) The competent authority to whom documents are produced may—

(*a*) inspect the documents;

(*b*) make copies of the documents; or

(*c*) retain the documents for so long as is reasonably necessary for the purposes of this act.

(4) where the competent authority retains documents produced to it under subsection (3), it shall make a copy of the documents available to the person who produced them.

(5) a person is not entitled to refuse to produce documents ordered to be produced under this section on the ground that—

(*a*) the document might tend to incriminate the person or make him liable to a penalty; or

(*b*) the production of the document would be in breach of an obligation, whether imposed by a written law or otherwise, of the person not to disclose the existence or contents of the document.

Evidential value of information

105.—(1) Subject to section 104, where a person who is not charged with an offence produces a document pursuant to an order under section 104, the production of the document, or any information, document or thing obtained as a direct or indirect consequence of the production of the document is not admissible against the person in any criminal proceedings except proceedings under section 106.

(2) For the purposes of subsection (1), proceedings on an application for a restraining order, a confiscation order or a pecuniary penalty order are not criminal proceedings.

Failure to comply with a production order

106. Where a person is required by a production order to produce a document to the competent authority, the person commits an offence against this section if he—

(*a*) contravenes the order without reasonable cause; or

(*b*) in purported compliance with the order, produces or makes available a document known to the person to be false or misleading in a material particular and does not so indicate to the competent authority and provide to the competent authority any correct information of which the person is in possession, and on conviction shall be liable, —

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

(ii) in the case of a body corporate, a fine of K50,000,000.

Application for preservation and restraining orders

107.—(1) A competent authority may apply to the court for a preservation order against any realizable property held by the defendant or specified realizable property held by a person other than the defendant.

(2) An application for a restraining order shall be made, without informing the other party, in writing and be accompanied by an affidavit stating—

(*a*) where the defendant has been convicted of an offence under this Act, the offence for which he was convicted, the date of the conviction, the court before which the conviction was obtained and whether an appeal has been lodged against the conviction;

(*b*) where the defendant has not been convicted of an offence under this Act, the serious offence for which he is charged or about to be charged and grounds for believing that the defendant committed the offence;

(*c*) a description of the property in respect of which the restraining order is sought;

(*d*) the name and address of the person who is believed to be in possession of the property;

(*e*) the grounds for the belief that the property is tainted property in relation to the offence;

(*f*) the grounds for the belief that the defendant derived a benefit, directly or indirectly, for the commission of the offence;

(*g*) where the application seeks a restraining order against property of a person other than the defendant, the grounds for the belief that the property is tainted property in relation to the offence and is subject to the effective control of the defendant;

(*h*) the grounds for the belief that a confiscation order or a pecuniary penalty order may be or is likely to be made in respect of the property.

Preservation orders

108.—(1) Subject to this section, where the competent authority applies to the court for a preservation order under section 107 against property and the court is satisfied that—

(*a*) the defendant has been convicted of an offence under this Act or has been charged or is about to be charged with an offence under this Act;

(*b*) where the defendant has not been convicted of an offence under this Act, there are reasonable grounds for believing that the defendant has committed an offence under this Act;

(*c*) there is reasonable cause to believe that the property is tainted property in relation to an offence or that the defendant derived a benefit directly or indirectly from the commission of the offence;

(*d*) where the application seeks a restraining order against property of a person other than the defendant, there are reasonable grounds for believing that the property is tainted property in relation to an offence and that the property is subject to the effective control of the defendant; and

(*e*) there are reasonable grounds for believing that a confiscation order or a pecuniary penalty order is likely to be made under this act in respect of the property, the court may make an order in accordance with subsection (2).

(2) An order made pursuant to subsection (1) may—

(*a*) prohibit the defendant or any person from disposing of, or otherwise dealing with, the property or a part thereof or interest therein as is specified in the order, except in a manner specified in the order; and

(*b*) at the request of the competent authority, where the court is satisfied that the circumstances so require—

(i) direct such person as the court may appoint to take custody of the property or such part thereof as is specified in the order and to manage or otherwise deal with all or any part of the property in accordance with the directives of the court; and

(ii) requiring any person having possession of the property to give possession thereof to the person appointed under sub-paragraph (i) to take custody and control of the property.

(3) An order under subsection (2) may be made subject to such conditions as the court thinks fit, and without limiting the generality of this subsection, may make provision for meeting out of the property or a specified part of the property, any or all of the following—

(*a*) the reasonable living expenses of the person, including the reasonable living expenses of the dependents of the person, if any, and reasonable business expenses;

(*b*) the reasonable expenses of the person in defending the criminal charge and any proceedings under this Division; and

(*c*) any specified debt incurred by the person in good faith.

(4) In determining whether there are reasonable grounds for believing that property is subject to the effective control of the defendant the court may have regard to the matters referred to in section 66.

(5) Where the other person appointed under subsection (2) (*b*) (i) is given a direction in relation to any property, he may apply to the court for directions or any question respecting the management or preservation of the property under his or her control.

(6) An application under subsection (1) shall be served on all persons interested in the application or any of them as the court thinks expedient and all persons shall have the right to appear at the hearing and be heard.

(7) Where the application is made under subsection (1) on the basis that a person is about to be charged, any order made by the court shall lapse if the person is not charged—

(*a*) where the offence is an offence against the laws of Malawi, within three months; and

(*b*) where the offence is an offence against the laws of a foreign State, within twelve months.

Undertaking by government

109.—(1) Before making a restraining order under section 107 the court may require the Attorney General, on behalf of Government, to make specified undertakings as the court considers appropriate with respect to the payment of damages or costs, or both, in relation to the making and execution of the order.

(2) Nothing in this Act affects the right of a person whose property has been restrained to seek the payment of damages, in cases where it is alleged that the action of the Government involved any abuse of process.

Registration of preservation order affecting land

110.—(1) A competent authority shall upon obtaining a restraining order which affects land in Malawi register it with the appropriate land registry and shall not take effect until it is registered.

(2) Where particulars of a preservation order affecting land are registered with the appropriate registry, a person who subsequently deals with the property shall, for the purposes of this Act be deemed to have notice of the order at the time of the dealing.

Contravention of preservation

111.—(1) A person who knowingly contravenes a preservation order by disposing of or otherwise dealing with property that is subject to the restraining order commits an offence and shall, upon conviction, be liable—

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

(*b*) in the case of a body corporate a fine of K50,000,000.

(2) Where a restraining order is made against 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 under this subsection, and

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

Duration of preservation order

112. A preservation order remains in force until—

(*a*) it is discharged, revoked or varied;

(*b*) the period of twelve months from the date on which it is made has lapsed or such later time as the court may determine; or

(*c*) a confiscation order or a pecuniary order, as the case may be, is made in respect of property which is the subject of the order.

Review of preservation order

113.—(1) A person who has an interest in property in respect of which a preservation order was made under section 108 may, at any time, apply to the court for an order under subsection (4).

(2) An application under subsection (1) shall not be heard by the court unless the applicant has given to the competent authority at least three clear days' notice in writing of the application.

(3) The court may require notice of the application to be given to, and may hear, any person who in the opinion of the court appears to have an interest in the property.

(4) On an application under subsection (1), the court may revoke or vary the restraining order or make the order subject to any conditions that the court thinks fit:

Provided that, for the purposes of this subsection, the court may—

(*a*) require the applicant to enter into recognizances;

(*b*) vary the restraining order to permit the payment of reasonable living expenses of the applicant, including his dependants, if any, and reasonable legal or business expenses of the applicant.

(5) An order under subsection (4) may only be made if the court is satisfied that—

(*a*) the applicant is the lawful owner of the property or is entitled to lawful possession thereof and appears to be innocent of any complicity in the commission of an offence under this act or of any collusion in relation to the offence; and

(*b*) the property will no longer be required for the purposes of any investigation or as evidence in any proceedings.

Extension of preservation order

114.—(1) The competent authority may apply to the court that made a preservation order for an extension of the period of the operation of the 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 thereof or that a pecuniary penalty order may be made against the person.

Powers of search for and seize documents relevant to locating property

115. The competent authority may, with the consent of the occupier of the land or the premises, or under warrant issued under section 116—

(*a*) enter upon land or upon or into premises;

(*b*) search the land or premises for any document of the type described in section 104 (1); and

(*c*) seize any document found in the course of that search that the competent authority believes, on reasonable grounds, to be a relevant document in relation to an offence.

Search warrant for locating documents for locating property

116.—(1) where—

(*a*) a person has been charged or convicted of an offence under this act; or

(*b*) the competent authority has reasonable grounds for suspecting that there is, or may be within the next seventy-two

hours, upon any land or upon or in any premises, a document of the type described in section 104 (1) in relation to the offence, the competent authority may make an application supported by information on oath to a court for a search warrant in respect of that land or those premises.

(2) Where an application is made under subsection (1) for a warrant to search land or premises, the magistrate or judge may, subject to subsection (4), issue a warrant authorizing competent authority, with such assistance and by necessary and reasonable force to—

(*a*) enter upon the land or in or upon any premises and to search the land or premises for property of that kind; and

(*b*) seize property found in the course of the search that the competent authority believes on reasonable grounds to be property of that kind.

(3) A court shall not issue a warrant under subsection (2) unless it is satisfied that—

(*a*) a production order has been given in respect of the document and has not been complied with;

(*b*) a production order in respect of the document would be unlikely to be effective;

(*c*) the investigation for the purposes of which the search warrant is being sought might be seriously prejudiced, if the competent authority does not gain immediate access to the document without any notice to any person; or

(*d*) the document involved cannot be identified or described with sufficient particularity to enable a production order to be obtained.

(3) A warrant issued under this section shall state—

(*a*) the purpose for which it is issued, including a reference to the nature of the relevant offence;

(*b*) a description of the kind of documents authorized to be seized;

(*c*) a time at which the warrant ceases to be in force; and

(*d*) whether entry is authorized to be made at any time of the day or night or during specified hours.

(4) If during the course of searching under a warrant issued under this section, the competent authority finds—

(*a*) a document of the type described in section 104 (1) that the competent authority believes on reasonable grounds to relate to the relevant offence or to another indictable offence; or

(*b*) anything the competent authority believes on reasonable grounds will afford evidence as to the commission of an offence, the competent authority may seize that property or thing and the warrant shall be deemed to authorize such seizure.

Part VIII—Mutual Assistance

Search for and seizure of tainted property in relation to foreign offences

117. Where a foreign State requests assistance to locate or seize property suspected to be tainted property in respect of an offence within its jurisdiction, the provisions of section 104 and section 105 apply with necessary modification.

Search warrants in relation to foreign offences Cap. 8:04

118. Where a foreign State requests assistance to locate or seize property suspected to be tainted property in respect of an offence within its jurisdiction and the Attorney General has, under the Mutual Assistance in Criminal Matters Act, authorized the giving of assistance to the foreign State, the provisions of section 104 apply *mutatis mutandis*.

Money laundering and financing of terrorism offences for extradition purposes

119. For the purpose of any law relating to extradition of fugitive offenders, offences under this Act shall be offences for which extradition or rendition may be granted.

Mutual assistance Cap. 8:04

120.—(1) Where for the investigation or prosecution of an offence under this Act or for the making or execution of any order or direction made under this Act in respect of such offences, any assistance is required from a foreign State, the Minister, under the Mutual Assistance in Criminal Matters Act, may request assistance from the designated country as if such investigation, prosecution, making or execution is a criminal matter within the meaning of that Act.

(2) Where a request is made by a foreign State in the investigation or prosecution of an offence equivalent to an 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 such an offence, the Minister may in accordance with the Mutual Assistance in Criminal Matters Act, provide such assistance as if such investigation, prosecution, making or execution is a criminal matter within the meaning of that Act.

Cap. 8:04

Mutuality and reciprocity

121. For purposes of this Part, the principles of mutuality and reciprocity shall, at all times, be recognized.

Reciprocal assistance

122.—(1) For the purpose of an investigation or proceedings under this Act, the Attorney General may request an appropriate authority of another country to arrange for—

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(*a*) evidence to be taken, or information, documents or articles to be produced or obtained in that country;

(*b*) a warrant or other instrument authorizing search and seizure to be obtained and executed in that country;

(*c*) a person from that country to come to Malawi to assist in the investigation or proceedings;

(*d*) a preservation order or forfeiture order made under this Act to be enforced in that country, or a similar order to be obtained and executed in that country to preserve property that had it been located in Malawi would be subject to forfeiture or confiscation under this Act;

(*e*) an order or notice under this Act to be served on a person in that country; or

(*f*) other assistance to be provided, whether pursuant to a treaty or other written arrangement between Malawi and that country or otherwise.

(2) Requests by other countries to Malawi for assistance of a kind specified in subsection (1) shall be made to the Attorney General.

Foreign evidence

123. Evidence, documents or articles obtained pursuant to a request made under section 124 shall—

(*a*) be received in evidence in Malawi;

(*b*) not be used for a purpose other than that specified in that request, except with the consent of the appropriate authority of the foreign country; and

(*c*) be returned when its use is no longer required, unless that authority indicates to the contrary.

Extradition of persons

124.—(1) The effect of a request made pursuant to this Act for extradition shall be to authorize the entry into and departure from Malawi of the person who is the subject of the request, as well as the presence of the person in Malawi for so long as required for the purposes of the request.

(2) Where the person who is the subject of a request under this Part is in custody in the other country by virtue of a sentence or order of a court or tribunal exercising criminal jurisdiction, the effect of a request under this section shall be to authorize the detention in custody of the person in transit to or from Malawi, and while in Malawi at a place the Attorney General may specify.

(3) A person in Malawi, pursuant to a request under this section, shall not be required to give evidence or produce a document or thing in any proceeding in Malawi other than the proceeding to which the request relates.

Taking of evidence in malawi

125.—(1) Where a country requests assistance from Malawi in obtaining evidence for the purpose of an investigation or a proceeding in relation to an offence under corresponding law of that country, the Attorney General may nominate a court in Malawi to receive such evidence as appears to the court appropriate in order to give effect to the request.

(2) The court nominated pursuant to subsection (1) shall have the same power to secure the attendance of witnesses, administer oaths and receive evidence as it has for the purposes of other proceedings before the court.

(3) The evidence received by the court shall be certified or verified by the court in a manner the Attorney General specifies and then furnished to the Attorney General for transmission to the requesting country.

Foreign country request for search and seizure warrant

126.—(1) Where a country requests assistance from Malawi in obtaining and executing a search and seizure warrant for the purposes of an investigation or proceedings relating to the corresponding law of that country, the Attorney General may apply to the court for the warrant requested.

(2) Where, on application, the court is satisfied that—

(*a*) a proceeding or investigation relating to an offence has commenced in the requesting country; and

(*b*) there are reasonable grounds for believing that evidence relevant to the investigation or proceedings is located in Malawi, it may issue a warrant under this section authorizing entry for the purpose of search for the thing and if found the thing shall be seized.

(3) Any written law with respect to the procedure for the making and disposal of an application for the execution of a search warrant shall apply, as if the application were for the issue of a warrant under the Criminal Procedure and Evidence Code.

Requests to malawi for the enforcement of certain orders

127.—(1) Where—

(*a*) a court or tribunal of another country issues a preservation order or confiscation order, (whether based upon criminal or in rem or other non-conviction based proceedings), in respect of an offence against the corresponding law of that country; and

(*b*) that country requests assistance from Malawi in enforcing those orders against property believed to be located in Malawi, the Attorney General may apply to the court for the registration of the order.

(2) Where the Attorney General applies to the court for the registration of an order pursuant to subsection (1), the court shall register the order.

(3) An order registered in accordance with this section shall have effect and shall be enforced, as if it were an order made under this Act or forfeiture orders, as the case may be where the court is satisfied that—

(*a*) the order is final, not subject to appeal, and a certified copy of the order bearing the seal or the signature of the court has been submitted;

(*b*) the person against whom, or in relation to whose property the order has been made, received notice of the proceedings outside of malawi and had an opportunity to defend his interest in the property; and

(*c*) enforcement of the order would not be contrary to the interests of justice.

(4) The attorney general may, in order to preserve the availability of property in malawi that is subject to confiscation proceedings that have been or are likely to be instituted in another country, apply to the court to issue an order of preservation of the said property.

(5) In issuing the order of preservation, the court may rely on information set forth in the request from the other country describing the nature of the pending investigations or proceedings and setting forth a reasonable basis to believe that the said property will be named in a confiscation order at the conclusion of the proceedings.

(6) A copy of the application to register and enforce orders from another country shall be provided to any person who appears to own or control or otherwise have a legal interest in the property in the manner prescribed in this act.

(7) A person entitled to notice pursuant to subsection (6) shall have thirty days from the date of such receipt of notice or publication, whichever is later, to file an objection contesting the enforcement of the order from another country.

(8) Unless a person contesting enforcement of an order from another country is able to establish one of the conditions in subsection (3), the court may enter such orders as may be necessary to give effect to the orders of a court or tribunal of the other country and the court shall be bound by the findings of fact to the extent that they are stated in the foreign order.

(9) Where an amount of money is to be paid under an order from another country is expressed in a currency other than that of Malawi,

the amount shall be converted into the currency of Malawi on the basis of the official exchange rate prevailing as of the date of the registration of the order.

(10) Where the Attorney General considers it appropriate either because an international arrangement so requires or because it is permitted or in the public interest, he may order that the whole or any part of any property forfeited pursuant to this section or the value thereof be returned or remitted to the requesting State.

Part IX—The Confiscation Fund

Confiscation Fund

128. There is hereby established a fund to be known as the Confiscation Fund (hereinafter in this Act referred to as "the Fund").

Composition of the Fund

129. The Fund shall comprise—

(*a*) funds and property confiscated to the Government whether under civil or criminal process under this Act;

(*b*) funds and property subject to a preservation order; provided that the funds and property may not be applied by the Government until after confiscation;

(*c*) any other funds or property lawfully payable to the Fund whether under this Act or otherwise.

Vesting of the Fund
Cap. 37:02

130.—(1) The Fund shall vest in the Minister and, subject to this Act and the Public Finance Management Act, shall be administered in accordance with his directions.

(2) The Fund shall be administered on behalf of the Minister responsible for finance by the Authority in accordance with instructions referred to in section 132.

(3) The Authority shall submit to the Minister such periodic reports on the inflow and outflow of the funds as he requires.

Objects of the Fund

131. The object for which the Fund is established is to hold funds and property forfeited or confiscated under any written law or subject to a preservation order made under this Act.

Application of the Fund

132.—(1) The Fund may be applied for the purposes set out in this Act.

(2) Without limiting the generality of subsection (1), the Fund may be applied to—

(*a*) pay the costs and fees of the Administrator;

(*b*) pay the costs of the liquidator or trustee in bankruptcy as the case may be, where there is liquidation or bankruptcy of the person subject of the confiscation in accordance with this Act;

(*c*) pay for the cost of maintaining or managing the funds or property confiscated or preserved;

(*d*) any other purpose which the National Assembly may approve.

Books and other records of account, audit and reports of the Fund
Cap. 37:02

133.—(1) The Minister shall cause to be kept proper books and other records of account in respect of receipts and expenditures of the Fund in accordance with the Public Finance Management Act.

(2) The accounts of the Fund shall be audited by the Auditor General who shall have all the powers conferred upon him by the Public Audit Act.

(3) The Minister shall cause to be prepared, as soon as practicable, but not later than six months after the end of the financial year, an annual report on all the financial transactions of the Fund.

(4) The report referred to in subsection (3) shall include a balance sheet, an income and expenditure account and the annual report of the Auditor General and shall be laid by the Minister before the National Assembly.

Holdings of the Fund

134.—(1) All sums received for the purposes of the Fund shall be paid into a bank account and no amount shall be withdrawn therefrom except under sectin 132(2) of this Act.

(2) Any part of the Fund not immediately required for the purposes of the Fund as provided for under section 132(2) of this Act may be invested in such manner as the Minister may determine.

Financial year of the Fund

135. The financial year of the Fund shall be the financial year of Government:

Provided that the first financial year of the Fund may be a period shorter or longer than twelve months as the Minister shall determine, but in any case not longer than eighteen months and not shorter than six months.

Part X—Transition

Saving of existing agreements and arrangements

136. Subject to this Act, where an agreement or arrangement was entered into on a date before the commencement of this Act, by the former Financial Intelligence Unit then the agreement or arrangement, as the case may be, shall have effect and be taken always to have had effect as if this Act was in operation when the arrangement or agreement was entered into.

Vesting of assets of the former financial intelligence

137.—(1) Any property procured or acquired by the Financial Intelligence Unit shall vest in the Authority.

(2) On or after the appointed date, there shall be transferred to, and vested in, or subsisted against, the Authority by virtue of this Act and without further assurance—

(*a*) the affairs of the Financial Intelligence Unit;

(*b*) subject to this Act, all property, rights and obligations which immediately before the appointed date that were the property, rights and obligations of the Financial Intelligence Unit.

(3) Except as provided in this Act, every deed, bond and agreement (other than an agreement for personal service) to which the Financial Intelligence Unit was a party immediately before the appointed date, whether in writing or not, and whether or not of such nature that rights, liabilities and obligations there under could be assigned, shall, unless its subject matter or terms make it impossible that it should have effect as modified in the manner provided by this subsection, have effect from the date of the assignment thereof, as if—

(*a*) the Authority had been a party thereto;

(*b*) for any reference to the Financial Intelligence Unit were substituted, as regards anything falling to be done on or after the appointed date, a reference to the Authority; and

(*c*) for any reference to any officer of the Financial Intelligence Unit not being a party thereto and beneficially interested therein there were substituted, as regards anything falling to be done on or after the appointed date, or reference to such officer of the Authority as the Authority shall designate.

(4) Subject to the provisions of subsection (2), documents, other than those referred to therein, which refer specifically or generally to the Authority shall be construed in accordance with subsection (2) as far as applicable.

Registration of property transferred by the Financial Intelligence Unit

138.—(1) Where under this Act, any property, rights, liabilities and obligations of the Financial Intelligence Unit are deemed to have been transferred to the Authority in respect of transferred property, rights liabilities and obligations whose transfer a written law provides for registration, the Authority shall make an application in writing to the appropriate authority for registration of such transfer.

(2) The registration authority referred to in subsection (1) shall make such entries in the appropriate register as shall give effect to such transfer and, where applicable, issue to the transferee concerned a certificate of title in respect of the property or make necessary amendments to the register, as the case may be, and shall make endorsement on the deeds relating to the title, right or obligation concerned, and no registration fees, stamp duty or other duties shall be payable in respect thereof.

Legal proceedings

139.—(1) Without prejudice to the other provisions of this Act, where any right, liability or obligation vests in the Authority by virtue of this Act, the Authority and all other persons shall, as from the appointed date, have the same rights, powers and remedies (and in particular the same rights as to the instituting or defending of legal proceedings or the making or resisting of applications to any authority) for ascertaining, perfecting that right, liability or obligation as they would have had if it had at all times been a right, liability or obligation of the Authority.

(2) Any legal proceedings or application of any authority pending immediately before the appointed date by or against the Financial Intelligence Unit may be instituted by or against the Authority.

(3) After the appointed date, proceedings in respect of any right, liability or obligation which was vested in, held, enjoyed, incurred or suffered by the Financial Intelligence Unit may be instituted by or against the Authority.

Transfer of employees

140.—(1) Any person who immediately prior to the commencement of this Act is employed by the Financial Intelligence Unit shall be deemed to have been transferred to the employment of the Authority under his former terms and conditions of service and for purposes of determining his rights there under his service shall be regarded as being continuous from the time he was appointed by the Financial Intelligence Unit.

(2) An employee of the Authority transferred to the Authority by virtue of this section shall not be entitled to claim any payments merely by virtue of the transfer.

Repeal and savings Cap. 8:07

141.—(1) Subject to subsection (2), the Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act is hereby repealed.

(2) Anything done in accordance with the Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act repealed under subsection (1), prior to the commencement of this Act and which may be done in accordance with the provisions of this Act, shall be deemed to have been done in accordance with this Act.

(3) Any subsidiary legislation made or deemed to have been made under the Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act repealed by subsection (1) in force immediately before the commencement of this Act—

(*a*) shall remain in force, unless in conflict with this Act, and shall be deemed to be subsidiary legislation made under this Act; and

(*b*) may be replaced, amended or repealed by subsidiary legislation made under this Act.

(4) All contracts awarded by the Financial Intelligence Unit under the Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act repealed by subsection (1), prior to the commencement of this Act, shall be deemed to be contracts awarded by the Authority in accordance with this Act.

PART XI—MISCELLANEOUS

Terrorist list

142.—(1) The Minister may, on the recommendation of the Authority, by notice published in the *Gazette*, publish a national list of terrorists or terrorist organizations and the Authority shall circulate that list to all reporting institutions.

(2) In publishing the list under subsection (1), the Minister may, consult another country or international organization.

Application of Part III to relevant competent authorities

143.—(1) The obligations under Part III apply, where applicable and with necessary modifications, to relevant competent authorities.

(2) The Minister may, by regulations published in the *Gazette*, prescribe the obligations of a relevant competent authority under Part III.

Regulations

144.—(1) The Minister may make regulations for carrying the purpose and provisions of this Act into effect and prescribing all matters which are necessary or convenient to be prescribed for the better carrying out of the provisions of this Act.

(2) Notwithstanding the provisions of section 21(*e*) of the General Interpretation Act, the Minister may, in regulations made under this Act, prescribe a fine of up to K100,000,000 and imprisonment to ten years for an offence committed in contravention of such regulations.

FIRST SCHEDULE s. 2

UNITED NATIONS COUNTER—TERRORISM CONVENTIONS

(*a*) Convention on Offences and Certain Other Acts committed on Board Aircraft, signed at Tokyo on 14th September, 1963;

(*b*) Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16th December, 1970;

(*c*) Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on 23rd September, 1971;

(*d*) Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14th December, 1973;

(*e*) International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17th December, 1979;

(*f*) Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3rd March, 1980;

(*g*) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24th, February, 1988;

(*h*) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10th March, 1988;

(*i*) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10th March, 1988;

(*j*) Convention on the Making of Plastic Explosives for the Purposes of Detention, signed at Montreal, on 1st March, 1991;

(*k*) International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15th December, 1997;

(*l*) International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9th December, 1999.

SECOND SCHEDULE s. 10

OATH OF SECRECY

I, ... having been appointed as an employee of the Financial Intelligence Authority or an agent in the service of the Financial Intelligence Authority do solemnly swear/affirm that I will not, directly, or indirectly divulge the business or proceedings of the Financial Intelligence Authority or the nature or contents of any document communicated to me or any matter coming to my knowledge in my capacity as an employee of the Financial Intelligence Authority or an agent in the service of the Financial Intelligence Authority and that I will well and truly perform the functions and duties of that office.

So help me God.

SWORN at .....

.....
Signature of Deponent

This ..... day of ....., 20……

Before me:.....
Commissioner for Oaths

Passed in Parliament this ninth day of February, two thousand and seventeen.

FIONA KALEMBA
Clerk of Parliament

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