

# **MONEY LAUNDERING ACT, 2003**

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the functions of the competent authority as provided in this Act, and includes any person exercising those functions on behalf of the competent authority;

“conducts” includes initiates, concludes and participates in initiating or concluding a transaction;

“equivalent” when used in relation to a fine in dalasis, means the equivalent of that fine in United States dollars;

“financial institution” means a person who carries on any business or activity -

Schedule I

(a) listed in Schedule I to this Act; or

(b) specified by the Secretary of State by an order published in the *Gazette* amending Schedule I to this Act;

“financial transaction” means a transaction involving-

(a) the movement of funds by wire or other means or involving one or more monetary instrument, which in any way or degree affects a foreign monetary instrument; or

(b) the use of a financial institution that engages in, or the activities of which, affects foreign commercial transactions in any way or degree;

“freezing” means temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order by a court or other competent authority;

“forfeiture” means the permanent deprivation of property by an order of a court or other competent authority;

“identification record” means-

(a) in the case of a body corporate -

(i) the certificate of incorporation, which must be notarized where the corporate body is incorporated outside The Gambia,

(ii) the most recent annual return of the corporate body filed at the Registrar General’s office, which must be notarized where the corporate body is incorporated outside of The Gambia, and

(iii) the location of any office of the body corporate; and

(b) in any other case, sufficient documentary evidence to prove to the satisfaction of a financial institution that the person is who he or she claims to be, and for the purpose of this paragraph “person” includes any person who is a nominee, agent, beneficiary or principal in relation to a business transaction;

“instrumentality” means a thing that is used or intended for use by a person who is a nominee, agent, beneficiary or principal in relation to a business transaction;

“knows or ought to know that the property involved in a financial transaction represents the proceeds of some form of unlawful activity” means that the person knows or ought to have known that the property involved in the transaction represented proceeds from some form, though not necessarily which form of activity, that constitutes an offence;

“law enforcement agency” means The Gambia Police Force or any other body charged with the

responsibility for performing the duties of the law enforcement agency under this Act;

“monetary instrument” means a coin or currency of The Gambia or of any country, traveller’s cheque, personal cheque, bank cheque, money order or investment security in bearer form or otherwise in such form that title to the instrument passes upon delivery;

“money laundering” includes-

- (a) engaging directly or indirectly in a transaction that involves property that is the proceeds of crime, knowing or believing the property to be the proceeds of crime; or
- (b) receiving, possessing or bringing into The Gambia any property that is the proceeds of crime, knowing or believing the property to be the proceeds of crime;

“person” includes any entity, natural or legal, a corporation, partnership, trust or estate joint stock company, association, syndicate, joint venture or other incorporate organization or group, capable of acquiring rights or entering into obligations;

“prescribed offence” means an offence for the time being listed in the Schedule 2 to this Act;

Schedule 2

“property” includes money, investment, holding, possession, asset and any other property, real or personal, heritable or moveable, including things in action and other intangible or incorporeal property wherever situated in The Gambia or else where;

“Secretary of State” means the Secretary of State for Finance and Economic Affairs;

“specified unlawful activity” means an act or activity constituting an offence under this Act with respect to a financial transaction occurring in whole or in part in The Gambia, or an offence

against the laws of a foreign country involving the acquisition of property by fraud, by whatever name called;

“Supervisory Authority” means the Supervisory Authority appointed under section 10.

## **PART II – PREVENTION OF MONEY LAUNDERING**

Identification of customers

3. (1) A financial institution shall take reasonable measures to satisfy itself as to the true identity of an applicant seeking to –

- (a) enter into a business relationship with it; or
- (b) carry out a transaction or series of transactions with it,

by requiring the applicant to produce an official record reasonably capable of establishing the true identity of the applicant.

(2) Accordingly, where the applicant –

- (a) is an individual, he or she shall be required to provide proof of his or her identity by presenting to the financial institution –
  - (i) a valid original copy of an official document bearing his names and photograph, and
  - (ii) the originals of receipts issued within the previous three months by public utilities, as proof of his or her address, or
  - (iii) an identification by an existing customer of the financial institution; and
- (b) is a body corporate, it shall be required to provide proof of its identity by presenting-

- (i) its certificate of incorporation, and
- (ii) any other valid official document dating from less than three months before the date of the transaction and attesting the existence of the body corporate.

(3) The manager, employee or assignee delegated by a body corporate to open or operate an account shall be required to-

- (a) produce the documents specified in subsection (2); and
- (b) proof of the power of attorney granted to him or her covering the transaction.

(4) A casual customer shall be identified-

- (a) in the same way as in subsection (2) for any transaction involving a sum greater than two hundred thousand dalasis or its equivalent; and
- (b) where the transaction is carried out in one or more transactions that seem to be connected and the amount is unknown at the start of the transaction, as soon as the amount is known or is greater than two hundred thousand dalasis.

(5) Where the financial institution suspects that the amount involved in a transaction relates to the laundering of drug money or other proceeds of crime, it shall require identification of a customer, notwithstanding that the amount involved in the transaction is less than two hundred thousand dalasis or its equivalent.

(6) Where an applicant requests a financial institution to enter into a transaction, the institution shall take reasonable measures to establish whether the person is acting on behalf of another person.



(7) If it appears to a financial institution that an applicant requesting it to enter into a transaction is acting on behalf of another person, the institution shall take reasonable measures to establish the true identity of the person on whose behalf or for whose ultimate benefit the applicant may be acting in the proposed transaction, whether as trustee, nominee, agent or otherwise.

(8) In determining what constitutes reasonable measures for the purposes of subsection (6) or (7), regard shall be had to all the circumstances of the case, and in particular, to -

(a) whether the applicant is a person based or incorporated in a country in which there are in force, provisions to prevent the use of the financial system for the purpose of money laundering; and

(b) the custom and practice as may, from time to time, be current in the relevant field of business.

(9) Nothing in this section shall require the production of any evidence of identity where -

(a) the applicant is itself a financial institution; or

(b) there is a transaction or a series of transactions taking place, in the course of a business relationship, in respect of which the applicant has already produced satisfactory evidence of identity.

Special  
surveillance  
of certain  
transactions

4. (1) When a transaction, whether or not it relates to the laundering of drug money-

(a) involves-

(i) a sum greater than five hundred thousand dalasis or its equivalent, in the case of an individual, or

- (ii) two million dalasis or its equivalent, in the case of a body corporate;
- (b) is surrounded by conditions of unusual or unjustified complexity; and
- (c) appears to have no economic justification or lawful object,

the financial institution shall seek information from the customer as to the origin and destination of the funds, the aim of the transaction and the identity of the beneficiary.

(2) On reasonable suspicion that the transactions described in subsection (1) could constitute or be related to money laundering, a financial institution shall –

- (a) prepare a written report containing all relevant information on the matter mentioned in paragraphs (a), (b) and (c) of subsection (1), together with the identity of the principal and, where applicable, of the beneficiary or beneficiaries; and
- (b) send a copy of the report to the Supervisory Authority.

(3) A financial institution shall not notify any person, other than a court, a law enforcement agency or any other person authorised by law, that information has been requested by or furnished to a court or the Supervisory Authority.

(4) When the report referred to in subsection (2) is made in good faith, the financial institution and its employees, directors, owner, or other representatives as authorised by law shall be exempted from criminal, civil or administrative liability, as the case may be, for complying with this section or for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, regardless of the result of the information.

(5) A financial institution or any of its employees, directors, owner, or other authorised representatives who, wilfully fails to comply with an obligation imposed under this section, or who wilfully makes a false report referred to in this section commits an offence.

(6) Without prejudice to criminal or civil liabilities for an offence connected to money laundering, a financial institution or any other person who commits an offence under subsection (5) is liable on conviction to a fine of fifty thousand dalasis and in addition the licence of the financial institution to operate as such may be suspended or revoked by the Central Bank in accordance with the Financial Institutions Act, 1992 or any other law replacing that Act.

(7) The question whether a reasonable suspicion for the purpose of subsection (2) has been formed shall be determined objectively having regard to all the facts and surrounding circumstances of the case.

(8) A report prepared under subsection (2) shall be kept for at least six years from the date it is made.

Mandatory disclosure by financial institutions

5. (1) Notwithstanding anything to the contrary in any other enactment, a financial institution shall, where it suspects that money is being laundered, disclose and report to the law enforcement agency in writing, within seven days, any single transaction, lodgment or transfer of funds in excess of –

(a) one million dalasis or its equivalent, in the case of an individual; and

(b) two million dalasis or its equivalent, in the case of a body corporate.

(2) A person, other than a financial institution, may voluntarily give information to the law enforcement agency on any single transaction, lodgment or transfer of funds in excess of –

(a) two hundred thousand dalasis or its equivalent, in the case of an individual; and

(b) two million dalasis or its equivalent, in the case of a body corporate,

where he or she suspects that money is being laundered.

(3) The law enforcement agency shall acknowledge receipt of any disclosure, report or information received under this section and may collect such additional information, as it may deem necessary.

(4) The acknowledgement of receipt shall be sent to the financial institution within the time allowed for the transaction to be carried out and the acknowledgement may be accompanied by a stop notice deferring the transaction for a period not exceeding three working days, which may be extended for a further period of three working days, and thereafter by a court order for such further periods of three working days as the court may determine.

(5) If a stop notice does not accompany the acknowledgment of receipt, or if, when the stop notice expires, the order specified in subsection (6) to block the transaction has not reached the financial institution, the financial institution may carry out the transaction.

(6) When it is not possible to determine the origin of the funds within the period of stoppage or further stoppage of the transaction, the Attorney General may, at the request of the law enforcement agency, order that the funds, accounts or securities referred to in the report be blocked.

(7) An order made by the Attorney General under subsection (6) shall be enforceable forthwith.

(8) The Attorney General shall notify the Supervisory Authority of any order made by him or her under subsection (6).

Liabilities of directors etc. of financial institution

6. Where funds are blocked under section 5 and there is evidence of conspiracy involving the financial institution and the owner of the funds, the financial institution shall not be relieved of liability, and criminal proceedings, for the laundering of drug money or monies derived from criminal activities, may be brought against its directors and any employee involved in the conspiracy.

Financial institutions to report suspicious transaction

7. (1) Whenever a financial institution is a party to a transaction and has reasonable grounds to suspect that the information it has concerning the transaction may be relevant to the investigation or prosecution of a person for an offence under this Act, it shall as soon as possible but not later than three working days after forming that suspicion and wherever possible before the transaction is carried out -

- (a) take reasonable measures to ascertain from the relevant customer and any relevant party to the transaction, 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
- (c) communicate the information contained in the report to the law enforcement agency in writing or in such other form as the Secretary of State may, from time to time, approve.

(2) The report required by subsection (1) shall -

- (a) contain particulars of the matters specified in subsection (1) (a) and in section 3;
- (b) contain a statement of the grounds on which the financial institution holds the

suspicion; and

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

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

Customer records to be established, etc by financial institutions

8. (1) A financial institution shall establish, maintain and keep-

(a) records of all transactions exceeding -

(i) two hundred thousand dalasis or its equivalent in foreign currency, or

(ii) such amount of currency or its equivalent as may be specified, from time to time, by the Secretary of State,

carried out by it, in accordance with the requirement of subsection (3);

(b) where evidence of a person's identity is obtained in accordance with section 3, a record that indicates the nature of the evidence obtained, including a copy of the evidence or such information as would enable a copy of it to be obtained.

(2) The records required under subsection (1)(a) shall contain particulars sufficient to identify -

(a) the name, address and occupation or where appropriate, the business or principal activity of each person -

(i) conducting the transaction, or

(ii) if known, on whose behalf the transaction is being conducted,

and the method used by the financial institution to verify the identity of each person;

- (b) the nature and date of the transaction;
- (c) the type and amount of currency involved;
- (d) the type and identifying number of any account with the financial institution involved in the transaction;
- (e) if the transaction involves a negotiable instrument, other than currency-
  - (i) the name of the drawer of the instrument and of the institution on which it was drawn,
  - (ii) the name of the payee (if any),
  - (iii) the amount and date of the instrument,
  - (iv) the number (if any) of the instrument, and
  - (v) details of any endorsements appearing on the instrument; and
- (f) the name and address of the financial institution and of the officer, employee or agent of the financial institution who prepared the report.

(3) The records required under subsection (1) shall be kept by the financial institution for a period of at least six years from the date the relevant business or transaction was completed.

Financial institutions to establish and maintain internal report procedures

9. A financial institution shall establish and maintain internal reporting procedures to -

- (a) identify persons to whom an employee is

to report any information which comes to the employee's attention in the course of his or her employment, and which gives rise to knowledge or suspicion by the employee that a person is engaged in money laundering;

- (b) enable a person identified in accordance with paragraph (a) to have reasonable access to information that may be relevant to determining whether sufficient basis exists to report the matter pursuant to section 4 or 5;
- (c) require the identified person to report the matter pursuant to section 4 or 5, if he or she determines that sufficient basis exists;
- (d) take appropriate measures for the purpose of making employees aware of domestic laws relating to money laundering, and the procedures and related policies established and maintained by it pursuant to this Act; and
- (e) provide its employees with appropriate training in the recognition and handling of money laundering transactions.

### **PART III - ANTI-MONEY LAUNDERING SUPERVISION**

Appointment  
of Supervisory  
Authority

10. The Secretary of State shall appoint a person or persons to be known as the Supervisory Authority to supervise financial institutions in accordance with this Act.

Powers of the  
Supervisory  
Authority

11. The Supervisory Authority-

- (a) shall receive the reports issued by the financial institutions pursuant to the provisions of section 4(2);
- (b) shall send any report received to the law enforcement agency if, having considered the report, the Supervisory



Authority also has reasonable grounds to believe that a money laundering offence is being, has been or is about to be committed;

- (c) may, by itself or a person authorised by it for such a purpose, enter into the premises of any financial institution during normal working hours to inspect any business transaction record kept by that financial institution pursuant to section 8 (1)(a) and ask any questions relevant to the record and make any notes or take any copies of the whole or any part of the record;
- (d) shall send to the law enforcement agency any information derived from an inspection carried out pursuant to paragraph (c) if it has reasonable grounds to believe that a money laundering offence is being, has been or is about to be committed;
- (e) shall destroy any note or copy thereof made or taken pursuant to paragraph (c) within three years of the inspection except where a note or copy has been sent to the law enforcement agency;
- (f) may instruct a financial institution to take such steps as may be appropriate to facilitate any investigation anticipated by the Supervisory Authority following a report or investigation made under this section;
- (g) shall compile statistics and records, disseminate information within or outside The Gambia, make recommendation arising out of any information received, issue guidelines to financial institutions and advise the Secretary of State and the Attorney General with regard to any matter relating to money laundering; and

- (h) shall determine training requirements and provide training for any financial institution in respect of its reporting and the business transaction record-keeping obligations required under sections 4 (2) and 12(a), respectively.

Records of transactions to be kept

12. A financial institution shall-

- (a) keep a business transaction record of any business transaction for a period of at least six years after the termination of the business transaction so recorded;
- (b) comply with any instruction issued to it by the Supervisory Authority pursuant to section 11(f);
- (c) permit any member or staff of the Supervisory Authority on request to enter into any premises of the financial institution during normal working hours, and -
  - (i) inspect the records kept pursuant to paragraph (a),
  - (ii) make any note or take a copy of the whole or any part of any record, and
  - (ii) answer any questions of the Supervisory Authority in relation to the record; and
- (d) comply with the guidelines and training requirements issued by the Supervisory Authority in accordance with paragraphs (g) and (h) of section 11, respectively.

Power to enter premises

13. (1) The Supervisory Authority or a law enforcement agency may enter any premises belonging to, or in the possession or under the control of the financial institution or any officer or employee of the financial institution if it is satisfied that there are reasonable grounds for believing that-

- (a) a financial institution has failed to report any business transaction as required under section 4 (2);
- (b) a financial institution has failed to keep a business transaction record as required under section 12; or
- (c) an officer or employee of a financial institution is committing, has committed or is about to commit an offence under this Act.

(2) The Supervisory Authority or law enforcement agency may search the premises and remove any document, material or other thing in the premises required for its purpose.

Delivery of documents, etc

14. The Supervisory Authority or law enforcement agency may apply to the High Court, and if the Court is satisfied that there are reasonable grounds for believing that a person is committing, has committed or is about to commit an offence under this Act or for the purpose of determining whether any property belongs to it is in the possession or under the control of any person, it may make an order directing that-

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

belonging to, or in the possession or under the control of that person, be delivered forthwith to the Supervisory Authority or law enforcement agency; or

- (b) a financial institution produces forthwith to the Supervisory Authority or law enforcement agency, all information obtained by the financial institution about

any business transaction conducted by or for the person with the financial institution during such period before or after the date of the order as the Court directs.

Power of Court to grant injunction

15. (1) The Supervisory Authority may apply to the High Court, and if the Court is satisfied that a financial institution has failed without reasonable excuse to comply in whole or in part with any obligation as provided under section 4(2) or 12, it may grant a mandatory injunction against any or all of the officers or employees of that financial institution on such terms as the Court deems necessary to enforce compliance with the obligation.

(2) In granting an injunction pursuant to subsection (1), the Court may order that, should the financial institution or any officer or employee of that institution fail, without reasonable excuse, to comply with all or any of the provisions of the injunction, the financial institution, officer or employee shall pay a financial penalty in such sum and manner as the Court may direct.

Currency reporting when leaving The Gambia

16. A person leaving The Gambia with more than three hundred thousand dalasis or its equivalent in cash or negotiable bearer instruments, without first reporting the fact to the Supervisory Authority, commits an offence and is liable on conviction to a fine of not less than ten thousand dalasis.

#### **PART IV – MONEY LAUNDERING AND RELATED OFFENCES**

Money laundering offences

17. (1) A person commits the offence of money laundering if he or she –

(a) acquires, possesses or uses a property, knowing or having reason to believe that it is derived directly or indirectly from acts or omissions-

(i) in The Gambia, which constitute an offence under this Act, or any other law of The Gambia

punishable by imprisonment for a term of not less than two years, or

(ii) outside The Gambia, which, had they occurred in The Gambia, would have constituted an offence under a law of The Gambia punishable by imprisonment for a term of not less than two years; or

(b) renders assistance to another person for-

(i) the conversion or transfer of property derived directly or indirectly from those acts or omissions, with the aim of concealing or disguising the illicit origin of the property, or of aiding any person involved in the commission of the offence to evade the legal consequences of the offence, or

(ii) concealing or disguising the true nature, origin, location, disposition, movement or ownership of a property derived directly or indirectly from those acts or omissions.

(2) A person who commits an offence under subsection (1) is liable on conviction –

(a) in the case of an individual, to a fine of not less than one hundred thousand dalasis or imprisonment for a term of not less than five years or more than fifteen years or to both the fine and imprisonment; and

(b) in the case of a body corporate, to a fine of not less than five hundred thousand dalasis.

Laundering of funds obtained through unlawful activities, etc.

18. (1) A person who conducts or attempts to conduct a financial transaction which in fact involves the proceeds of a specified unlawful activity -

(a) with intent to promote the carrying on of the specified unlawful activity; or

(b) where the transaction is designed in whole or in part to -

(i) conceal or disguise the nature, the location, the source, the ownership or the control of the proceeds of a specified unlawful activity, or

(ii) avoid a lawful transaction under a law of The Gambia,

commits an offence if he or she knows or ought to know, having regard to the circumstances of the case, that the property involved in the financial transaction represents the proceeds of the unlawful activity.

(2) A person who commits an offence under subsection (1) is liable on conviction –

(a) in the case of a financial institution or corporate body, to a fine of one million dalasis and where the financial institution or corporate body is unable to pay the fine, its assets to the value of the fine shall be confiscated and forfeited to the Government of The Gambia; or

(b) in the case of a Director, Secretary or other officer of the financial institution or corporate body or any other person, to imprisonment for a term of not less than five years without the option of a fine.

Transporting money in or through The Gambia

19. (1) A person who transports or attempts to transport a monetary instrument or funds from one place in The Gambia to or through a place outside The Gambia or to a place in The Gambia from or

through a place outside the Gambia -

- (a) with intent to promote the carrying on of a specified unlawful activity; or
- (b) where the monetary instrument or funds being transported represent the proceeds of some form of unlawful activity and the transportation is designed in whole or in part to-
  - (i) conceal or disguise the nature, the location, the source, the ownership or the control of the proceeds of a specified unlawful activity, or
  - (ii) avoid a lawful transaction under a law of The Gambia,

commits an offence if he or she knows or ought to know, having regard to the circumstances of the case, that the monetary instrument or funds involved in the transaction represent the proceeds of some form of unlawful activity and the intent of the transaction.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine of one million dalasis or twice the value of the monetary instrument or funds involved in the transportation, whichever is higher, or imprisonment for a term of not less than five years or to both the fine and imprisonment.

Giving advance information prejudicial to investigation

20. (1) A person who, knowing or suspecting that an investigation into money laundering has been, is being or is about to be made, divulges to another person a fact or other information that is likely to prejudice the investigation commits an offence.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine of one hundred thousand dalasis or imprisonment for a term of not less than five years or more than fifteen years or to both the fine and imprisonment.

Falsification and concealment , etc. of document

21. (1) A person who falsifies, conceals, destroys or otherwise disposes of or causes or permits the falsification, concealment, destruction or disposal of any document or material which is or is likely to be relevant to an investigation into money laundering or to any order made in accordance with the provisions of this Act commits an offence.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine of one hundred thousand dalasis or imprisonment for a term of not less than five years or more than fifteen years or to both the fine and imprisonment.

Conversion of property

22. (1) A person who -

(a) converts or transfers resources, property or rights derived directly or indirectly from an unlawful activity, with the intent of-

(i) concealing or disguising the unlawful origin of the resources or property, or

(ii) aiding any person involved in the unlawful activity to evade the legal consequences of the action; or

(b) collaborates in concealing or disguising the genuine nature, origin, location, disposition, movement or ownership of the resources, property or rights derived directly or indirectly from any unlawful activity,

commits an offence and is liable on conviction to imprisonment for a term of not less than five years or more than fifteen years or to both the fine and imprisonment.

(2) A person commits an offence under subsection (1) and is subject to the penalty specified in that subsection notwithstanding that the various acts constituting the offence were committed in



different countries.

Other offences

23. (1) Without prejudice to the penalties provided for the laundering of proceeds of unlawful activity or for illicit traffic in drugs, a person who –

(a) being the chief executive or employee of a financial institution-

(i) warns or in any other way intimates the owner of the funds involved in an investigation about a report he or she is required to make or the action taken in respect of the funds, or

(ii) refrains from making the report he or she is required to make;

(b) destroys or removes a register or record required to be kept under this Act;

(c) makes or accepts cash payments greater than the amount authorised under this Act without making the report required to be made under this Act; or

(d) fails to report an international transfer of funds or securities required to be reported under this Act,

commits an offence.

(2) A person who commits an offence under subsection (1) is liable on conviction -

(a) in the case of an individual, to a fine of not less than one hundred thousand dalasis or imprisonment for a term of not less than five year or more than fifteen years or to both the fine and imprisonment; and

(b) in the case of a financial institution or any other body corporate, to a fine of not less than one million dalasis.

(3) A person who commits an offence under subsection (1) may, in addition to the penalty prescribed for the offence, be banned permanently or for a period of five years from practicing the profession or carrying out the business which provided the opportunity for the offence to be committed.

Conspiracy,  
aiding, etc.

24. A person who -

- (a) conspires with, aids, abets or counsels any other person to commit an offence;
- (b) attempts to commit or is an accessory to an offence; or
- (c) incites, procures or induces any other person by any means whatsoever to commit an offence,

under this Act commits the offence and is liable on conviction to the same punishment as is prescribed for that offence under this Act.

Offences by  
bodies  
corporate

25. (1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed on the instigation or with the connivance of or to be attributable to any neglect on the part of a Director, Manager, Secretary or other officer of the body corporate, or any person purporting to act in any such capacity, he or she, as well as the body corporate, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where a body corporate is convicted of an offence under this Act, the Court may order that the body corporate shall thereupon and without any further assurance, but for the order, be wound up and all its assets and properties forfeited to the Government of The Gambia.

Inference

26. The knowledge, intent, purpose, belief or suspicion required as an element of any offence under this Act may be inferred from objective or

factual circumstances.

Jurisdiction

27. Notwithstanding anything to the contrary contained in any other law, the offences created by this Act shall be investigated, tried, judged and sentenced by a court of The Gambia regardless of whether or not the prescribed offence occurred in The Gambia or in another territorial jurisdiction, but without prejudice to extradition when applicable in accordance with the law.

## **PART V - FREEZING AND FORFEITURE OF ASSETS IN RELATION TO MONEY LAUNDERING**

Freezing of property

28. (1) The High Court may, on application by the competent authority, by order, freeze the property in the possession or under the control of a person wherever it may be, if the Court is satisfied that a person has been charged or is about to be charged with a money laundering offence.

(2) The High Court may, in making any order freezing the property of that person, give directions for the disposal of that property for the purpose of –

- (a) determining any dispute as to the ownership of the property or any part of it;
- (b) its proper administration during the period of freezing;
- (c) the payment of debts due to creditors prior to the order; or
- (d) the payment of moneys to that person for the reasonable subsistence of that person and his or her family.

(3) An order made under this section shall cease to have effect at the end of the period of three working days following the time the order was made if the person against whom the order was made has not been charged with a money laundering offence within that time.

Forfeiture of property, proceeds or instrumentalities

29. (1) When a person is convicted of a money laundering offence, the Court shall order that the property, proceeds or instrumentalities derived from or connected or related to the offence be forfeited and disposed of in such manner as the Secretary of State may direct.

(2) When as a result of any act or omission of the person convicted, any of the property, proceeds or instrumentalities described in subsection (1) cannot be forfeited, the Court shall order-

(a) the forfeiture of any other property of the person convicted, for an equivalent value; or

(b) the person convicted to pay a fine of the equivalent value.

(3) In determining whether or not property is derived from or connected or related to a money laundering offence, the Court shall apply the standard of proof required in civil proceedings.

(4) In making a forfeiture order, the Court may give directions for the purpose of determining any dispute as to the ownership of the property or any part of it.

Rights of *bona fide* third parties

30. (1) The measures and sanctions referred to in sections 28 and 29 shall apply without prejudice to the rights of *bona fide* third parties.

(2) The Court or competent authority shall ensure that proper notices are given so that all those claiming legitimate legal interest in any property, proceeds or instrumentalities may appear in support of their claims.

(3) A third party's lack of good faith may be inferred, at the discretion of the Court or the competent authority, from the objective circumstances of the case.

(4) The Court or the competent authority shall

return the property, proceeds or instrumentalities to the claimant, when it has been demonstrated to its satisfaction that-

- (a) the claimant has a legitimate legal interest in the property, proceeds or instrumentalities;
- (b) no participation, collusion or involvement with respect to a money laundering offence which is the subject of the proceedings can be imputed to the claimant;
- (c) the claimant lacked knowledge and was not intentionally ignorant of the illegal use of the property, proceeds or instrumentalities;
- (d) the claimant did not acquire any right in the property, proceeds or instrumentalities from a person proceeded against under circumstances that give rise to a reasonable inference that any right was transferred for the purpose of avoiding the eventual subsequent forfeiture of the property, proceeds or instrumentalities; and
- (e) the claimant did all that could reasonably be expected to prevent the illegal use of the property, proceeds or instrumentalities.

Limitations on freezing or forfeiture of property

31. The provisions of sections 28 and 29 shall only apply to property coming into the possession or under the control of a person after the coming into force of this Act.

## **PART VI - INTERNATIONAL COOPERATION**

Assistance to foreign countries

32. (1) The Court or the competent authority shall cooperate with the Court or other competent authority of another State, taking the appropriate measures to provide assistance in matters concerning money

laundering offences, in accordance with this Act, and within the limits of their respective legal systems.

(2) The Court or the competent authority may receive a request from the Court or other competent authority of another State to identify, trace, freeze, seize or forfeit the property, proceeds or instrumentalities connected to money laundering offences, and may take appropriate actions, including those contained in sections 28 and 29.

(3) A final judicial order or judgment that provides for the forfeiture of property, proceeds or instrumentalities connected to a money laundering offence, issued by a Court or other competent authority of another State, may be recognized as evidence that the property, proceeds or instrumentalities referred to in the order or judgment may be subject to forfeiture in accordance with the law.

(4) The Court or the competent authority may receive and take appropriate measures with respect to a request from a Court or other competent authority of another State, for assistance related to any civil, criminal or administrative investigation, prosecution or proceedings, as the case may be, involving money laundering offences or violations of any provision of this Act.

(5) The assistance referred to in this section may include-

- (a) providing original or certified copies of relevant documents and records, including those of financial institutions and Government agencies;
- (b) obtaining testimony in the requested State;
- (c) facilitating the voluntary presence or availability in the requesting State, of persons, including those in custody, to give testimony;

- (d) locating or identifying persons;
- (e) service of documents;
- (f) examining objects and places;
- (g) executing searches and seizures; and
- (h) providing information and evidentiary items, and provisional measures.

(6) The assistance referred to in this section shall be provided only to those countries with which The Gambia has entered into mutual assistance treaties on a bilateral or multilateral basis, and all assistance shall be subject to the terms of the treaties.

## **PART VII - MISCELLANEOUS**

Power to demand and obtain records, etc

33. The Inspector General of Police or an officer designated by the Inspector General to act on his or her behalf may direct any police officer or law enforcement officer to demand, obtain and inspect the books and records of a financial institution to confirm compliance with the provisions of this Act.

Obstruction of the Supervisory Authority, the law enforcement agency or authorised officer

34. A person who wilfully obstructs the Supervisory Authority, law enforcement agency or any other authorised officer in the exercise of the powers conferred on them by this Act commits an offence and is liable on conviction –

- (a) in the case of an individual, to imprisonment for a term of not less than five years or more than ten years; and
- (b) in the case of a financial institution or body corporate, to a fine of one million dalasis.

Money laundering an offence for extradition purposes

35. Money laundering shall be an offence for the purpose of any law relating to extradition or the rendering of fugitive offenders.

Secrecy obligation overridden	36. Subject to the provisions of the Constitution, the provisions of this Act shall have effect notwithstanding any obligation as to secrecy or other restriction on the disclosure of information imposed by any law or otherwise.
Prosecution of offences	37. No prosecution in respect of an offence committed under this Act or the regulations made under it shall be instituted except by, or with the consent in writing of, the Attorney General.
Limitation of proceedings	38. All prosecutions, actions, suits or other proceedings brought for an offence, or for the recovery of any fine, penalty or forfeiture under this Act or the regulations made under it shall be brought within six years after the date the offence was committed or the cause of action accrued.
Regulations	39. The Secretary of State may make regulations for the better carrying out of the provisions of this Act and for prescribing anything that needs to be prescribed.

## **SCHEDULES**

### **SCHEDULE 1 (section 2)**

#### **FINANCIAL INSTITUTIONS**

1. Banking business and financial business as defined in the Financial Institutions Act, 1992 or in any other law replacing that Act.
2. International offshore banking business.
3. Venture risk capital.
4. Money transmission services.
5. Issuing, selling or redeeming credit cards, travellers' cheques, bank drafts, money orders or similar instruments, dealing in bullions, collecting, holding or delivering cash as part of providing payroll services.



6. Guarantees and commitments.
7. Underwriting and participation share issues.
8. Safe custody services.
9. Credit reference services.
10. Safekeeping and administration of securities
11. Trading for own account or for account of customers -
  - (a) money market instruments (for example, cheques, bills, certificates of deposits and commercial papers);
  - (b) foreign exchange transactions;
  - (c) financial and commodity-based derivative instruments, for example, futures, options, interest rate and foreign exchange instruments; and
  - (d) transferable or negotiable instruments.
12. Money brokering.
13. Money lending and pawning.
14. Money exchange and transfer.
15. Real estate business.
16. Credit Unions.
17. Building societies.
18. Insurers, insurance intermediary, securities dealer and broker.
19. Gambling house, casino and lottery.
20. Trust business.

21. Such other businesses or activities as the Secretary of State may, by order in the *Gazette*, specify.

**SCHEDULE 2** (section 2)

**PRESCRIBED OFFENCES**

1. Blackmail
2. Counterfeiting
3. Drug trafficking and related offences
4. Extortion
5. False accounting
6. Forgery
7. Fraud
8. Illegal deposit-taking
9. Robbery involving more than twenty thousand dalasis
10. Terrorism
11. Thefts involving more than twenty thousand dalasis
12. Insider trading
13. Such other offences as the Secretary of State may, by order in the *Gazette*, specify

**FAMARA JATTA  
SECRETARY OF STATE FOR**

## **FINANCE AND ECONOMIC AFFAIRS**

Attorney General's Chambers &  
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Muammar Ghaddafi Avenue  
**BANJUL**

AG/C/272/(4)

15<sup>th</sup> May 2001

The Permanent Secretary  
Department of State for Interior  
and Religious Affairs  
21 OAU Boulevard  
**BANJUL**

**MONEY LAUNDERING BILL, 2001**

I wish to refer to your letter Ref MI/C/VOL. III/(14) of 1<sup>st</sup> February, 2001 and forward herewith a copy of the above-mentioned Bill for your perusal.

Kindly examine the Bill and let us have your comments thereon together with the objects and reasons for the Bill, for incorporation therein.

Thank you.

Grace O. Mowoe (Mrs)  
Parliamentary Counsel  
For: Solicitor General & Legal Secretary