MONEY LAUNDERING AND FINANCING OF TERRORISM (PREVENTION) ACT NO. 6 OF 2011

Date of commencement: 23 August, 2011

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An Act to criminalise money laundering and suppress the financing of terrorism; to establish a financial intelligence unit; to provide for the forfeiture of ill-gotten property and for matters incidental thereto.

PART 1

PRELIMINARY

[Under Section 26]

Short title and commencement.

1. (1) This Act may be cited as the Money Laundering and Financing of Terrorism (Prevention) Act, 2011, and shall come into operation on such date as the Minister may, by Notice published in the *Gazette*, determine.

(2) The Minister may appoint different dates of coming into operation in respect of different sections or parts of this Act.

Interpretation.

2. In this Act unless the context otherwise determines —

"Accountable Institution" means an Institution listed in Schedule 3

[Definition of "Accountable Institution" amended A.5/2016.];

"act of terrorism" means an act as defined in the Suppression of Terrorism Act, 2008;

"Appeals Tribunal" means the Board appointed in terms of section 35*ter* of this Act;

[Definition of "Appeals Tribunal" amended A.5/2016.]

"beneficial owner" means a person or persons who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted and includes those persons who exercise effective control over a legal person or arrangement;

"Board" means the board of the SFIU established under section 27;

"business relationship" means any arrangement or proposed arrangement between a person and an accountable institution where —

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

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

"competent authority" means —

(*a*) the Attorney General;

(*b*) the Director of Public Prosecutions;

(*c*) the Governor of the Central Bank of Eswatini;

(*d*) the Commissioner General;

(*e*) any law enforcement agency and any person exercising such powers on behalf of the foregoing authorities; or

(*f*) such other person as the Minister may, by Notice published in the *Gazette*, designate;

"Council" means the Council of the Task Force established in terms of section 39 of this Act;

[Definition of "Council" amended A.5/2016.]

"Court" means the High Court or a Magistrate's Court, as the case may be;

"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*) any person to whom a transaction has been assigned or transferred;

(*d*) any person who is authorised to conduct a transaction; or

(*e*) such other person as the Minister may, by Notice published in the *Gazette*, prescribe;

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

"Director" means the Director of the Eswatini Financial Intelligence Unit appointed by the Minister in terms of section 21.

"forfeiture" means the permanent deprivation of property by order of court;

"funds" means assets of every kind, whether tangible or intangible, movable or immovable. however acquired, and legal documents or instruments in any form including electronic or digital. evidencing title to or interest in such assets including but not limited to cash, bank credits. travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit;

[Definition of "funds" amended A.5/2016.]

"Institution" means an Accountable institution;

[Definition of "Institution" amended A.5/2016.]

"instrumentality" means any property which is concerned in the commission or suspected commission of an offence at any time before or after the commencement of this Act whether committed within Eswatini or elsewhere;

[Definition of "instrumentality" amended A.5/2016.]

"law enforcement agent" means an officer from a law enforcement agency;

[Definition of "law enforcement agent" amended A.5/2016.]

"law enforcement agency" means —

(*a*) the Police;

(*b*) the Immigration Service;

(*c*) the Anti Corruption Commission; or,

(*d*) such other person or institution as the Minister may, by Notice published in the *Gazette*, prescribe;

"Minister" means the Minister responsible for Finance;

"occasional transaction" means any transaction involving cash that is conducted by any person otherwise than through an account in respect of which the person is the customer;

"offence" means the offence of money laundering or the offence of financing of terrorism, or any offence listed in Schedule 1 to this Act;

"payable-through accounts" means correspondent accounts that are used directly by third parties to transact business on their own behalf;

"person" means any natural or legal person and includes a body of persons, whether it has legal personality or not;

"persons, groups and entities involved in acts of terrorism" means —

(*a*) persons who commit, or attempt to commit, acts of terrorism or who participate in, or facilitate, the commission of acts of terrorism;

(*b*) groups and entities owned or controlled directly or indirectly by such persons; and persons, groups and entities acting on behalf of, or under the direction of, such persons, groups and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons, groups and entities;

"politically exposed person" means a person who holds, or has held, a prominent public position, whether in Eswatini or in a foreign country, including, but not limited to, a Head of State or Government; a politician on the national level; a senior Government, judicial, military or party official on the national level; a senior executive of a State-owned enterprise of national importance; or an individual or undertaking identified as having close family ties or personal or business connections to any of the aforementioned persons;

"proceeds of a crime" means any money or property that is derived, obtained or realised, directly or indirectly, by any person from —

(*a*) the commission of an offence punishable by imprisonment for life or for a period exceeding 12 months; or,

(*b*) an act or omission committed or done outside Eswatini, which if it were committed or done in Eswatini, would constitute an offence referred to in paragraph (*a*);

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

"property" means currency or any asset of any kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible, and includes legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit, whether situated in Eswatini or elsewhere and includes any legal or equitable interest in any such property;

"registrable property" means property the title to which is passed by registration in accordance with the provisions of the Deeds Registry Act, 1968, or the Road Traffic Act, 2007;

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

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

(*b*) where an appeal against a person's conviction or against the making of a forfeiture order is lodged, the date on which the appeal lapses in accordance with the rules of court or is finally determined, whichever is the later;

"restraint" means the temporary prohibition of the transfer, conversion, disposition or movement of property or the temporary assumption of custody or control of property on the basis of an order issued by a Court;

"SFIU" means the Eswatini Financial Intelligence Unit as established in Section 19 of this Act;

"shell bank" means a bank incorporated in a jurisdiction in which it has no physical presence and which is unaffiliated with a regulated financial group. "Task Force" means the Council and the Technical Committee established in section 39 of this Act;

[Definition of "shell bank" amended A.5/2016.]

"supervisory authority" means any authority having oversight over an accountable institution;

"Task Force" means the National Task Force on Anti Money Laundering appointed in terms of section 38;

"tainted property" means the property intended for use in, or used in or in connection with the commission of an unlawful activity; and the proceeds of crime;

"Technical Committee" means the Technical Committee of the Task Force established in terms of section 39 of this Act;

(Amended A.5/2016.)

"terrorist group" means a group or organisation as defined in the Suppression of Terrorism Act;

"terrorist property" means property of a terrorist as defined in the Suppression of Terrorism Act;

"unlawful activity" means an act or omission which if committed in Eswatini or elsewhere, would constitute a criminal offence.

Application.

3. Notwithstanding anything contained in any other law, an accountable institution shall be compelled to comply with the provisions of this Act.

PART 2

OFFENCES RELATING TO MONEY LAUNDERING AND FINANCING OF TERRORISM

Offence of money laundering.

4. (1) A person who —

(*a*) converts or transfers property knowing or having reason to believe that the property is derived directly or indirectly from those acts or omissions referred to in paragraph (*c*), with the aim of concealing or disguising the illicit origin of that property, or of aiding any person involved in the commission of those acts or omissions to evade the legal consequences of those acts or omissions;

(*b*) conceals or disguises the true nature, origin, location, disposition, movement or ownership of the property knowing or having reason to believe that the property is derived directly or indirectly from those acts or omissions referred to in paragraph (*c*);

(*c*) acquires, possesses or uses property, knowing or having reason to believe that it is derived directly or indirectly from an act or omission—

(i) in Eswatini which constitutes an offence under any law; or

(ii) outside Eswatini which, had it occurred in Eswatini, would have constituted an offence; or

[Replaced A.5/2016.]

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

commits the offence of money laundering.

(2) A person who —

(*a*) organises or directs others to commit;

(*b*) attempts to commit;

(*c*) conspires to commit; or,

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

(3) Knowledge, intent or purpose required as an element of the activities mentioned in subsection (1) may be inferred from objective factual circumstances.

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

Offence of financing of terrorism.

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

(2) Notwithstanding the provisions of subsection (1), an act is taken not to be an act of terrorism if —

(*a*) it is committed as part of an advocacy, protest, demonstration, dissent or industrial action and is not intended to result in any harm mentioned in subsection (1); or,

(*b*) it occurs in a situation of armed conflict and is, at the time and in the place it occurred, in accordance with rules of international law applicable to the conflict.

(3) A person who —

(*a*) organises or directs others to commit;

(*b*) attempts to commit;

(*c*) conspires to commit; or,

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

commits an offence under this section.

(4) Knowledge, intent or purpose required as an element of the activities mentioned in subsections (1) and (3) maybe inferred from objective factual circumstances.

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

(6) The offence under sub-section (1) shall be deemed to have occurred whether or not—

(*a*) an act of terrorism actually occurred or the funds in question are linked to a particular act of terrorism, individual or group of terrorists;

(*b*) the accused was physically in or not in the same country as the terrorist, terrorist group or act of terrorism is situated; or

(*c*) the funds are from a legitimate source.

[Added A.5/2016.]

PART 3

RISK ASSESSMENT AND OBLIGATIONS TO VERIFY IDENTITY AND KEEP RECORDS

[Amended A.5/2016.]

Risk Assessment and Management.

6. (1) An accountable institution shall put in place appropriate processes to identify, assess, monitor, manage, and mitigate money laundering and financing of terrorism risks, including, but not limited to risks that may arise in relation to the development of new products, business practices and delivery channels or risks that may arise through the use of new or developing technologies.

(2) An accountable institution shall ensure that it has adequate resources to fulfil the requirements of sub-section (1).

(3) An accountable institution shall create, maintain and update regularly, a record of the actions taken in pursuance of sub-section (1).

[Added A.5/2016.]

Accountable institutions to verify customers' identity and transactions.

6*bis*. (1) An accountable institution shall, before entering into a business relationship with any person, ascertain the identity of a customer or beneficial owner on the basis of any official identifying document and shall verify the identity of the customer on the basis of reliable and independent source documents, data or information or other evidence as is reasonably capable of verifying the identity of the customer when —

(*a*) an accountable institution —

(i) enters into a continuing business relationship; or,

(ii) in the absence of such a business relationship, conducts any transaction;

(*b*) carrying out an electronic funds transfer;

(*c*) there is a suspicion of a money laundering offence or the financing of terrorism; or,

(*d*) the accountable 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), an accountable institution shall —

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

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

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

(ii) national identity card or passport or other applicable official identifying document,

and take reasonable measures to establish the source of wealth and source of property of that person;

(*c*) if the transaction is conducted by a legal entity, adequately identify and verify its legal existence and structure, including information relating to —

(i) the customer's name, legal form, address and directors;

(ii) the principal owners and beneficiaries and control structure; and,

(iii) provisions regulating the power to bind the entity,

and verify that any person purporting to act on behalf of the customer is so authorised, and identify those persons;

(*d*) in relation to politically exposed persons, in addition to the requirements in paragraph (*b*) shall —

(i) have appropriate risk management systems to determine whether the customer is a politically exposed person;

(ii) obtain the approval of senior management before establishing a business relationship with the customer; and,

(iii) conduct regular enhanced monitoring of the business relationship.

(3) An accountable institution shall take reasonable measures to ascertain the purpose of any transaction in excess of twenty thousand emalangeni (E20,000), or of ten thousand emalangeni (E10,000) in case of cash transactions, and the origin and ultimate destination of the funds involved in the transaction.

(4) An accountable institution shall, in relation to its cross-border correspondent banking and other similar relationships —

(*a*) adequately identify and verify the respondent institution with which it conducts such a business relationship;

(*b*) gather sufficient information about the nature of the business of the respondent institution;

(*c*) determine from publicly available information the reputation of the person and the quality of supervision to which the respondent institution is subject;

(*d*) assess the respondent institution's anti-money laundering and terrorist financing controls;

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

(*f*) document the responsibilities of the accountable institution and the respondent institution.

(5) Where the relationship is a payable-through account, an accountable institution shall ensure that the institution with whom it has established the relationship —

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

(*b*) is able to provide the relevant customer identification data upon request to the accountable institution.

(6) Where an accountable institution relies on an intermediary or third party to undertake its obligations under subsections (1) and (2) or to introduce business to it, that accountable institution shall —

(*a*) immediately obtain the information and documents required by subsections (1) and (2);

(*b*) ensure that copies of identification data and other relevant documentation relating to the requirements in subsections (1), (2) and (3) 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, the requirements set out in sections 7, 8 and 9 of this Act.

(7) Subsection (1), (2) or (3) shall not apply —

(*a*) if the transaction is part of an existing and regular business relationship with a person who has already produced satisfactory evidence of identity unless the accountable institution has reason to suspect that the transaction is suspicious or unusual; or,

(*b*) if the transaction is an occasional transaction not exceeding two thousand, five hundred emalangeni (E2,500) unless the accountable institution has reason to suspect that the transaction is suspicious or unusual.

(8) The Minister may, by Notice published in the *Gazette*, prescribe the —

(*a*) 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; or,

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

(9) In the case of an existing customer, an accountable institution shall verify the identity of the customer within such period as the Minister may, by Notice published in the *Gazette* prescribe.

[Renumbered A.5/2016.]

Necessity of identification to conduct business.

7. If satisfactory evidence of the identity of a customer is not produced to, or obtained by, an accountable institution in accordance with section 6, the accountable institution shall report

the attempted transaction to the SFIU and shall not proceed any further with the transaction unless directed to do so by the SFIU.

Accountable institution to maintain records.

8. (1) An accountable institution shall establish and maintain records of —

(*a*) the identity of a person obtained in accordance with section 6;

(*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 SFIU or competent authority, and shall contain particulars as the Minister may by regulation prescribe.

(*c*) all reports made to the SFIU under section 12; and,

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

(2) The records mentioned in subsection (1) shall be kept for a minimum period of five years from the date —

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

(*b*) of any transaction or correspondence;

(*c*) the account is closed or business relationship ceases, whichever is the 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 SFIU or competent authority to provide, if necessary, evidence for prosecutions of any offence; and,

(*b*) maintained in a manner and form that will enable the accountable institution to comply immediately with requests for information from the law enforcement or SFIU.

(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 in a manner as the Minister may by Regulation prescribe.

(5) The records maintained under subsection (1) shall be made available upon request to the SFIU, or a competent authority for purposes of ensuring compliance with this Act and for purposes of an investigation or prosecution of an offence.

(6) Notwithstanding the provisions of sub-section (2), an accountable institution shall maintain particular records beyond the minimum period of five years when requested to do so by—

(*a*) the SFIU

(*b*) a Law Enforcement Agency; or

(*c*) a Supervisory Authority.

(7) An accountable institution may use the services of a third party for the keeping and maintenance of records.

(8) Where an accountable institution relies on a third party as envisaged in sub-section (7) that accountable institution shall be liable for ensuring that the requirements of this section are met.

[Added A.5/2016.]

Accountable institution to maintain account in true name.

9. (1) An accountable institution that maintains accounts, shall maintain them in the true name of the account holder.

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

Financial Institutions and money transmission service providers to include originator information.

10. (1) An entity or person that is licensed to do business in Eswatini as a financial institution under the Financial Institutions Act, 2005, or a money transmission service provider shall include accurate originator information and other related messages on electronic funds transfers and such information shall remain with the transfer.

(2) Subsection (1) shall not apply to an electronic funds transfer, other than a money transfer effected from the use of a credit or debit card as means of payments that results from a transaction carried out using a credit or debit card, where the credit or debit card number is included in the information accompanying such a transfer.

(3) Subsection (1) shall not apply to electronic funds transfers and settlements between financial institutions where the originator and beneficiary of the funds transfer are acting on their own behalf.

Accountable institution to monitor transactions.

11. (1) An accountable institution shall pay special attention to —

(*a*) any complex, unusual or large transactions;

(*b*) any unusual patterns of transactions;

that have no apparent or visible economic or lawful purpose;

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

(*d*) electronic funds transfer that do not contain complete originator information.

(2) In relation to subsection (1), an accountable institution shall —

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

(*b*) upon request, make available such findings to the SFIU or to competent authority, to assist the SFIU or the law enforcement agency in any investigation relating to an unlawful activity, a money laundering offence or an offence of financing of terrorism.

(3) An accountable institution shall monitor its business relationships and the transactions undertaken throughout the course of the relationship to ensure that its obligations under section 6 are met and that the transactions conducted are consistent with the information that the accountable institution has of its customer and the profile of the business of the customer.

PART 4

OBLIGATIONS TO REPORT

Accountable institution to report suspicious transactions.

12. (1) Where an accountable institution suspects or has reasonable grounds to suspect that —

(*a*) any transaction or attempted transaction may be related to the commission of an unlawful activity, a money laundering offence or an offence of financing of terrorism;

(*b*) information that may be —

(i) relevant to an act preparatory to an offence of the financing of terrorism;

(ii) relevant to an investigation or prosecution of a person or persons for an unlawful activity, a money laundering offence or an offence of financing of terrorism or may otherwise be of assistance in the enforcement of this Act;

the accountable institution shall, forthwith, after forming that suspicion or receiving the information, but no later than two working days, report the transaction or attempted transaction or the information to the SFIU.

(2) A report made in terms of subsection (1) shall —

(*a*) be in writing and may be given by way of mail, telephone to be followed up in writing, fax or electronic mail or such other manner as may be prescribed by the SFIU;

(*b*) be in such form and contain such details as may be prescribed by the SFIU;

(*c*) contain a statement of the grounds on which the accountable institution holds the suspicion; and,

(*d*) be signed or otherwise authenticated by the accountable institution.

(3) An accountable institution that has made a report in terms of subsection (1) shall give the SFIU or the competent authority that is carrying out an investigation arising from, or relating to the information contained in the report, any further information that it has about the transaction or attempted transaction or the parties to the transaction if requested to do so by the SFIU.

(4) If the SFIU, after consulting an accountable institution required to make a report under subsection (1), has reasonable grounds to suspect that a transaction or a proposed transaction may involve an offence of financing of terrorism, the proceeds of an unlawful activity or a money laundering offence, it may direct the accountable institution in writing or by telephone to be followed up in writing within 1 working day, not to proceed with the carrying out of that transaction or proposed transaction or any other transaction in respect of the funds affected by that transaction or proposed transaction for a period as may be determined by the SFIU, which may not be more than five working days, in order to allow the SFIU —

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

(*b*) if the SFIU deems it appropriate, to inform and advise a competent authority

(5) The provisions of this section shall supersede any provision contained in any other law regarding the reporting of suspicious transactions.

Cash Threshold Reports.

12*bis*. (1) An accountable institution shall, within the prescribed period, and in the prescribed form, report to the SFIU the particulars of any transaction which falls above an amount prescribed by the Minister.

(2) The Minister may, by Notice published in the *Gazette*, prescribe the amount or amounts above which an accountable institution shall report as required under sub-section (1).

[Added A.5/2016.]

Supervisory authority or auditor to report suspicious transactions.

13. Where a supervisory authority or an auditor of an accountable institution suspects or has reasonable grounds to suspect that information that it has concerning any transaction or attempted transaction may be —

(*a*) related to the commission of a money laundering offence or an offence of financing of terrorism;

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

(*c*) relevant to an act preparatory to the offence of financing of terrorism;

the supervisory authority or the auditor of the accountable institution shall forthwith report the transaction or attempted transaction to the SFIU.

Disclosure of suspicious transaction reports and other information.

14. A person or an institution shall not disclose to any person —

(*a*) that a report to the SFIU under section 12(1) or 13 has been or may be made, or further information has been given under section 12(3);

(*b*) that the accountable institution has formed a suspicion in relation to a transaction for purposes of section 12(1); 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.

Protection of identity of persons and information in suspicious transaction reports.

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

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

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

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

(*d*) information contained in a suspicious transaction report or information provided pursuant to section 12(3).

[Amended A.5/2016.]

(2) Nothing in this section prohibits the disclosure of any information for the purposes of the prosecution of any offence against any of the provisions of section 14 of this Act.

Protection of persons reporting suspicious transactions.

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

(*a*) an accountable institution, an auditor, the competent authority or supervisory authority of an accountable institution; or,

(*b*) an officer, employee or agent of the accountable institution, an auditor, the competent authority or supervisory authority of an accountable institution acting in the course of that person's employment or agency;

in relation to any action by the accountable institution, the auditor, the competent authority or the supervisory authority or their officer, employee or agent taken under section 11(2)(*b*), 12, or 13 carried out in good faith or in compliance with directions given by the SFIU pursuant to section 31 (*g*) of this Act.

(2) Subsection (1) shall not apply in respect of proceedings for an offence against section 14 of this Act.

Privileged communication.

17. (1) Nothing contained in section 12 of this Act requires any lawyer to disclose any privileged communication.

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

(*a*) a confidential communication, whether oral or in writing, passing between a lawyer in his or her professional capacity and another lawyer in such capacity; or

(*b*) made or brought into existence for the purpose of obtaining or giving legal advice or assistance; and,

(*c*) not made or brought into existence for the purpose of committing or furthering the commission of some illegal or wrongful act.

(3) Where the information consists wholly or partly of, or relates wholly or partly to receipts, payments, income, expenditure, or financial transactions of a specified person (whether a lawyer, his or her client, or any other person), it shall not be a privileged communication if it is contained in, or comprises the whole or part of, any book, account, statement or other record prepared or kept by the lawyer in connection with a trust account of the lawyer.

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

Other preventative measures by accountable institutions.

18. (1) An accountable institution shall —

(*a*) appoint a compliance officer who shall be responsible for ensuring the accountable institutions' compliance with the requirements of this Act;

(*b*) establish and maintain procedures and systems to —

(i) implement the customer identification requirements under section 6;

(ii) implement record keeping and retention requirements under sections 8 and 9;

(iii) implement the reporting requirements under section 12;

(iv) make its officers and employees aware of the laws and regulations relating to money laundering and financing of terrorism;

(v) make its officers and employees aware of the procedures, policies and audit systems adopted by it to deter money laundering and financing of terrorism; and

(vi) screen persons before hiring them as employees;

(*c*) train its officers, employees and agents to recognize suspicious transactions, trends in money laundering and financing of terrorism activities and money laundering and financing of terrorism risks within accountable institutions' products, services and operations; and,

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

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

(*a*) be a senior officer with relevant qualifications and experience to enable him or her to respond sufficiently well to enquiries relating to the accountable institution and the conduct of its business;

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

(*c*) be responsible for ensuring compliance by staff of the accountable 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 accountable institution and the supervisory authority and the SFIU 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.

(3) Subsection (1)(*a*) and (*d*) shall not apply to an accountable institution which, in the course of carrying on its business, does not employ more than 5 persons.

(4) A financial institutions shall—

(*a*) not enter into, or continue, a correspondent banking relationship with a shell bank; and

(*b*) develop and implement sufficient policies and procedures to guard against establishing relations with a respondent foreign financial institution that permits their accounts to be used by shell banks.

(5) A financial institution shall pay special attention to business relationships and transactions with persons, including companies and financial institutions, from countries which do not or insufficiently apply the FATF Recommendations and, where these transactions have no apparent economic or visible lawful purpose, their background and purpose should, as far as possible, be examined, and the findings reduced in writing, and be made available to competent authorities.

[Added A.5/2016.]

Responsibility of Supervisory Authority.

18*bis*. A supervisory authority shall, for the purposes of this Act—

(*a*) conduct inspections and facilitate training for accountable institutions under the supervision of the supervisory authority; and

(*b*) issue guidelines relating to risk management, customer identification, record keeping, reporting obligations, identification of suspicious transactions, politically exposed persons and such other actions required for that accountable institution to be in compliance with this Act.

[Added A.5/2016.]

PART 5

ESWATINI FINANCIAL INTELLIGENCE UNIT AND THE ESWATINI TASK FORCE

Establishment of the Eswatini Financial Intelligence Unit (SFIU).

19. A financial intelligence unit to be known as the Eswatini Financial Intelligence Unit ("SFIU") is hereby established which shall be an autonomous central national agency responsible for receiving, requesting, analysing and disseminating to competent authorities disclosures of financial information as required under this Act in order to counter money laundering and financing of terrorism.

General Powers.

20. The SFIU may do all that is necessary or expedient to perform its functions effectively, which includes the power to —

(*a*) determine its own staff establishment and the terms and conditions for its staff within a policy framework determined by the Board;

(*b*) appoint employees and seconded personnel to posts on its staff establishment;

(*c*) obtain the services of any person by agreement, including any government department, functionary or institution, to perform any specific act or function;

(*d*) acquire or dispose of any right in or to property, but rights in respect of immovable property may be acquired or disposed of only with the consent of the Board; and,

(*e*) open and operate its own bank account, subject to the Finance Management and Audit Act, 1967.

Appointment of Director.

21. (1) The Minister shall, in consultation with the Task Force and on the recommendation of the Board, appoint a Director on such terms and conditions as the Minister may determine.

(2) A person appointed as the Director shall hold office —

(*a*) for a term not exceeding four years, but which is renewable; and

(*b*) on terms and conditions set out in a written employment contract as determined by the Minister;

(3) The Director shall exercise all of the powers, duties and functions of the SFIU under this Act;

(4) The Director may, subject to the approval of the Board, authorize any person, subject to any terms and conditions that the Director may specify, to carry out any power, duty or function conferred on the Director under this Act.

Qualification of Director.

22. The Director shall be a person of recognised qualification, integrity and experience in financial or legal matters or law enforcement with financial investigative background.

Removal from office.

23. (1) The Minister may remove the Director from office on the recommendation of the Board and after there has been an independent inquiry into the Director's violation of this Act, misconduct, incapacity or incompetence.

[Sub-s. (1) replaced A.5/2016.]

(2) The Minister may suspend the Director 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 26.

Acting Director.

24. (1) When the Director is absent or otherwise unable to perform the functions of office, or during a vacancy in the office of Director, the Minister, acting on the advice of the Board, may designate another employee of the SFIU to act as Director.

(2) Notwithstanding the provision in subsection (1), where the Director is absent on leave the Director may appoint a senior officer of the SFIU to act as a Director.

Staff.

25. (1) The staff of the SFIU shall consist of —

(*a*) the Director;

(*b*) Senior management staff who shall be appointed by the Director, subject to the prior approval of the Board;

(*c*) other employees who may be appointed by the Director; and

(*d*) an employee of a supervisory authority, Law Enforcement Agency or Government Department seconded to the SFIU under agreement between the SFIU and the relevant supervisory authority, Law Enforcement Agency or Government Department.

[Sub-s. (1) added A.5/2016.]

(2) Staff members referred to in sub-section (1)(*b*), (*c*) and (d) shall perform their duties subject to the control and directions of the Director.

[Sub-s. (2) amended A.5/2016.]

(3) The period of service of a person seconded to the SFIU as contemplated in section (1)(*d*) shall be calculated as part of, and continuous with, the service of that person with the

employer from whose service that person is seconded to the SFIU for the purposes of leave, pension, or any other condition of service.

[Sub-s. (3) added A.5/2016.]

(4) A staff member of the SFIU whether, employed or seconded, shall not strike or induce or conspire with any other member of the staff of the SFIU to strike.

[Sub-s. (4) added A.5/2016.]

Security screening of staff.

25*bis*. (1) A person shall not be employed in or seconded to the SFIU unless—

(*a*) that person has been subjected to a security screening process; and

(*b*) the Board, in the case of the Director or the Director, in the case of staff, is satisfied after evaluating the information arising out of the security screening process, that that person—

(i) does not constitute a security risk; and

(ii) will not act in a manner that is prejudicial to the objectives or functions of the SFIU.

(2) Where the Board or the Director is satisfied as envisaged in subsection (1)(*b*), the Board or the Director, as the case may be, shall issue a certificate in respect of the person who was the subject of the security screening process certifying that that person has successfully undergone a security screening process.

(3) The Director and staff of the SFIU may at any time determined by the Board or the Director be subjected to a further screening process as contemplated in sub-section (1).

(4) The Board or the Director, may withdraw a certificate issued in terms of sub-section (2) if, on the basis of a further screening process conducted as envisaged in sub-section (3), the Board or the Director believe that the person no longer satisfies the conditions referred to in sub-section (1)(*b*).

(5) Where a certificate has been withdrawn as provided for in sub-section (4), the person concerned may not perform any functions of the SFIU and the Board or the Director shall discharge that person from the SFIU.

[Added A.5/2016.]

Declaration of assets and liabilities and confidentiality.

26. (1) The Director, members of the Task Force, members of the Board and every staff member of the SFIU shall —

(*a*) before they begin to perform any duties under this Act —

(i) on an annual basis declare their assets and liabilities to the Integrity Commission, and

[Sub-para. (i) amended A.5/2016.]

(ii) take and subscribe before a Commissioner of Oaths such oath of confidentiality in the form set out in Schedule 2 to this Act; and

(*b*) maintain during and after their relationship with the SFIU the confidentiality of any matter relating to the relevant enactments.

(2) A person who contravenes this section commits an offence and on conviction, shall be liable to a fine not exceeding five thousand emalangeni (E5,000) and to imprisonment for a term not exceeding 2 years.

The Board.

27. (1) There is hereby established a Board which shall be the policy making organ of the SFIU and shall oversee the SFIU.

(2) Without limiting the generality of subsection (1) or any other provision of this Act, the Board shall, amongst other things, have the authority to —

(*a*) give direction to the Director in connection with the management, performance, operational policies and implementation of the policies of the SFIU;

(*b*) on the recommendation of the Director, approve such organisational structures as the Director may consider necessary for the discharge of the functions of the SFIU;

(*c*) approve such administrative measures as may be required to safeguard all revenue of the SFIU;

[Para. (*c*) amended A.5/2016.]

(*d*) approve the budget of the SFIU; and,

(*e*) approve a code of conduct for the SFIU.

Composition of the Board.

28. (1) The Board shall consist of —

(*a*) a Chairperson, who shall be a person who has —

(i) served as a Judge of the High Court; or,

(ii) served as a law officer or practiced as a lawyer, in Eswatini for at least 10 years;

(*b*) four members of high repute, of whom at least one shall be a person with substantial experience in the legal profession, two shall be persons with substantial experience in the financial services industry representing the banking and non-banking financial sectors and one shall be a person with substantial experience in a designated non-financial businesses and professions sector other than law;

[Para. (*b*) amended A.5/2016.]

(*c*) a former police intelligence officer; and

(*d*) the Director, who shall be an *ex officio* member.

(2) The Chairperson and members of the Board shall be appointed by the Minister.

(3) The Director may, subject to the approval of the Board, appoint a suitably senior staff member of the SFIU to perform the duties of secretary to the Board.

[Sub-s. (3) amended A.5/2016.]

(4) The appointment of the Chairperson and each member of the Board shall be on such terms as may be specified in the instrument of appointment of the Chairperson and each such member.

[Sub-s. (4) renumbered A.5/2016.]

(5) Subject to sub-section (3), the Board shall determine its own procedure.

[Sub-s. (5) renumbered A.5/2016.]

Reports to the Board and Parliament.

29. (1) The Director shall report to the Board on the exercise of the Director's powers and the performance of his or her duties and functions under this Act and advise the Board on any matter relating to money laundering and financing of terrorism.

(2) The Director shall keep the Board informed of any matter that could materially affect public policy or the strategic direction of the SFIU, and any other matter the Board considers necessary.

(3) The Director shall, within 3 months after the close of each financial year, submit an annual report on the activities of the SFIU for the preceding year to the Board.

(4) The Board shall submit the annual report to the Minister, who shall as soon as possible table a copy of the report before Parliament.

Disclosure of information.

30. (1) This section shall apply to a person while that person is or after the person ceases to be a Director, staff member, employee or agent of the SFIU.

[Sub-s. (1) amended A.5/2016.]

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

(*a*) detection, investigation or prosecution of an unlawful activity, a money laundering offence or an offence of financing of terrorism; or

(*b*) enforcement of this Act.

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

Functions and powers of SFIU.

31. The SFIU —

(*a*) shall receive reports made under sections 12, 13 and 41(7) and information provided to the SFIU by any agency of another country, information provided to the SFIU by a competent authority or a government institution or agency, and any other information voluntarily provided to the SFIU about suspicions of an unlawful activity, a money laundering offence or the offence of financing of terrorism;

(*b*) shall have the authority to collect any information that the SFIU considers relevant to an unlawful activity, money laundering activities or financing of terrorism and that is publicly available, including commercially available databases, or information that is collected or maintained, including information that is stored in databases maintained by the government;

(*c*) shall have the authority to request information from accountable institutions, any supervisory agency and any law enforcement agency for purposes of this Act;

(*d*) shall analyse and assess all reports and information and shall in the process conduct operational and strategic analysis;

[Para. (*d*) amended A.5/2016.]

(*e*) shall carry out examinations of accountable institutions for the purposes of this Act;

[Para. (*e*) amended A.5/2016.]

(*f*) shall send any information derived from such report or any other information it receives to the appropriate competent authority or supervisory authority if, on the basis of its analysis and assessment, the SFIU has determined that there is an element of money laundering, financing of terrorism, proliferation of weapons of mass destruction or criminal activity or unlawful activity;

[Para. (*f*) amended A.5/2016.]

(*g*) shall have the authority to instruct any accountable institution to take such steps as may be appropriate in relation to any information or report received by the SFIU, to enforce compliance with this Act or to facilitate any investigation anticipated by the SFIU;

(*h*) shall compile statistics and records and may disseminate information within Eswatini or elsewhere, as well as make recommendations arising out of any information received;

(*i*) shall issue guidelines to an accountable institution not under the jurisdiction of a supervisory authority relating to risk based supervision, customer identification, record keeping, reporting obligations, identification of suspicious transactions, politically exposed person and such other related actions required for that accountable institution to be in compliance with this Act;

[Para. (*i*) amended A.5/2016.]

(*j*) may obtain further information on parties or transactions referred to in a report made to it under this Act;

(*k*) may provide training programs for accountable institutions in relation to customer identification, record keeping and reporting obligations and the identification of suspicious transactions;

(*l*) may conduct research into trends and developments in the area of money laundering and financing of terrorism and improved ways of detecting, preventing and deterring money laundering and the financing of terrorist activities;

(*m*) may educate the public and create awareness on matters relating to money laundering and financing of terrorism;

(*n*) may disclose any report, any information derived from such report or any other information it receives to an institution or agency of a foreign state or of an international organisation established by the governments of foreign states

that has powers and duties similar to those of the SFIU as set out in section 32, if on the basis of its analysis and assessment, the Financial Intelligence

Unit has reasonable grounds to suspect that report or information would be relevant to investigating or prosecuting a money laundering offence or a terrorist financing offence;

(*o*) may enter into any agreements or arrangements with any domestic government institution or agency regarding the exchange of information;

(*p*) may require police and other investigative or prosecutorial bodies to report progress and outcomes on matters referred to them; and

(*q*) may perform such other acts as may be necessary to fulfil the objectives of the SFIU;

(*r*) shall provide feedback to Accountable institutions on reports made to the SFIU;

[Para. (*r*) added A.5/2016.]

(*s*) shall implement a registration system for Accountable institutions;

[Para. (*s*) added A.5/2016.]

Disclosure to foreign institutions and agencies.

32. The SFIU may disclose any report or information as set out under section 31(*n*) to an institution or agency of a foreign state or of an international organisation or body or other institution or agency established by the governments of foreign states that has powers and duties similar to those of the SFIU —

(*a*) on such terms and conditions as are set out in the agreement or arrangement between the SFIU and that foreign state or international organisation regarding the exchange of such information; or,

(*b*) where such an agreement or arrangement has not been entered into between SFIU and that foreign state or international organisation or body, on such terms and conditions as may be agreed upon by SFIU and the institution or agency at the time of disclosure, which terms and conditions shall include the stipulation that the report or information be used for intelligence purposes only and be treated in a confidential manner and not be further disclosed without the express consent of the SFIU.

Audit.

33. (1) The accounts of the SFIU shall be audited by the Auditor General.

(2) 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 that they have obtained, or to which they have had access, in the course of their audit.

(3) Notwithstanding the provisions of sub-section (3) the Auditor General may approve the appointment of an independent audit firm to audit the accounts of the SFIU.

[Sub-s. (3) added A.5/2016.]

Power to examine.

34. (1) The SFIU or Supervisory Authority, with respect to the accountable institutions under their supervision and the SFIU with respect to all other accountable institutions, may during or after business hours, enter any premises to examine the records and inquire into the business and affairs of any accountable institution for the purpose of —

(*a*) ensuring compliance with Parts 3 and 4;

(*b*) using or causing to be used any computer system or data processing system in the premises to examine any data contained in or available to the system;

(*c*) reproducing any record, or causing it to be reproduced from the data, in the form of a printout or other intelligible output and remove the printout or other output for examination or copying; or,

(*d*) using or causing to be used any copying equipment in the premises to make copies of any record.

(2) The owner or person responsible for premises referred to in subsection (1) and every person found there shall give the SFIU or a supervisory authority all reasonable assistance to enable them to carry out their responsibilities and shall furnish them with any information that they may reasonably require with respect to the administration of Parts 3 and 4 or the regulations under this Act.

Powers to Enforce Compliance.

35. (1) The enforcement of compliance with and implementation of the provisions of this Act by accountable institutions shall be conducted using a risk based approach or on a risk sensitive basis and shall be the responsibility of a supervisory authority with respect to the accountable institutions under their supervision and the SFIU with respect to all other accountable institutions.

[Sub-s. (1) amended A.5/2016.]

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

(3) Notwithstanding the provisions of Section 35*bis*, where an accountable institution fails to comply with a directive issued under Section 35*bis*(3), the SFIU or the supervisory authority, may, upon application to a Court and satisfying the Court that an accountable institution has failed without reasonable excuse to comply in whole or in part with any obligations under this Act, obtain an interdict against any or all of the officers or employees of that accountable institution in such terms as the Court deems necessary to enforce compliance with such obligation.

[Sub-s. (3) amended A.5/2016.]

(4) In granting an interdict pursuant to sub-section (3), the Court may order that should the accountable institution or any officer or employee of that institution fail without reasonable excuse to comply with all or any of the provisions of that interdict such accountable institution, officer or employee shall pay a financial penalty in the sum of twenty thousand emalangeni (E20,000) plus five thousand emalangeni (E5,000) for each day that the failure to comply continues.

[Sub-s. (4) amended A.5/2016.]

Administrative Sanctions.

35*bis*. (1) The SFIU or a supervisory Authority may impose an administrative sanction referred to in sub-section (3) on any accountable institution or person to whom this Act applies when satisfied on available facts and information that the institution or person has failed to comply with a—

(*a*) provision of this Act or any regulation, guideline, order, determination or directive issued in terms of this Act;

(*b*) condition of a licence, registration, approval or authorisation issued or amended in accordance with this Act or any other law; or

(*c*) directive issued in terms of sub-section 3(*c*).

(2) In determining an appropriate administrative sanction, the SFIU or the Supervisory authority shall consider—

(*a*) the nature, duration, seriousness and extent of the relevant non-compliance;

(*b*) whether the institution or person has previously failed to comply with any law;

(*c*) any remedial steps taken by the institution or person to prevent a recurrence of the non-compliance;

(*d*) any steps taken or to be taken against the institution or person by—

(i) another supervisory authority; or

(ii) a voluntary association of which the institution or person is a member; and

(*e*) any other relevant factor, including mitigating factors;

(3) In pursuance of sub-section (1), the SFIU or a supervisory authority may, after consultation with each other, and where applicable, after consultation with a relevant regulatory body—

(*a*) caution the institution not to repeat the conduct which led to the non-compliance referred to in sub-section (1);

(*b*) reprimand the institution;

(*c*) issue a directive to the institution to take remedial action or to make specific arrangements;

(*d*) issue a restriction or suspension of certain identified business activities of the institution;

(*e*) suspend the institution's licence to carry on business activities; or

(*f*) impose a financial penalty, not exceeding E5,000,000 (five million Emalangeni) as determined by the SFIU after consultation with the relevant supervisory authorities or regulatory bodies.

(4) The SFIU or a supervisory authority may—

(*a*) in addition to the imposition of an administrative sanction, make recommendations to the relevant institution or person in respect of compliance with this Act or any regulation, guideline, order, determination or directive issued in terms of this Act;

(*b*) direct that a financial penalty be paid by a natural person for whose actions the relevant institution is accountable in law, provided that person was personally responsible for the noncompliance;

(*c*) suspend any part of an administrative sanction on any condition the SFIU or the supervisory authority considers appropriate for a period not exceeding five years.

(5) The SFIU or the supervisory authority shall, before imposing an administrative sanction, give the institution or person reasonable notice in writing of the—

(*a*) nature of the alleged non-compliance;

(*b*) intention to impose an administrative sanction;

(*c*) amount or particulars of the intended administrative sanction.

(6) An institution or person that has been served with a notice in terms of sub-section (5) may in writing, within a period specified in the notice, make representations as to why the administrative sanction should not be imposed.

(7) After considering any representations and the factors referred to in sub-section (2), the SFIU or the supervisory authority may impose an administrative sanction as the SFIU or supervisory authority considers appropriate.

(8) Upon imposing the administrative sanction the SFIU or a supervisor authority shall, in writing, notify the institution or person of the —

(*a*) decision and the reasons therefor; and

(*b*) right to appeal against the decision in accordance with 35 *quat*.

(9) The SFIU shall, prior to taking a decision contemplated in sub-section (6), consult the relevant regulator, where applicable.

(10) A financial penalty imposed under this Act shall be paid into the bank account of the SFIU, within the period and in the manner as may be specified in the relevant notice.

(11) If the institution or person fails to pay the financial penalty within the specified period and an appeal has not been lodged within the required period, the SFIU or the supervisory authority may forthwith file with the clerk or registrar of a competent court a certified copy of the notice contemplated in sub-section (5) and the notice shall thereupon have the effect of a civil judgement lawfully given in that court in favour of the SFIU or the supervisory authority.

(12) An administrative sanction contemplated in this section may not be imposed if the respondent has been charged with a criminal offence in respect of the same set of facts.

(13) A court in assessing the penalty to be imposed on a person convicted of an offence in terms of this Act, may take into account any administrative sanction imposed under this section in respect of the same set of facts.

(14) An administrative sanction imposed in terms of this Act shall not constitute a previous conviction as contemplated section 155 of the Criminal Procedure and Evidence Act, 1938.

(15) Unless the Director or the head of a supervisory authority is of the opinion that there are exceptional circumstances present that justify the preservation of the confidentiality of any decision, the Director or the head of the Supervisory authority shall make public the decision and the nature of any sanction imposed if—

(*a*) an institution or person does not appeal against a decision of the SFIU or supervisory authority within the required period; or

(*b*) the Appeals Tribunal confirms the decision of the SFIU or supervisory authority.

[Added A.5/2016.]

Appeals Tribunal.

35*ter*. (1) Upon receipt of a notice of appeal by an institution or person made under section 3 Squat against a decision of the SFIU or a supervisory authority, the Minister, on recommendation of the Council, shall appoint an Appeals Tribunal to hear and decide the appeal.

(2) The Appeals Tribunal shall consist of—

(*a*) a person who has a qualification in law and with at least 10 years' experience, who shall be the chairperson; and

(*b*) two other persons who have experience and extensive knowledge of financial institutions or financial services provision or financial services financial institutions or financial services provision or financial services regulation.

(3) The Minister may prescribe additional qualifications, terms and conditions and other requirements for appointment as members of the Appeals Tribunal.

(4) If, before or during the consideration of an appeal, it transpires that any member of the Appeals Tribunal has a direct or indirect personal interest in the outcome of that appeal, that member shall declare the interest of that member and recuse himself and shall be replaced with another person.

(5) A member of the Appeals Tribunal may be paid such remuneration and allowances as the Minister may determine.

(6) The SFIU shall be responsible for the expenditure of and administrative support for the Appeals Tribunal.

[Added A.5/2016.]

Appeals.

35*quat*. (1) An institution or person may appeal to the Appeals Tribunal against a decision of the SFIU or a supervisory authority made against that institution or person in terms of section 35*bis* of this Act.

(2) An appeal shall be lodged within 30 days of the delivery of the decision of the SFIU or a supervisory authority, in the manner, and on payment of the fees prescribed by the Minister.

(3) An appeal under sub-section (1) shall take place on the date, at the place and time determined by the Appeals Tribunal.

(4) An appeal shall be decided on the affidavits and supporting documents presented to the Appeals Tribunal by the parties to the appeal.

(5) Notwithstanding the provisions of sub-section (4), the Appeals Tribunal may—

(*a*) summon any person whom, in its opinion, may be able to give information for the purposes of deciding the appeal or whom it believes that persons has possession, custody or control of any document which has a bearing upon the decision under appeal, to appear before it on a date, time and place specified in the summon;

(*b*) summon any person to be questioned or to produce any relevant document and retain for examination any document so produced;

(*c*) administer an oath to or accept an affirmation from any person called as a witness at an appeal; and

(*d*) call any person present at the appeal proceedings as a witness and interrogate that person and require that person to produce any document in the possession, custody or control of that person.

(6) The chairperson of the Appeals Tribunal may determine any other procedural matters relating to an appeal.

(7) An appellant or a respondent to an appeal shall be entitled to be represented at that appeal by a legal practitioner or any other person of the appellant or respondents' choice.

(8) The Appeals Tribunal may—

(*a*) confirm, set aside or vary a decision of the SFIU or supervisory authority; or

(*b*) refer a matter back for consideration or reconsideration by the SFIU or the supervisory authority concerned in accordance with the directions of the Appeals Tribunal.

(9) The decision of a majority of the members of the Appeals Tribunal shall constitute the decision of that Board.

(10) The decision of the Appeals Tribunal shall be in writing, and a copy shall be made available to the appellant, the SFIU and the supervisory authority.

(11) If the Appeals Tribunal sets aside any decision of the SFIU or supervisory authority, the fees contemplated in sub-section (2) paid by the appellant in respect of the appeal in question shall be refunded to the appellant.

(12) Subject to sub-section (13), a decision of the Appeals Tribunal may be taken on appeal to the High Court as if it were a decision of a magistrate in a civil matter.

(13) The launching of appeal proceedings does not suspend the operation or execution of a decision, unless the SFIU or supervisory authority directs otherwise.

[Added A.5/2016.]

Immunity.

36. No action shall lie against the Director, any officer, employee or agent of the SFIU or any person acting under the direction of the Director for anything done in good faith in the administration or discharge of any powers, duties or functions under this Act.

Funds and financial year of SFIU.

37. (1) The funds of the SFIU shall consist of —

(*a*) money appropriated annually by Parliament for the purpose of the SFIU;

(*b*) any government grants made to the SFIU; and,

(*c*) any other money legally acquired by the SFIU.

(2) Notwithstanding subsection (1) (*c*), the SFIU may accept donations only with prior approval of the Minister.

(3) The financial year of the SFIU shall end on March 31 in each year.

The Task Force.

38. There is hereby established a Task Force which shall be the policy making organ for anti-money laundering and counter financing of terrorism in Eswatini.

Composition of the Task Force.

39. (1) The Task Force shall consist of—

(*a*) a Council;

(*b*) a Technical Committee;

(*c*) other *ad hoc* Committees as the Council may appoint, and

(*d*) a Secretariat as may be designated by the Ministry of Finance.

(2) The Council shall consist of the—

(*a*) Attorney General;

(*b*) Chief Executive Officer of the Financial Service Regulatory Authority;

(*c*) Commissioner General of the Eswatini Revenue Authority;

(*d*) Commissioner of the Anti-Corruption Commission;

(*e*) National Commissioner of Police;

(*f*) Director;

(*g*) Director of Public Prosecutions;

(*h*) Governor of the Central Bank of Eswatini; and

(*i*) Principal Secretary in the Ministry of Finance.

(3) The Technical Committee shall consist of—

(*a*) a representative of the Principal Secretary in the Ministry of Finance;

(*b*) a representative of the Principal Secretary in the Ministry of Foreign Affairs;

(*c*) a representative of the Director;

(*d*) a representative of the Attorney-General;

(*e*) a representative of the Director of Public Prosecutions;

(*f*) a representative of the President of the Eswatini Law Society;

(*g*) a representative of the Bankers' Association;

(*h*) a representative of the Central Bank of Eswatini;

(*i*) a representative of the Financial Services Regulatory Authority;

(*j*) a representative of the Commissioner of Police;

(*k*) a representative of the Anti-Corruption Commissioner; and

(*l*) not more than three other persons appointed by the Minister on the recommendation of the Council to represent accountable institutions or supervisory authorities not otherwise represented in the Technical Committee.

(4) The Council shall meet at least on a quarterly basis and the Technical Committee shall meet at least on a monthly basis.

(5) The Council and the Technical Committee shall determine their own procedure.

(6) Members of Council and the Technical Committee shall be paid such allowances as are payable to members of statutory Boards.

(7) The Minister may, on the advice of the Council and by Notice published in the *Gazette*, amend the composition of the Task Force.

[Replaced A.5/2016.]

Functions of the Task Force.

40. (1) The Council shall advise the—

(*a*) Minister on the anti-money laundering and counter financing of terrorism national strategy plan for Eswatini;

(*b*) Minister on the Government policy on anti-money laundering and counter financing of terrorism;

(*c*) Ministry of Finance on legislative and practical initiatives necessary to secure compliance with international and regional standards in anti-money laundering and counter financing of terrorism;

(*d*) Minister on the composition of the Technical Committee; and

(*e*) Minister on the exercise of the powers entrusted on the Minister in terms of this Act.

(2) The Technical Committee shall—

(*a*) develop the anti-money laundering and counter financing of terrorism national strategy plan for Eswatini and ensure its implementation on approval;

(*b*) co-ordinate the national anti-money laundering and counter financing of terrorism risk assessment;

(*c*) facilitate collaboration between the stakeholders in the anti-money laundering and counter financing of terrorism arena;

(*d*) act as the point of contact for international agencies in the anti-money laundering, and counter financing of terrorism arena, including donor agencies;

(*e*) ensure that Government policy on anti-money laundering and counter financing of terrorism is implemented;

(*f*) produce and submit quarterly reports on the national strategy plan and the progress to the Council; and

(*g*) within three months after the close of each financial year, produce an annual report on its activities, which shall be presented to the Minister after approval by the Council.

(3) The Technical Committee may delegate any of its functions to a subcommittee consisting of at least one member of the Technical Committee.

(4) The Council and the Technical Committee may co-opt other members with certain expertise and skill where the need arises.

(5) The Minister shall determine the allowances and remuneration of the co-opted members.

[Replaced A.5/2016.]

PART 6

CURRENCY REPORTING AT POINT OF ENTRY OR DEPARTURE

Currency Reporting at Point of Entry or departure.

41. (1) A person who leaves or arrives in Eswatini with more than fifteen thousand emalangeni (E 15,000) or equivalent in cash or negotiable bearer instruments on his or her

person or in his or her luggage shall report the fact to the Customs Office and to the police at the point of entry or departure.

(2) A person who contravenes the provisions of subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding thirty thousand emalangeni (E30,000) or imprisonment not exceeding five years.

(3) For the purpose of this section and section 42, the term —

(*a*) "authorised officer" means a —

(i) police officer; or,

(ii) customs officer.

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

(4) Where a person —

(*a*) is about to leave Eswatini or has arrived in Eswatini; or,

(*b*) is about to board or leave, or has boarded or left, any ship or aircraft

an authorised officer may, with such assistance as is reasonable and necessary, and with use of force as is necessary —

(i) examine any article which a person has with him or her or in his or her luggage; and,

(ii) if the officer has reasonable grounds to suspect that an offence under subsection (1) of this section may have been or is being committed, search the person,

for the purpose of determining whether the person has in his or her possession, any cash or negotiable bearer instruments in respect of which a report under subsection (1) of this section is required.

(5) An authorised officer, and any person assisting such officer, may stop, board and search any ship, aircraft or conveyance for the purposes of exercising the powers conferred by sub-section (4) of this section.

[Sub-s. (5) amended A.5/2016.]

(6) Where an authorised officer has reasonable grounds to believe that cash or negotiable bearer instruments found in the course of an examination or search, conducted under sub-section (4), may afford evidence as to the commission of an offence under this section, an unlawful activity, a money laundering offence or an offence of financing of terrorism, the officer may seize the cash or negotiable bearer instruments.

[Sub-s. (6) amended A.5/2016.]

(7) An authorised officer who has seized cash and negotiable bearer instrument under sub-section (6) shall report such seizure to the SFIU.

[Sub-s. (7) amended A.5/2016.]

(8) A courier shall report to the SFIU cash movements in excess of fifteen thousand Emalangeni E15,000 in such manner as the Minister, acting on the recommendation of the Director, may determine.

[Sub-s. (8) amended A.5/2016.]

(9) The Customs Office referred to in sub-section (1) shall without delay send a copy of the currency report to the SFIU.

[Sub-s. (9) amended A.5/2016.]

Seizure of cash or negotiable instruments.

42. An authorised officer may seize and, in accordance with this Part detain, any cash or negotiable bearer instruments which is being imported into, or exported from, Eswatini, in any form or manner if that officer has reasonable grounds for suspecting that it is —

(*a*) derived from an unlawful activity or a money laundering offence or an offence of financing of terrorism; or,

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

Retention and release of cash or negotiable instruments seized.

43. (1) Cash and negotiable bearer instruments seized under section 41 or 42 shall not be detained for more than 72 hours 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 it was derived from an unlawful activity, a money laundering offence or an offence of financing of terrorism, or is intended by any person for use in the commission of such an offence; and,

(*b*) its continued detention is justified while its origin or derivation is further investigated.

(2) The Court may, after hearing, with notice to all parties concerned, subsequently order the continued detention of the cash and negotiable bearer instruments if 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), cash and negotiable bearer instruments detained under this section shall be released in whole or in part to the person from whom it was seized or to other persons claiming an interest in the cash or negotiable bearer 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 Customs Office or the authorized officer to the contrary; or,

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

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

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

(*a*) an application is made under Part 7 of this Act for the purpose of —

(i) the forfeiture of the whole or any part of the cash or negotiable bearer instruments; or,

(ii) its continued detention pending determination of its liability to forfeiture; or

(*b*) proceedings are instituted in Eswatini or elsewhere against any person for an offence with which the currency 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.

PART 7

RESTRAINT, SEARCH, SEIZURE AND FORFEITURE

Applications.

44. (1) An application brought under this Act for a restraining order or for a forfeiture order may be brought whether or not a person has been charged or convicted of an offence and whether or not an application has been brought for a confiscation order, a pecuniary penalty order or a forfeiture or after a criminal conviction.

(2) A Court may, on the application of the Attorney General or the Director of Public Prosecutions order that proceedings under this Part be postponed pending the outcome of proceedings under another Act if the Court is satisfied that to do so would clearly be in the interests of justice.

(3) An order made on an application brought under this Part shall not be construed as being a final order for the purposes of any matter between the parties in proceedings other than those brought under this Part.

[Replaced A.5/2016.]

Restraint of property.

45. (1) Where a law enforcement officer investigating an unlawful activity, a money laundering offence or a financing of terrorism offence has reasonable grounds to believe that any money or property whether located inside or outside of Eswatini, relating to an unlawful activity, a money laundering offence or a financing of terrorism offence is held or is under the control of any person, the relevant law enforcement agency may apply to a Court in accordance with sub-section (2) for a restraint order prohibiting the person from disposing or otherwise dealing with that property except in such manner as may be specified in the order.

(2) An application under sub-section (1) may be made *ex parte*, and shall be in writing and be accompanied by an affidavit in support of the application.

(3) The hearing of an application made under sub-section (1) may be held in camera.

(4) A Court shall make an order under this section if satisfied that there are reasonable grounds for making the order.

(5) A Court may, in granting any order under sub-section (4), or on application at any time thereafter, give direction as to the—

(*a*) effective period of the order;

(*b*) proper administration of the money or property during the effective period of the order, including the appointment of a person to take care of, administer or otherwise deal with the property, or a part of the property and where the property is a business or undertaking, to carry on, with due regard to any applicable law, the business or undertaking;

(*c*) handing over of the property to the person appointed to take care of the property by any person having possession of the property; and

(*d*) disposal of that money or property for the purpose of determining any dispute as to the ownership of, or other interest in, the property thereof, payment of debts incurred in good faith to creditors prior to the order, or payment of the costs of the person mentioned in sub-section (2) to defend criminal proceedings against him or her.

(6) The power of administration under sub-section 4(b) shall include, in the case of perishable or rapidly depreciating property, the power to sell that property including stocks and bonds.

(7) An application made as contemplated in sub-section (5) after the granting of an order under sub-section (4) may be held in camera.

(8) Before the person restrained under this section disposes of any property referred to under this sub-section, that person shall apply to a Court for a disposal order.

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

(*a*) reasonable living expenses of the person in respect of whom the investigation is being made, including that of the dependants of that person; and

(*b*) reasonable expenses of that person in defending any criminal charge or any other proceedings under this Act.

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

(11) Any order under sub-section (4) shall cease to have effect at the end of a period of six months following the hour the order was made if the person against whom such order was made has not been charged with an unlawful activity, a money laundering or financing of terrorism offence within the period.

(12) The Government shall not be liable for any damages or costs arising directly or indirectly from the making of an order under sub-section (2) or (3) unless it can be proved that the application for the order was not made in good faith.

[Replaced A.5/2016.]

Service of and registration of restraining order.

46. (1) A copy of a restraining order shall be served on a person affected by the order in such manner as the Court directs or as may be prescribed by rules of court.

(2) A copy of a restraining order which affects land in Eswatini shall be registered with the Registrar of Deeds.

(3) A restraining order is of no effect with respect to registered land unless it is registered as a charge under the Deeds Registry Act, 1968.

(4) Where particulars of a restraining order are registered under the Deeds Registry Act, 1968, a person who subsequently deals with the property shall, for the purposes of section 45, be deemed to have notice of the order at the time of the dealing.

[Replaced A.5/2016.]

Contravention of restraining order.

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

(*a*) a fine of twenty-five thousand Emalangeni (E25,000) or imprisonment for a period of 3 years or both, in the case of a natural person; or

(*b*) a fine of fifty thousand Emalangeni (E50,000) in the case of a body corporate.

(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 sub-section (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 sub-section and declare the respective rights of any persons who acquired interests in the property on, or after the day on which the disposition or dealing took place, and before the day of the order under this sub-section.

[Replaced A.5/2016.]

Extension of Restraining Order.

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

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

[Replaced A.5/2016.]

Seizure of Property subject to restraint order.

49. (1) In order to prevent property subject to a restraining order from being disposed of or removed contrary to that order, any law enforcement agent may seize any such property if he or she has reasonable grounds to believe that such property will be so disposed of or removed.

(2) Property seized under sub-section (1) shall be dealt with in accordance with the Court which made the relevant restraining order.

[Replaced A.5/2016.]

Powers to search for and seize tainted property or terrorist property.

50. (1) A law enforcement agent may—

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

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

(*c*) in either case, seize any property found in the course of the search that the law enforcement agent believes, on reasonable grounds, to be tainted property or terrorist property,

provided that the search or seizure is made—

(i) with the consent of the person or the occupier of the land or premises as the case may be;

(ii) under warrant issued under section 52; or

(iii) under section 53.

(2) Where a law enforcement agent is empowered to search a person, he or she may also search—

(*a*) the clothing that is being worn by the person; and

(*b*) any property in, or apparently in, the person's immediate control.

[Replaced A.5/2016.]

Search warrants in relation to tainted property or terrorist property.

51. (1) Where a law enforcement agent has reasonable grounds for suspecting that there is, or may be within the next 72 hours, tainted property or terrorist property of a particular kind—

(*a*) on a person;

(*b*) in the clothing that is being worn by a person;

(*c*) otherwise in a person's immediate control; or

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

the law enforcement agent may lay before a magistrate information on oath setting out those grounds and apply for the issue of a warrant to search the person, the land or the premises as the case may be, for property of that kind.

(2) Where an application is made under sub-section (1) for a warrant to search a person, land or premises, the magistrate may, subject to sub-section (4), issue a warrant authorising a law enforcement agent (whether or not named in the warrant) with such assistance and by such force as is necessary and reasonable to—

(*a*) search the person for property of that kind;

(*b*) enter upon the land or in or upon any premises and to search the land or premises for property of that kind; and

(*c*) seize property found in the course of the search that the law enforcement agent believes on reasonable grounds to be property of that kind.

(3) A magistrate shall not issue a warrant under sub-section (2) in respect of tainted property or terrorist property unless the magistrate is satisfied that there are reasonable grounds to believe that a forfeiture order may be made under this Act in respect of the property.

(4) A warrant issued under this section shall state—

(*a*) the purpose for which it is issued including, in respect of tainted property, a reference to the nature of the relevant offence;

(*b*) a description of the kind of property authorised to be seized;

(*c*) a time at which the warrant ceases to be in force; and

(*d*) whether entry is authorised to be made at any time of the day or night or during specified hours.

(5) If during the course of searching under a warrant issued under this section, a law enforcement agent finds—

(*a*) property that the law enforcement agent believes on reasonable grounds to be tainted property or terrorist property of a type not specified in the warrant, or tainted property in relation to an unlawful activity; or

(*b*) anything the law enforcement agent believes on reasonable grounds will afford evidence as to the commission of an unlawful activity;

the law enforcement agent may seize that property or thing and the warrant shall be deemed to authorise such seizure.

[Replaced A.5/2016.]

Search warrants may be granted by telephone, etc.

52. (1) Where by reason of urgency a law enforcement agent considers it necessary to do so, that law enforcement agent may make application for a search warrant under section 51 by telephone or by other means of communication.

(2) A Magistrate, to whom an application for the issue of a warrant is made by telephone or other means of communication, may sign a warrant if that Magistrate is satisfied that it is necessary to do so, and shall inform the law enforcement agent of the terms of the warrant so signed.

(3) The law enforcement agent shall complete a form of warrant in the terms furnished by the magistrate.

(4) The law enforcement agent to whom a warrant is granted by telephone or other means of communication shall, not later than the next working day following the execution of the warrant, give the magistrate a duly sworn information and the form of warrant completed by the law enforcement agent.

[Replaced A.5/2016.]

Searches in emergencies.

53. (1) Where a law enforcement agent suspects on reasonable grounds that—

(*a*) particular property is tainted property or terrorist 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 law enforcement agent may—

(i) search a person;

(ii) enter upon land, or upon or into premises and search for the property; and

(iii) if property is found, seize the property.

(2) If, during the course of a search conducted under this section, a law enforcement agent finds—

(*a*) property that the law enforcement agent believes on reasonable grounds to be tainted property or terrorist property; or

(*b*) anything the law enforcement agent believes on reasonable grounds will afford evidence as to the commission of an unlawful activity,

the law enforcement agent may seize that property or thing.

[Replaced A.5/2016.]

Record of property seized.

54. A law enforcement agent who seizes property under section 49 or section 50 shall detain the property seized, make a written record thereof, and take reasonable care to ensure that the property is preserved.

[Replaced A.5/2016.]

Return of seized property.

55. (1) Where property has been seized under section 51 or section 53 (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 sub-section (1) and the Court is satisfied that—

(*a*) the person is entitled to possession of the property;

(*b*) the property is not tainted property or terrorist property; and

(*c*) in the case of tainted property, the person in respect of whose 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.

[Replaced A.5/2016.]

Search for and seizure of property in relation to foreign offences.

56. Where a foreign State requests assistance to locate or seize property suspected to be tainted property in respect of an offence within its jurisdiction or property suspected to be terrorist property, the provisions of sections 52, 53 and 54 apply in so far as is applicable, provided that the Minister of Justice and Constitutional Affairs has, under the Criminal Matters (Mutual Assistance) Act, 2001, authorised the giving of assistance to the foreign State.

[Replaced A.5/2016.]

Forfeiture of property.

57. (1) Where, on application of a competent authority or a person authorised by a competent authority a Court is satisfied that the property has been derived, obtained or realised, directly or indirectly, from the commission of an unlawful activity, an offence of money laundering or financing of terrorism the Court may make an order of forfeiture in respect of that property.

(2) Property subject to forfeiture order under sub-section (1) may include—

(*a*) the assets laundered or terrorist property, the proceeds, income, and gains from such assets;

(*b*) the assets intended to be laundered;

(*c*) assets used to facilitate or commit the unlawful activity; and

(*d*) instrumentalities used or intended to be used in the commission of the offence, money laundering or financing of terrorism.

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

(*a*) cannot, on the exercise of due diligence be located;

(*b*) has been transferred to a third part in circumstances which do not give rise to a reasonable inference that the title or interest was transferred for the purpose of avoiding the forfeiture of the property;

(*c*) is located outside Eswatini;

(*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 person to pay to the State an amount equal to the value of the property, part or interest.

(4) Where property subject to forfeiture has been commingled with property acquired legitimately or acquired using funds from legitimate sources, the Court shall in the forfeiture order, declare the nature, extent and value of the property which is to be forfeited only in regard of property subject to the unlawful activity or money laundering offence or financing of terrorism offence.

(5) A Court shall not make an order of forfeiture under this section in respect of any property where the Court is satisfied that the person who is in possession of the property or purports to be its owner acquired the property—

(*a*) in good faith and for good cause; and

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

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

(*a*) before the Court makes an order of forfeiture; or

(*b*) when the Court has made an order of forfeiture, within 30 days after the order was made,

apply to the Court against the granting of the order or, where the Court has made an order of forfeiture, for an order declaring the nature, extent and value of the claimant's interest; and—

(i) directing the Government to transfer the property to the claimant; or

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

(7) If a Court is satisfied that a person referred to in sub-section (5)—

(*a*) has an interest in the property which is the subject of the application; and

(*b*) has exercised reasonable care to ensure that the property is not the proceeds of a crime, or terrorist property, or would not be used to commit or facilitate the commission of an act of terrorism and would not be used by a terrorist group; and

(*c*) is not a member of a terrorist group,

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

(8) Where—

(*a*) a Court has made an order of forfeiture under this section; and

(*b*) the conviction of the person in relation to whom the order was made is set aside,

the order of forfeiture shall cease to have effect and a person who claims to have an interest in any property in respect of which the order was made may apply to the Court for an order declaring the nature, extent and value of the claimant's interest; and—

(*a*) directing the Government to transfer the property to the claimant; or

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

(9) Where—

(*a*) the Court has made an order of forfeiture under this section; and

(*b*) the conviction of the person in relation to whom the order was made is set aside,

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

(10) A person who makes an application under sub-section (5) or sub-section (6) shall give notice to the competent authority and the competent authority shall be a party to a proceeding on the application.

(11) Where an application has been made under sub-section (1), the Court may, for the purpose of tracing of the property or preventing the circumventing of an order of forfeiture

which the Court may make under this section, make such order or give such direction as the Court thinks necessary and may in particular make—

(*a*) a prohibition order against any registration under the Deeds Registry Act, 1968, or a restraining order;

(*b*) a production order; or

(*c*) an order that any property be transferred to a named person to be held by the person pending the determination of the application.

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

(*a*) to have been under the control of a person or held by that person any time after the person committed the offence and before the Court makes an order under sub-section (1); or

(*b*) to have been transferred to or by, or deposited with or by, the person convicted at any time after that person committed an offence and before the Court makes an order under sub-section (1),

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

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

[Replaced A.5/2016.]

Application of procedure for enforcing fines.

58. (1) Where the Court orders a person to pay an amount under section 57(3), that amount shall be treated as if it were a fine imposed upon him or her in respect of a conviction for an unlawful activity or offence, and the Court shall—

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

(i) 1 year, where the amount does not exceed twenty thousand Emalangeni (E20, 000);

(ii) 3 years, where the amount exceeds fifty thousand Emalangeni (E50, 000) but does not exceed one hundred thousand Emalangeni (E100, 000);

(iii) 5 years, or more where the amount exceeds one hundred thousand Emalangeni (E100,000) and;

(*b*) direct that the term of imprisonment imposed pursuant to sub-section (a) be served consecutively to any other form of imprisonment imposed on that person, or that the person is then serving.

[Replaced A.5/2016.]

Effect of forfeiture order.

59. (1) Subject to sub-section (2), where a Court makes a forfeiture order against any property, the property vests absolutely in the Government by virtue of the order.

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

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

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

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

(3) Where the Court makes a forfeiture order against property—

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

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

[Replaced A.5/2016.]

Procedure for in rem forfeiture order where person dies or absconds.

60. (1) Where—

(*a*) information has been laid alleging the commission of the offence by a person; and

(*b*) a warrant for the arrest of the person has been issued in relation to that information,

the competent authority may apply to the Court for a forfeiture order in respect of any tainted property if the defendant has died or absconded.

(2) For the purposes of sub-section (1), a person is deemed to have absconded if reasonable attempts to arrest the person pursuant to the warrant have been unsuccessful during the period of 12 months commencing on the day the warrant was issued.

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

(*a*) require notice of the application to be given to any person who, in the opinion of the Court, appears to have an interest in the property; and

(*b*) direct that notice of the application to be published in the *Gazette* and in a newspaper published and circulating in Eswatini containing such particulars and for so long as the Court may require.

[Replaced A.5/2016.]

Forfeiture where a person dies or absconds.

61. (1) Subject to section 60(3), where an application is made to the Court under section 60(1) for a forfeiture order against any tainted property in consequence of a person having died or absconded in connection with an unlawful activity and the Court is satisfied that—

(*a*) any property is tainted property in respect of the offence;

(*b*) an information has been laid alleging the commission of the offence by that person and a warrant for the arrest of that person has been issued in relation to that information; and

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

the Court may order that the property or such property as is specified by the Court in the order be forfeited.

[Replaced A.5/2016.]

Voidable Transfers.

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

[Replaced A.5/2016.]

Establishment of Fund.

62*bis*. (1) There is hereby established in the accounts of Eswatini an account to be known as the Confiscated and Forfeited Assets Fund.

(2) The Minister shall, by notice in the Gazette, designate a staff member of the Ministry of Finance or appoint a person to be the accounting officer of the Fund.

(3) The staff member or person referred to in sub-section (2) shall be accountable to the Committee established under Section 62*quat*.

(4) The staff member designated or person appointed in terms of sub-section (2) shall, with the approval of the Auditor-General, open a bank account at a commercial bank and all money received on behalf of the Fund shall be deposited into that account.

(5) The Fund shall be audited by the Auditor-General.

[Added A.5/2016.]

Receipts and Disbursements.

62*ter*. (1) There shall be credited to the Fund—

(*a*) all moneys derived from the fulfilment of confiscation or forfeiture orders under this Act or any other Act;

(*b*) any sums of money allocated to the Fund from time to time by parliamentary appropriation;

(*c*) any voluntary payment, grant or gift made by any person for the purposes of the Fund;

(*d*) any income derived from the investment of any amount standing to the credit of the Fund;

(*e*) the balance of all moneys derived from the execution of foreign confiscation orders in terms of the Criminal Matters (Mutual Assistance) Act, 2001 (Act 7 of 2007), after payments have been made to requesting States in terms of that Act;

(*f*) any property or amount of money lawfully received or acquired from any source; and

(*g*) all property or moneys transferred to the Fund in terms of this Act.

(2) The Committee may authorise payments out of the Fund to—

(*a*) compensate victims who suffered losses as a result of criminal offences, terrorism unlawful activity;

(*b*) satisfy a compensation order under sub-sections 57(6) or (8);

(*c*) enable the appropriate law enforcement agencies to continue their fight against serious offences, terrorism and unlawful activities;

(*d*) share confiscated property with foreign States pursuant to any relevant treaties or arrangements.

[Added A.5/2016.]

Establishment of Committee.

62*quat*. (1) There is established a Committee to be known as the Confiscated and Forfeited Assets Fund Committee.

(2) The Committee consists of—

(*a*) the Principal Secretary in the Ministry of Finance or a representative of the Principal Secretary, who shall be the chairperson of the Committee;

(*b*) the Attorney-General or a representative of the Attorney General;

(*c*) the National Commissioner of Police or a representative of the National Commissioner;

(*d*) the Commissioner of the Anti-Corruption Commission or a representative of the Commissioner of the Anti-Corruption Commission;

(*e*) the Commissioner-General or a representative of the Commissioner General;

(*f*) the Director or a representative of the Director; and

(*g*) if necessary, not more than four persons designated by the Minister to deliberate on any relevant matter.

(3) The Committee shall designate one of its members as deputy chairperson of the Committee, and when the chairperson is not available, the deputy chairperson shall act as chairperson.

(4) The Accounting officer appointed under section 62*bis* together with such other staff members as may be designated by the Principal Secretary in the Ministry of Finance shall perform the administrative functions of the Committee.

[Added A.5/2016.]

Meetings of Committee.

62*quin*. (1) A meeting of the Committee shall be held at a time and place determined by the chairperson.

(2) The procedure, including the manner in which decisions shall be taken, to be followed at meetings of the Committee and the manner in which the Committee shall conduct its affairs shall be determined by the Committee, if the procedure has not been otherwise prescribed.

[Added A.5/2016.]

Objects of Committee.

62*sext*. The objects of the Committee are to—

(*a*) advise the Minister Cabinet in connection with all aspects of confiscation or forfeiture of property to the State and the transfer of confiscated or forfeited property to the Fund in terms of this Act or any other Act;

(*b*) advise the Minister Cabinet in connection with the rendering of financial assistance to law enforcement agencies in order to combat organised crime, money laundering, criminal gang activities and crime in general; and

(*c*) advise the Minister Cabinet in connection with the rendering of financial assistance to any other institution, organisation or fund established with the object to render assistance in any manner to witnesses, including protected witnesses, and victims of crime.

[Added A.5/2016.]

Functions and powers of Committee.

62*sept*. (1) The Committee may make recommendations to Cabinet with regard to the—

(*a*) policy to be adopted concerning the confiscation, forfeiture and realisation of property and the transfer of that property to the Fund in terms of this Act or any other Act;

(*b*) allocation of property and moneys from the Fund to specific law enforcement agencies;

(*c*) allocation of property and moneys from the Fund to any institution, organisation or fund contemplated in section 62*sext*(c); and

(*d*) allocation of moneys for the administration of the Fund.

(2) In order to fulfil the functions referred in sub-section (1) the Committee may—

(*a*) exercise any powers and perform any functions conferred or imposed on it by this Act, and any powers that are necessary or expedient for or incidental to the achievement of its objects; and

(*b*) co-opt any person to advise it on any specific matter.

[Added A.5/2016.]

Annual Report to Parliament.

62*quat*. The Minister of Finance shall, not later than the first sitting of Parliament after the expiry of 90 days from the end of the financial year, table a report in Parliament, detailing the—

(*a*) amounts credited to the Fund;

(*b*) investments made with the amounts credited to the Fund; and

(*c*) payments made from the Fund, including the specific purpose for which each payment was made and to whom it was made.

[Added A.5/2016.]

PART 8

PECUNIARY PENALTY ORDERS

Pecuniary penalty order on conviction.

63. (1) Subject to this section, where the competent authority applies to the Court for a pecuniary penalty order against a person in respect of that person's conviction for an unlawful activity or offence the Court shall, if it is satisfied that the person has benefited from that unlawful activity or offence, order him or her to pay to the Government an amount equal to the value of his or her benefit from the unlawful activity or offence or such lesser amount as the Court certifies in accordance with section 64(3) 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 benefits derived by a person from the commission of an unlawful activity or offence in accordance with sections 64, 65, 66 and 67.

(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 such appeal having been 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 the later date.

Rules of determining benefit and assessing value.

64. (1) Where a person obtains property as the result of, or in connection with the commission of an unlawful activity or offence, his or her benefit is the value of the property so obtained.

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

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

(*a*) all property appearing to the Court to be held by that person on the day on which the application is made or at any time —

(i) within the period between the day the unlawful activity or offence, or the earliest unlawful activity or offence was committed and the day on which the application is made; or,

(ii) within the period of 6 years immediately before the day on which the application is made,

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

(*b*) any expenditure by the person since the beginning of that period to be expenditure met out of payments received by him or her as a result of, or in connection with, the commission of that unlawful activity or offence or those unlawful activities or offences; and,

(*c*) 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 or her of that unlawful activity or offence or those unlawful activities or offences as property received by him or her 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 or her from the commission of the unlawful activity or offence, the Court shall leave out of account any benefits that are shown to the Court to have been taken into account in determining the amount to be recovered under that order.

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

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

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

65. (1) Where —

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

(i) determining whether the person has benefited from the unlawful activity or offence or from any other unlawful activity or offence of which he or she 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 person's benefit from the unlawful activity or offence or any other unlawful activity or offence of which he or she is convicted in the same proceedings or which is taken into account; and

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

the Court may, for the purposes of so determining or making that assessment, treat his or her 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 or she accepts each allegation in the statement and, so far as the person does not accept any allegation, to indicate any matters he or she proposes to reply on.

(3) Where the person fails in any respect to comply with a requirement under subsection (2), that person 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 that person complied with the requirement; and,

(*b*) an allegation that that person has benefited from the unlawful activity or offence or that any property or advantage was obtained by him or her as a result of or in connection with the commission of the unlawful activity or offence.

(4) Where —

(*a*) the person tenders to the Court a statement as to any matters relevant to determining the amount that might be realized at the time the pecuniary penalty order is made; and,

(*b*) the competent authority accepts to any extent any allegation in the statement,

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

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

(*a*) orally before the Court; or,

(*b*) in writing, in accordance with Rules of court.

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

Amount recovered under pecuniary penalty order.

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

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

Variation of Pecuniary Penalty Order.

67. Where —

(*a*) the Court makes a pecuniary penalty order against a person in relation to an unlawful activity or offence,

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

(*c*) an appeal against forfeiture or a forfeiture order is allowed, or the proceedings from the proposed forfeiture order terminate without the proposed forfeiture order being made,

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

Lifting the corporate veil.

68. (1) In assessing the value of benefits derived by a person from the commission of an unlawful activity, 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 or she has —

(*a*) any legal 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; or,

(*c*) any relationship whatsoever between the persons having an interest in the property or in companies of the kind referred to in subsection (*a*) or trust of the kind referred to in subsection (*b*), and any other persons.

(3) Where the Court, for the purposes of making a pecuniary penalty order against a person, treats particular property as the person's property 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 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 produce evidence at the hearing.

Enforcement of Pecuniary Penalty Orders.

69. Where the Court orders a person to pay an amount under a pecuniary penalty order, the provisions of section 47 shall apply with such modifications as the Court may determine for the purpose of empowering the Court to impose a term of imprisonment on a person in default of compliance by that person with a pecuniary penalty order.

Discharge of pecuniary penalty orders.

70. A pecuniary penalty order is discharged —

(*a*) if the conviction of the unlawful activity or offences in reliance on which the order was made is or is taken to be quashed and no conviction for the unlawful activity or offences is substituted;

(*b*) if the order is set aside; or,

(*c*) on the satisfaction of the order by payment of the amount due under the order.

PART 9

OTHER MATTERS

Property tracking and monitoring.

71. (1) Where a police officer has reasonable grounds for suspecting that a person has committed or is about to commit an unlawful activity or offence of money laundering or a financing of terrorism offence and that person or any other person has possession or control of —

(*a*) a document relevant to identifying, locating or quantifying money or other property of the person who has committed or is about to commit the offence; or,

(*b*) a document relevant to identifying or locating a document necessary for the transfer of money or property of the person who has committed or is about to commit the offence,

the police officer may apply to a Court in accordance with subsection (2) for an order requiring that person or that other person to —

(i) produce to the police officer the document; or,

(ii) make available to the police officer for inspection the document.

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

(3) A Court shall make an order under this section where the Court is satisfied on the statements of facts in the affidavit that there are reasonable grounds for making the order.

(4) An order made under this section shall specify the time when and the place where the document is to be produced or made available.

(5) Where a document is produced to a police officer pursuant to an order under subsection (3), the police officer may —

(*a*) inspect the document;

(*b*) take extracts from the document;

(*c*) make copies of the document; or,

(*d*) retain the document if, and for so long as, retention of the document is reasonably necessary for the purposes of this Act.

(6) Where a police officer retains a document under subsection (5)(*d*), the police officer shall give the person who produced the document a copy of the document certified by the police officer to be a true copy of the document.

(7) A person shall not be excused from producing or making available a document when required to do so by an order under subsection (3) on the ground that —

(*a*) the production or making available the document might tend to incriminate the person; or,

(*b*) the production or making available the document would be in breach of an obligation, whether imposed by written law or otherwise, of the person not to disclose the existence or contents of the document.

(8) The production or making available a document in compliance with an order under subsection (3) shall not be treated as a breach of any restriction or obligation, imposed by any written law or otherwise, on the person producing or making available the document.

Overriding of confidentiality.

72. An accountable institution shall comply with the requirement of this Act notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by any written law or otherwise.

Account in fictitious, false or incorrect name.

73. (1) Where a person is commonly known by two or more different names, the person shall not use one of those names in opening an account with an accountable institution unless the person has previously disclosed the other name or names to the accountable institution.

(2) Where a person using a particular name in his or her dealings with an accountable institution discloses to it a different name or names by which he or she is commonly known, the accountable institution shall make a record of the disclosure and shall, at the request of the SFIU, give the SFIU, a copy of that record.

(3) For purposes of this section —

(*a*) a person opens an account in a false name if the person, in opening the account, or becoming a signatory to the account, uses a name other than a name by which the person is commonly known;

(*b*) a person operates an account in a false name if the person does any act or thing in relation to the account (whether by way of making a deposit or withdrawal or by way of communication with the accountable institution concerned or otherwise) and, in doing so, uses a name other than a name by which the person is commonly known; and,

(*c*) an account is in a false name if it was opened in a false name, whether before or after the commencement date of this Act.

Liability of employers and principals.

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

Liability of directors, controllers or officers of bodies corporate.

75. Where any body corporate is convicted of an offence under this Act every director, controller or officer concerned in the management of the body corporate shall be guilty of the offence where it is proved that the act or omission that constituted the offence took place with that person's knowledge, authority, permission, or consent.

United Nations Security Resolutions.

75*bis*. (1) The Minister referred to in section 29 of the Suppression of Terrorism Act, 2008, shall act in consultation with the Task Force in the implementation of Security Council Resolutions as envisaged in that section.

(2) Notwithstanding the provisions of the Suppression of Terrorism Act, 2008, the measures referred to in section 29 shall include measures relating to the combating of the proliferation of weapons of mass destruction.

[Added A.5/2016.]

PART 10

OFFENCES AND PENALTIES

Offence of money laundering.

76. Any person who engages in any act in contravention of section 4, commits an offence.

Offence of financing of terrorism.

77. Any person who engages in any act in contravention of section 5, commits an offence.

Failure to establish and verify identity of persons and transactions.

78. An accountable institution that performs any act to give effect to a business relationship or transaction in contravention of sections 6(1) and (3) and 6*bis*(1), (2), (3) and (4), commits an offence.

[Amended A.5/2016.]

Failure to maintain records.

79. An accountable institution that fails to —

(*a*) keep record of information in terms of section 8(1);

(*b*) keep such records in accordance with section 8(2); or,

(*c*) comply with the provisions of section 8(3),

commits an offence.

Failure to maintain account in true name.

80. An accountable institution that fails to comply with the provisions of section 9(1) or (2), commits an offence.

Failure to report.

81. (1) An accountable institution that fails, within the prescribed period, to report to the SFIU the prescribed information in respect of a suspicious transaction in accordance with section 12(1) or (3), commits an offence.

(2) An accountable institution that fails to comply with a direction by the SFIU in terms of section 12(4), commits an offence.

(3) An institution that fails to make a cash transaction report to the SFIU as required under section 12*bis* commits an offence.

(4) A supervisory authority or an auditor that fails to report a suspicious transaction as required under section 13 commits an offence.

[Amended A.5/2016.]

Providing false or misleading statements.

82. A person who in making a report under section 12 or 13 makes any statement that the person knows is false or misleading in a material particular or omits from any statement any matter or thing without which the person knows that the statement is false or misleading in a material particular, commits an offence.

Unauthorised disclosure of suspicious transaction reports and other information.

83. (1) Any person referred to in section 14 who discloses a fact or information contemplated in that section, otherwise than in the circumstances or for the purposes authorised in that section, commits an offence.

(2) Any person referred to in section 14, who with intent to prejudice an investigation of an unlawful activity, a money laundering offence or an offence of financing of terrorism or for the purpose of obtaining directly or indirectly an advantage or a pecuniary gain for himself or herself or any other person, commits an offence.

(3) A person who contravenes the provisions of section 33(2) commits an offence.

[Amended A.5/2016.]

Failure to formulate and implement internal rules.

84. An accountable institution that fails to formulate and implement internal rules in accordance with section 18(1) (*b*), commits an offence.

Failure to appoint compliance officer or provide training.

85. An accountable institution that fails to —

(*a*) appoint the person referred to in section 18(1)(*a*); or,

(*b*) provide training to its employees in accordance with section 18(1)(*c*),

commits an offence.

Dealing with Shell banks.

85*bis*. A financial institution which fails to act in accordance with section 18(4) commits an offence.

[Added A.5/2016.]

Obstructing of official in performance of functions.

86. Any person who willfully obstructs, hinders or threatens an official or representative of the SFIU in the performance of their duties in exercise of their powers in terms of this Act, commits an offence.

Failure to comply with monitoring and restraint order.

87. An accountable institution that fails to comply with an order by a court in accordance with section 44 or 71, commits an offence.

Opening account in fictitious, false or incorrect name.

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

Penalties.

89. (1) Notwithstanding anything contained in any other law, a person convicted of an offence mentioned in section 76 or 77 is liable on conviction —

(*a*) in the case of an individual, to imprisonment for 10 years or to a fine of not less than one hundred thousand emalangeni (E100,000) or both; and,

(*b*) in the case of a body corporate to a fine of not less than two hundred and fifty thousand emalangeni (E250,000) or loss of authority to do business or both.

(2) A person convicted of an offence mentioned in section 78,79,80,81,84,85 or 88 shall be liable on conviction —

(*a*) in the case of an individual, to imprisonment for 1 year or to a fine of not less than thirty thousand emalangeni (E30,000); and,

(*b*) in the case of a body corporate to a fine of not less than one hundred thousand emalangeni (E100,000).

(3) A person convicted of an offence mentioned in section 82, 83, 85*bis*, 86 or 87 shall be liable on conviction—

(*a*) in the case of an individual, to imprisonment for 5 years or to a fine of not less than fifty thousand emalangeni (E50,000); and,

(*b*) in the case of a body corporate to a fine of not less than one hundred thousand emalangeni (E100,000).

[Para. (*b*) amended A.5/2016.]

PART 11

GENERAL PROVISIONS

Money laundering and financing of terrorism offences for extradition purposes.

90. For the purpose of any law relating to extradition of fugitive offenders, money laundering and financing of terrorism shall be offences for which extradition or rendition may be granted.

Mutual assistance.

91. (1) Where for the investigation or prosecution of an unlawful activity or money laundering offence or financing of terrorism offence or for the making or execution of any orders or directions made under this Act in respect of these offences, any assistance is required from a designated country, the Minister of Justice and Constitutional Affairs, may in accordance with section 5 of the Criminal Matters (Mutual Assistance) Act, 2001, request mutual assistance from that 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 designated country in the investigation or prosecution of a money laundering offence 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 of Justice and Constitutional Affairs may, in accordance with section 17 of the Criminal Matters (Mutual Assistance) Act, 2001, provide such assistance as if such investigation, prosecution, making or execution is a criminal matter within the meaning of that Act.

(3) In this section "designated country" has the same meaning as in the Criminal Matters (Mutual Assistance) Act, 2001.

Regulations.

92. The Minister may make regulations consistent with this Act —

(*a*) for or with respect to any matter that by this Act is required or permitted to be prescribed; or,

(*b*) that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Schedules.

92*bis*. The Minister may, acting in consultation with the Director, amend any of the Schedules to this Act.

[Added A.5/2016.]

Savings.

93. Notwithstanding the provisions of section 94, the SFIU may deal with a suspicious business transaction report made to the Supervisory Authority in terms of the Money Laundering (Prevention) Act, 2001, as if it had been made under this Act.

Repeal.

94. The Money Laundering (Prevention) Act, 2001, is hereby repealed.

SCHEDULE 1

OFFENCES

[Sch. 1 amended by LN 28 of 16 February, 2018.]

Blackmail;

Common law offences;

Corruption and bribery;

Counterfeiting currency;

Counterfeiting and piracy of products;

Environmental crime;

Extortion;

False accounting;

Forgery;

Fraud;

Illegal deposit taking;

Illicit arms trafficking;

SCHEDULE 1 —*continued*

Illicit trafficking in narcotic drugs and psychotropic substances;

Illicit trafficking in stolen and other goods;

Insider trading and market manipulation;

Kidnapping, illegal restraint and hostage taking;

Murder, grievous bodily harm;

Participation in an organized criminal group and racketeering;

Piracy;

Robbery or theft;

Sexual exploitation, including sexual exploitation of children;

Smuggling;

Tax Crimes;

Terrorism, including terrorist financing; and

Trafficking in human beings and migrant smuggling.

SCHEDULE 2

OATH OF CONFIDENTIALITY

[Under Section 26.]

I, (here set out the full name), do swear or solemnly affirm, that, in the office of (here set out the capacity) of the (Eswatini Financial Intelligence Unit (SFIU)/ Board of Directors of the Eswatini Financial Intelligence Unit (SFIU)/Anti-Money Laundering and Counter Financing of Terrorism Task Force)*, I shall not disclose to any person any information relating to the affairs of the SFIU or of any accountable institution or other person which I have acquired in the performance of my duties or the exercise of my functions.

I also declare that my attention has been drawn to all the provisions of section 26 of the Money Laundering and Financing of Terrorism (Prevention) Act, [2009].

Thus subscribed by me this ..... day ..... 20 .....

.....

(DEPONENT'S SIGNATURE)

Before me:

.....

COMMISSIONER OF OATHS

(*Delete whichever is inapplicable)

[Replaced A.5/2016.]

SCHEDULE 3

ACCOUNTABLE INSTITUTIONS

[Under Section 2]

"Accountable Institution" means any person who carries on the business or activity of—

(*a*) a financial institution licensed under the Financial Institutions Act, 2005;

(*b*) acceptance of deposits and other repayable funds from the public, lending, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions;

(*c*) financial leasing;

(*d*) money transmission services;

(*e*) issuing and administering means of payment (such as credit cards, travellers' cheques and bankers' drafts);

(*f*) financial guarantees and commitments;

(*g*) trading for that person's own account or for the account of that person's customers in money market instruments (such as cheques, bills, certificates of deposit), foreign exchange, financial futures and options, exchange and interest rate and index instruments, commodity futures trading and transferable securities;

(*h*) participation in securities issues and the provision of services related to such issues;

(*i*) money-broking;

(*j*) individual and collective investment schemes or trustees of collective investment schemes;

(*k*) safekeeping and administration of cash or liquid securities on behalf of other persons;

(*l*) safe custody services;

(*m*) investing, administering or managing funds or money on behalf of other persons;

(*n*) an insurer, an insurance broker or an insurance underwriter;

(*o*) trustee administrator or investment manager of a retirement scheme but excluding closed-ended schemes;

(*p*) bureaux de change or foreign exchange dealer;

(*q*) operating a gambling house, casino or lottery, including an operator who carries on such operations through the internet;

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

(i) acting as a formation agent of legal persons;

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

SCHEDULE 3 —*continued*

(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;

(*s*) an offshore entity;

(*t*) a lawyer, notary, conveyancer, other independent legal professional, or an accountant when preparing or carrying out transactions for a client concerning the following activities—

(i) buying and selling of immovable property;

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

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

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

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

(*u*) dealing in immovable property when the persons dealing are involved in transactions for their client concerning the buying and selling of real estate;

(*v*) dealing in precious metals or stones, when the persons dealing engage in any cash transaction with a customer equal to or above the applicable designated threshold; or,

(*w*) dealing in the trade, including the lease of motor vehicles.

[Added A.5/2016.]