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Anti-Money Laundering and Terrorist Financing Act 2012

Liberian Legislative Acts (Handbills)

ANTI-MONEY LAUNDERING AND TERRORIST FINANCING ACT, 2012

It is enacted by the Senate and House of Representatives of the Republic of [Liberia](#) in Legislature Assembled:

SECTION 1: Sub-Chapter G Prevention of Money Laundering, Chapter 15 Offenses against Property of the Penal Law, Title 26 of the Liberian Code of Laws Revised, is hereby amended to be entitled Sub-Chapter G Proceeds of Crime, Money Laundering and Terrorist Financing and to read as follows:

Chapter 15 Offenses Against Property

Subchapter G. Proceeds of Crime, Money Laundering and Terrorist Financing

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§15.1 Definitions

As used in this Subchapter, unless the context otherwise requires:

"account" means any facility or arrangement by which a financial institution or a designated non-financial

business and profession does any of the following:

(1) accepts deposits of funds or other assets;

(2) allows withdrawals or transfers of funds or other assets;

(3) pays negotiable or transferable instruments or orders drawn on, or collects negotiable or transferable

instruments or payment orders on behalf of, any other person; and

(4) any facility or arrangement for a safety deposit box or for any other form of safe deposit;

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

benefit means an advantage, gain, profit, or payment of any kind, and the benefits that a person derives or obtains or that accrue to him include those that another person derives, obtains or that otherwise accrue to such other person, if the other person is under the control of, or is directed or requested by the first person;

business relationship means any arrangement between a person or two or more persons or legal entity and a financial institution where 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;

currency means the coin and paper money of  Liberia, or of a foreign country, that is designated as legal tender or is customarily used and accepted as a medium of exchange;

customer means in relation to a transaction or an account:

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

(2) a signatory to a transaction or account;

(3) any person to whom a transaction has been assigned or transferred;

(4) any person who is authorized to conduct a transaction or control an account; or

(5) any other person as may be prescribed;

designated non-financial businesses and professions means any of the following:

(1) casinos, including internet casinos;

(2) real estate agents;

(3) dealers in precious metals;

(4) dealers in precious stones;

(5) professionals and accountants when they prepare for, engage in, or carry out transactions for a client

concerning any of the following:

(a) buying and selling of real estate;

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

(c) management of bank, savings or securities accounts;

- (d) organization of contributions for the creation, operation or management of legal persons; or
- (e) creation, operation or management of legal persons or arrangements, and buying and selling of business entities;
- (6) trust and company service providers not otherwise covered. by this law which, as a business, prepare for or carry out transactions on behalf of customers in relation to any of the following services to third parties:
 - (a) acting as a formation, registration or management agent of legal persons;
 - (b) acting as or arranging for another person to act as a director or secretary of a company or a partner of a partnership, or to hold a similar position in relation to other legal persons;
 - (c) providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
 - (d) acting as, or arranging for another person to act as a trustee of an express trust or other similar arrangement; or
 - (e) acting as or arranging for another person to act as, a nominee shareholder for another person and such other businesses and professions as may be prescribed by regulation by a competent authority;

Document means a record or information kept in any form including:

- (1) anything on which there is a writing;
- (2) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- (3) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; or
- (4) maps, plans, drawings or photographs;

financial institution means any person or entity that conducts as a business one or more of the activities listed below for or on behalf of a customer:

- (1) acceptance of deposits and other repayable funds from the public, including private banking;
- (2) including, but not limited to, consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions, including forfeiting;
- (3) financial leasing other than with respect to arrangements relating to consumer products;
- (4) the transfer of money or value;
- (5) issuing and managing means of payment, including, but not limited to, credit and debit cards, travelers' checks, money orders and bankers' drafts, and electronic money;
- (6) issuing financial guarantees and commitments;
- (7) trading in:
 - (a) money market instruments, including, but not limited to, checks, bills, certificates of deposit and derivatives;
 - (b) foreign exchange;

- (c) exchange, interest rate and index instruments;
- (d) transferable securities; and
- (e) commodity futures trading;
- (8) participation in securities issues and the provision of financial services related to such issues;
- (9) individual and collective portfolio management;
- (10) safekeeping and administration of cash or liquid securities on behalf of other persons;
- (11) investing, administering or managing funds or money on behalf of other persons;
- (12) underwriting and placement of life insurance and other investment-related insurance, including insurance intermediation by agents and brokers; and
- (13) money and currency changing;

"funds or other assets" means financial assets, property of every kind, whether tangible or intangible, moveable or immovable, however acquired, and legal documents or installments in any form, including electronic or digital, evidencing title to, or interest in, such funds or other assets, including but not limited to bank credits, travelers checks, bank checks, money orders, shares, securities, bonds, drafts or letters of credit, and any interest, dividends or other income on or value accruing from or generated by such funds or other assets;

funds transfer means any transaction carried out on behalf of an originator person through a financial institution by electronic means with a view to making an amount of money available to a beneficiary person at another financial institution. The originator and beneficiary may be the same person;

instrumentality means any property used or intended to be used, in any manner, wholly or in part to commit a criminal offense or criminal offenses as is deemed to include property of or available for use by a terrorist organization;

interest in relation to property, means:

- (1) a legal or equitable estate or interest in the property; or
- (2) a right, power or privilege in connection with the property;

legal arrangement refers to express trusts or other similar legal arrangements.

money laundering means the offense of money laundering as defined herein;

originator means the account holder, or where there is no account, the person that places the order with a financial institution to perform a wire transfer;

proceeds of crime means any property or economic advantage derived from or obtained directly or indirectly through the commission of a criminal offense, or in connection therewith. It shall include economic gains from the property and property converted or transformed, in full or in part, into other property;

property means currency and assets of every kind in any form including electronic or digital, evidencing title to, or interest in, such assets, including but not limited to bank credits, travelers checks, bank checks, money orders, shares, securities, bonds, drafts, letters of credit, whether situated in  Liberia  or elsewhere and encompasses legal or equitable interest in any such property whether:

- (1) corporeal or incorporeal;
- (2) moveable or immovable;
- (3) tangible or intangible; and
- (4) legal documents or instruments;

record means any material on which information is recorded or marked and which is capable of being read or understood by a person, or by an electronic system or other device;

shell bank means a bank that has no physical presence in the country in which it is incorporated and licensed, unless such bank is wholly owned by one or more financial institutions forming part of a regulated financial services group that is subject to effective consolidated supervision;

Suspicious Transaction Report means report of any transaction thought for any justified reason that it is related to proceeds of any crime or relating to money laundering or terrorist financing required to be made by reporting entities under the law to the Financial Intelligence Unit;

terrorist means any natural person who:

- (1) commits or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and willfully;
- (2) participates as an accomplice in terrorist acts;
- (3) organizes or directs others to commit terrorist acts; or
- (4) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act;

terrorist act means an act or omission in or outside  which constitutes an offense within the scope of a counter terrorism convention or which:

- (1) involves serious bodily harm to a person or damage to property;
- (2) endangers a person's life;
- (3) creates a serious risk to the health or safety of the public or a section of the public;
- (4) involves the use of firearms or explosives;
- (5) involves releasing into the environment or any part thereof or distributing or exposing the public or any part thereof to any:
 - (i) dangerous, hazardous, radioactive or harmful substance;
 - (ii) toxic chemical; and
 - (iii) microbial or other biological agent or toxin;
- (6) is designed or intended to disrupt any computer system or the provision of services directly related to communications infrastructure, banking or financial services, utilities, transportation or other essential infrastructure;
- (7) is designed or intended to disrupt the provision of essential emergency services such as police, civil defense or medical services;
- (8) involves prejudice to national security or public safety;

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

- (i) intimidate the public or a section of the public,
- (ii) compel a Government or an international organization to do, or refrain from doing any act;
- (iii) seriously destabilize or destroy the fundamental political, constitutional, economic or social structures of a country or an international organization;

(10) is made for the purpose of advancing a political, ideological, or religious cause and disrupts any services;

(11) is committed in pursuance of a protest, demonstration or stoppage of work, that shall be deemed not to be a terrorist act within the meaning of this definition, if it is not intended to result in any harm; and

(12) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act;

terrorist organization means any group of terrorists that:

- (1) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and willfully;
- (2) participates as an accomplice in terrorist acts;
- (3) organizes or directs others to commit terrorist acts; or
- (4) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act;

transaction means a purchase, sale, loan, pledge, gift, transfer, delivery or other disposition, or the arrangement thereof, and includes but is not limited to:

- (1) opening of an account;
- (2) any deposit, withdrawal, exchange or transfer of funds in any currency whether in cash or by check, payment order or other instrument or by electronic or other non-physical means;
- (3) the use of a safety deposit box or any other form of safe deposit;
- (4) entering into any fiduciary relationship;
- (5) any payment made or received in satisfaction, in whole or in part, of any contractual or other legal obligation;
- (6) any payment made in respect of a lottery, bet or other game of chance;
- (7) establishing or creating a legal person or legal arrangement; or
- (8) such other transaction as may be prescribed;

§15.2. Money Laundering

Section 1. Offense of Money Laundering. A person or body corporate or other legal entity commits the offense of money laundering if that person knowing or having reason to believe that property is the proceeds of crime:

- (a) converts or transfers the property with the intent of concealing or disguising the illicit origin of that property, or of aiding any person involved in the commission of the criminal conduct to evade the legal consequences of the conduct;
- (b) conceals or disguises the true nature, origin, location, disposition, movement or ownership of the property;
- (c) acquires, possesses or uses the property;
- (d) engages directly or indirectly in any transaction which involves the property;
- (e) receives, possesses, conceals, disguises, transfers, converts, disposes of, removes from or brings the property into **Liberia**; or

(f) Participates in, associates with or conspires to commit, attempts to commit or aids, abets or facilitates the commission of any of the above acts.

Section 2. Grading. The offense of money laundering shall be punishable as a first degree felony.

§15.3. Predicate Offenses for Money Laundering

Predicate offenses for money laundering are those original crimes and/or acts which result in proceeds. Predicate offenses are serious crimes which give rise to the separate crime of money laundering. Predicate offenses include, but are not limited to the following criminal acts which may be found in the Penal Law or other laws of **Liberia**:

- (a) participation in an organized criminal group and racketeering;
- (b) terrorism, including terrorist financing;
- (c) trafficking in human beings and migrant smuggling;
- (d) sexual exploitation, including sexual exploitation of children;
- (e) illicit trafficking in narcotic drugs and psychotropic substances;
- (f) illicit arms trafficking;
- (g) illicit trafficking in stolen and other goods;
- (h) corruption and bribery;
- (i) fraud;
- (j) counterfeiting currency;
- (k) counterfeiting and piracy of products;
- (1) environmental crime;
- (m) murder, grievous bodily injury;
- (n) kidnapping, illegal restraint and hostage-taking;

- (o) robbery or theft;
- (p) smuggling;
- (q) extortion;
- (r) forgery;
- (s) piracy;
- (t) insider trading and market manipulation; and
- (u) tax evasion.

§15.4. Terrorist Financing

Section 1. Offense of Terrorist Financing. Any person or body corporate, or other legal entity, commits the offense of terrorist financing that willfully, directly or indirectly, provides or collects funds, or attempts to do so, with the intention that they should be used or in the knowledge that they are to be used in whole or in part:

- (a) in order to carry out a terrorist act; or
- (b) by a terrorist to facilitate that person's activities related to terrorist acts or membership in a terrorist organization; or
- (c) by a terrorist organization.

Section 2. Grading. The offense of terrorist financing shall be punishable as a first degree felony.

§15.5. Assisting another to retain the benefit of criminal conduct

Section 1. Offense of assisting another to retain the benefit of criminal conduct. A person or body corporate, or other legal entity, is guilty of the offense of assisting another to retain the benefit of criminal conduct, if that person or body corporate or other legal entity, enters into or is involved in an arrangement whereby the retention or control by or on behalf of another's proceeds of criminal conduct is facilitated by concealment, removal from the jurisdiction, transfer to nominees or otherwise, or made available for disposal or to acquire property by way of investment.

Section 2. Grading. The offense of assisting another to retain the benefit of criminal conduct shall be punishable as a first degree felony.

Section 3. Defenses: In proceedings against a person or body corporate, or other legal entity, for an offense under this section, it is a defense to prove:

- (a) that the person did not know or suspect that the arrangement related to any person's proceeds of criminal conduct; or
- (b) that the person did not know or suspect that the arrangement, the retention or control by or on behalf of another's property was facilitating disposal, or acquisition of property or investment.

§15.6. Acquisition, possession or use of property representing proceeds of criminal conduct

Section 1. Offense of acquiring tainted property. A person or body corporate or other legal entity is guilty of the offense of acquiring tainted property if, he or she acquires or uses property or has possession of it, which he or she knows or should have known is, in whole or in part directly or indirectly another person's proceed criminal conduct.

Section 2. Grading. The offense of acquiring tainted property shall be punishable as a first degree felony.

§15.7. Concealing or transferring proceeds of criminal conduct

A person or body corporate or other legal entity is guilty of an offense if he or she, for the purpose of avoiding prosecution for an offense to which this Subchapter applies or the making or enforcement in case of a confiscation or other order by a court:

(a) conceals or disguises any property, in whole or in part, directly or indirectly, which represents, proceeds of criminal conduct; or

(b) converts or transfers that property or removes it from the jurisdiction.

Section 2. Grading. The offense of concealing or transferring proceeds of criminal conduct shall be punishable as a first degree felony.

§15.8. Tipping off

Section I. Offense of Tipping off during inquiry. A person or body corporate or other legal entity is guilty of the offense of tipping off if:

(a) the person knows or suspects that a law enforcement officer or customs officer is acting or proposing to act in connection with an investigation which is being, or is about to be, conducted into money laundering or terrorist financing; and

(b) the person discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation.

Section 2. Tipping off by financial institution or designated non-financial business. No financial institution or designated non-financial business and profession, nor any director, partner, officer, principal or employee thereof shall disclose to their customer or a third party that a report or any other information concerning suspected money laundering or financing of terrorism will be, is being, or has been submitted to a competent authority, or that a money laundering or financing of terrorism investigation is being or has been carried out.

Section 3. Privileged communication. Notwithstanding the foregoing section, it shall not be an offense in the case of a lawyer to disclose any information in connection with the giving of legal advice to a client including when seeking to dissuade a client from engaging in illegal activity or in contemplation of or relating to legal proceedings.

Section 4. Grading. The offense of tipping off shall be punishable as a first degree felony.

§15.9. Establishing customer anonymity and anonymous accounts

Section I. Prohibition on customer anonymity and anonymous accounts. Financial institutions and designated non-financial businesses and professions shall commit an offense if they establish or maintain customer anonymity and anonymous accounts or accounts in fictitious names.

Section 2. Grading. The offense of establishing customer anonymity and anonymous accounts shall be punishable as a first degree felony.

§15.10. Prohibition on shell bank.

Section I. Prohibition on establishing or continuing business relationship involving shell bank. No person or body corporate or other legal entity shall establish or be permitted to establish a shell bank within the territory of  or on the internet as a Liberian bank. Any person or body corporate or other legal entity who establishes such shell bank, or enters into or continues business relations with a shell bank or a equivalent financial institution in a

foreign country that permits its accounts to be used by a shell bank shall have committed the offense of establishing or continuing business relations involving shell banks.

Section 2. Grading. The offense of establishing a prohibited shell bank shall be punishable as a first degree felony.

SECTION 2: This Act shall take effect immediately upon publication in Handbills by the Ministry of Foreign Affairs.

ANY LAW TO THE CONTRARY NOTWITHSTANDING

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