

The Money Laundering (Prevention) Act, No. 12 of 2001

PART B

THE MONEY LAUNDERING (PREVENTION) ACT,2001 (Act No.12 of 2001)



AN ACT entitled

I ASSENT

MSWATI III
King of Swaziland

13th November 2001

An Act to make provision for the prevention of money laundering and to provide for matters connected or incidental thereto.

ENACTED by the King and the Parliament of Swaziland.

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PART I: PRELIMINARY

Short title and commencement

1. This Act may be cited as the Money Laundering (Prevention) Act, 2001 and shall come into force on such date as the Minister may, by notice in the Gazette, determine.

Interpretation

2. **In this Act, unless the context otherwise requires -**

"accountable institution" means any person whose regular occupation or business is, for the, account of that person, the carrying on of -

(a) any activity listed in the First Schedule to this Act

(b) any other activity defined by the Minister by notice published in the Gazette amending the First Schedule to this Act;

"business transaction" means any arrangement, including opening an account, between two or more persons where the purpose of the arrangement is to facilitate a transaction between the persons concerned and includes any related transaction between any of the persons concerned and another person;

"business transaction record". in relation to a business transaction includes

(a) the identification of all the persons party to that transaction;

(b) a description of that transaction which identifies its purpose and method of execution:

(c) the details of any account used for that transaction, including bank, branch and sort code; and

(d) the total value of that transaction;

"competent authority" means the Director of Public Prosecutions and includes any person authorized by him to act on his behalf;

"Court" means the High Court

"freezing" means temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court;

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

"identification record" means

(a) where the person is a corporate body, the details

(i) of the certificate of incorporation, such certificate having been certified by a notary public where the corporate body is incorporated outside of Swaziland;

(ii) of the most recent annual return of the corporate body filed at the General Registry .such return having been certified by a notary public where the public body is incorporated outside of Swaziland;

(iii) of any officer of the corporation;

(b) sufficient documentary evidence to prove to the satisfaction of a financial institution

that the person is who that person claims to be;

and for accounting purposes "person" includes any person who is a nominee, agent, beneficiary or principal in relation to a business transaction;

"instrument" means something that is used in or intended for use in any manner in the commission of a money laundering offence;

"Minister" means the Minister responsible for Finance;

"money laundering" means

(a) engaging, directly or indirectly, in a transaction that involves property that is the proceeds of crime, knowing or having reasonable grounds for believing the same to be the proceeds of crime; or

(b) receiving, possessing, managing, investing, concealing, disguising, disposing of or bringing into Swaziland any property that is the proceeds of crime, knowing or having reasonable grounds for believing the same to be the proceeds of crime;

"person" means any entity, natural or juridical, including among others, a corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture, or other unincorporated organisation or group, capable of acquiring rights or entering into obligations;

"prescribed offence" means an offence listed in the Second Schedule to this Act;

"proceeds of crime" means any property derived or obtained, directly or indirectly, through the commission of a prescribed offence, whether committed in Swaziland or elsewhere and shall include any property which is knowingly mingled with property that is so derived or obtained;

"property" includes money, investments, holdings, possessions, as sets and all other properties whether movable or immovable wherever situate;

"Supervisory Authority" means the Governor of the Central Bank of Swaziland, or any person acting in that capacity,

PART II: MONEY LAUNDERING PROHIBITED

Offence of money laundering

3. A person who, after the commencement of this Act, engages in money laundering commits an offence.

Offence committed by a person other than a natural person

4. Where an offence under Section 3 is committed by a person, other than a natural person who at the time of the commission of the offence, acted in an official capacity for or on behalf of such body of persons, whether as a director, manager, secretary or other similar officer, or was purporting to act in such capacity, that person is liable to punishment for that offence, unless he adduces evidence to show that the offence was committed without his knowledge, consent or connivance.

Attempts at money laundering, aiding and abetting, conspiracy

5. Any person who attempts or who aids, abets, counsels, or procures the commission of, or who conspires to commit, the offence of money laundering is guilty of an offence.

Penalty for money laundering

6. A person who commits an offence under the provisions of sections 3, 4, or 5 of this Act shall be liable and punishable on conviction, to a fine which shall not be less than twenty-five thousand Emalangeni (E25,000.00) or to imprisonment for a term which shall not be less than six (6) years or to both such fine and imprisonment.

Tipping-off

7. (1) It is an offence for a person who knows or suspects that an investigation into money laundering has been, is being, or is about to be made, to divulge that fact or any other information (or another whereby the investigation is likely to be prejudiced).

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding twenty thousand Emalangeni (E20,000.00), or to imprisonment for a term not exceeding five (5) years, or to both such fine and imprisonment.

Falsification, concealment etc., of document

8. (1) It is an offence for a person to falsify, conceal, destroy or otherwise dispose of or cause or permit the falsification, concealment, destruction or disposal of any document or material which is or likely to be relevant to an investigation into money laundering or to any order made in accordance with the provisions of this Act.

(2) A person who commits an offence under subsection (1) is liable, on conviction, to a fine not exceeding twenty thousand Emalangeni (E20,000.00) or to imprisonment for a term not exceeding five (5) years, or to both such fine or imprisonment.

Jurisdiction

9. Notwithstanding anything to the contrary contained in this Act or in any other law, any offence under this Act may be investigated, and prosecuted in Swaziland regardless of

whether or not the offence occurred in Swaziland or in any other country, but without prejudice to extradition where applicable.

PART III: ANTI-MONEY LAUNDERING SUPERVISION

The Supervisory Authority

10. The powers of the Supervisory Authority as provided in this Act shall be carried out by the Governor of the Central Bank of Swaziland for that purpose.

Powers of the Supervisory Authority

11 (1) The Supervisory Authority-

- (a) shall receive the reports issued by any accountable institution pursuant to the provisions of section 13;
- (b) shall send any such report to the law enforcement authorities if, having considered the report, the Supervisory Authority also has reasonable grounds to believe that a money laundering offence is being, has been or is about to be committed;
- (c) may, if there are reasonable grounds for believing that a contravention or breach of this Act may have occurred, enter into the premises of any accountable institution during normal working hours to inspect any business transaction record kept by that accountable institution and ask any questions relevant to such record and to make any notes or take any copies of the whole or any part of any such record;
- (d) shall send to the law enforcement authorities any information derived from an inspection carried out pursuant to the provisions of paragraph (c) of this section if the Supervisory Authority has reasonable grounds to believe that a money laundering offence is being, has been, or is about to be committed;
- (e) may destroy any note or copy thereof made or taken pursuant to the provisions of paragraph (c) of this section within three years of the inspection save where any such note or copy has been sent to a law enforcement authority;
- (f) may instruct any accountable institution to take such steps as may be appropriate to facilitate any investigation anticipated by the Supervisory Authority following a report or investigation made under the provisions of this section;
- (g) may compile statistics and records, provide information to law enforcement authorities and regulatory bodies within or without Swaziland, in accordance with Part V of this Act,

make recommendations arising out of any information received, issue guidelines to accountable institutions and advise the Minister with regard to any matter relating to money laundering; and

(h) shall create training requirements and provide such training for accountable institutions in respect of the business transaction record-keeping and reporting obligations as provided in this Act.

(2) No criminal or civil liability may be instituted against the Supervisory Authority for things done in good faith in the performance of its duties.

Obligations of accountable institutions

12. An accountable institution shall

(a) keep a business transaction record of any business transaction for a period of five years after the termination of the business transaction so recorded;

(b) comply with any instruction issued to it by the Supervisory Authority pursuant to section 111(f);

(c) permit the Supervisory Authority upon request to enter into any premises of the accountable institution during normal working hours and inspect the records kept pursuant to the provisions of paragraph (a) and to make any notes or taken any copies of the whole or any part of any such record and shall answer questions asked by the Supervisory Authority in relation to such records; and

(d) comply with the guidelines and training requirements issued and provided by the Supervisory Authority respectively in accordance with section 11 (1) (g) or (h).

Reporting of suspicious business transactions by accountable institutions

13. (1) An accountable institution shall pay special attention to all complex, unusual or large business transactions, or unusual patterns of transactions whether completed or not, and or to insignificant but periodic transactions, which are suspicious.

(2) On reasonable suspicion that the transactions described in subsection (1) could constitute or be related to money laundering, an accountable institution shall promptly report such suspicious transactions to the Supervisory Authority.

(3) When the report referred to in subsection (2) above is made in good faith. the accountable institutions or its employees, staff, directors, owners or other representatives, shall be exempt from criminal, civil and/or administrative liability, as the case may be, for complying with this section or for breach of any restriction on disclosure of information imposed by contract or by any legislative. regulatory or administrative provision.

(4) A criminal offence is committed by an accountable institution or its employees, staff, directors, owners or other authorised representatives who, acting as such, wilfully fails to comply with the obligations in this section, or who wilfully make a false report.

(5) Without prejudice to criminal and/or civil liabilities for offences connected to money laundering, an accountable institution that fails to comply with the requirements of this section commits an offence and shall be liable, on conviction, to a fine not exceeding fifty thousand Emalangeni (E50.000.00) and in addition, the licence of such accountable institution to operate as such may be suspended or revoked.

Competent Authority's power to obtain search warrant

14. The competent authority or any law enforcement authority upon application to a Judge of the High Court and satisfying him that there are reasonable grounds to believe that -

(a) an accountable institution has failed to keep a business transaction record as provided by the provisions of section 12(a);

(b) an accountable institution has failed to report any business transaction as provided by the provisions of section 13(2); or

(c) an officer or employee of an accountable institution is committing, has committed or is about to commit a money laundering offence,

may obtain a warrant to enter any premises belonging to, in the possession of or under the control of the accountable institution or any officer or employee of such institution and to search the premises and remove any document, material or other thing therein for the purposes of competent authority or law enforcement agency as ordered by the Judge and specified in the warrant.

Property tracking and monitoring orders

15. The Supervisory Authority, competent authority or any law enforcement authority may apply to the court where there are reasonable grounds for believing that a person is committing, has committed or is about to commit a money laundering offence for purposes of obtaining an order:-

(a) that any document relevant to

(i) identifying, locating or quantifying any property; or

(ii) identifying or locating any document necessary for the transfer of any property

belonging to, or in the possession or under the control of that person be delivered

forthwith to the Supervisory Authority, competent authority or law enforcement authority;

(b) that an accountable institution forthwith produce to the Supervisory Authority, competent authority or law enforcement authority all information obtained by the institution about any business transaction conducted by or for that person with the institution during such period before or after the date of the court order.

Other measures to avoid money laundering

16. A person who has been convicted of a prescribed offence (whether in Swaziland or elsewhere) or of an offence under this Act may not be eligible or licensed to carry on the business of an accountable institution.

Currency reporting when leaving Swaziland

17. A person who leaves Swaziland for a destination outside the common monetary area with more than ten thousand Emalangeni (E10,000.00) in cash (in Swaziland currency) without first having obtained permission from the Supervisory Authority commits an offence under this Act and is liable on conviction to a fine not exceeding twenty thousand Emalangeni (E20,000.00) or to imprisonment not exceeding five (5) years.

PART IV: FREEZING AND FORFEITURE OF ASSETS IN RELATION TO MONEY LAUNDERING

Restraint order

18. (1) Where a person has been charged or is about to be charged with a money laundering offence, the competent authority may make an application to the Court freezing the property of, or in the possession or under the control of that person, wherever such property may be.

(2) An application made under subsection (1), may be made ex parte to a judge in Chambers and shall be accompanied by an affidavit sworn on the information deposing to:-

- (a) the offence or matter under investigation;
- (b) the person who is believed to be in possession of the property;
- (c) the grounds for the belief that an order of forfeiture be made under this Act; or
- (d) the description of the property.

(3) If satisfied that there are reasonable grounds to believe that there exists any property in respect of which an order of forfeiture may be made under this Act, the judge may

make an order -

(a) prohibiting any person from disposing of, or otherwise dealing with property specified in the order otherwise than in such manner as may be specified in the order; and

(b) at the request of the competent authority, and where the judge is of the opinion that the circumstances so require, appoint a person to take control of or to manage or otherwise deal with property.

(4) Subject to subsection (5) and (6), the judge in making an order under subsection (3) may give directions as to the disposal of that property for the purpose of -

(a) determining any dispute as to the ownership of the property or any part thereof;

(b) its proper administration during the period of freezing;

(c) the payment of money to that person for the reasonable subsistence of that person and his family; and

(d) permitting the use of the property in order to enter into a recognisance required of that person by a court.

(5) Before making an order under subsection (3), the judge may require the competent authority to give such undertakings as the judge considers appropriate with respect to the payment of damages or costs, or both, in relation to the making and execution of the order.

(6) The order shall provide for notice to be given to persons affected by the order in such manner as the judge directs or as may be prescribed by rules of court.

(7) An order made under the provisions of this section shall cease to have effect at the end of the period of forty-eight hours if the person against whom such order was made has not been charged with a money laundering offence within that time.

Forfeiture of property, proceeds or instruments

19. (1) Where a person is convicted of a money laundering offence, the court shall order that the property, proceeds or instruments derived from or connected or related to such an offence be forfeited and disposed of in such manner as the court may direct.

(2) If, as a result of any act or omission of the person convicted, any of the property, proceeds or instruments cannot be forfeited, the court shall order the forfeiture of any other property of the person convicted, for an equivalent value, or shall order the person convicted to pay a fine of such value.

(3) In determining whether or not any property is derived from or connected or related to

a money laundering offence, the court shall apply the standard of proof required in civil proceedings.

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

(5) For purpose of this Act, the court may infer that property was obtained or derived as a result of the commission of a money laundering offence where evidence established that the value, after the commission of that offence, of all the property of the person alleged to have committed the offence exceeds the value of all the property of that person before the commission of that offence and the court is satisfied that the income of that person from his legitimate sources as disclosed by him to the court pursuant to subsection (6) cannot reasonably account for such an increase in value.

(6) A person convicted or absolutely or conditionally discharged of a money laundering offence may be summoned to appear before the court at the instance of the competent authority and to give information as to his legitimate sources of income.

Rights of bona fide third parties

20. (1) The measures and sanctions referred to in sections 18 and 19 shall apply without prejudice to the rights of **bona fide** third parties.

(2) Proper notifications shall be made so that all those claiming legitimate legal interest in the property, proceeds or instruments may appear in support of their claims.

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

(4) The court or competent authority shall return the property, proceeds or instruments to the claimant, when it has been proven that:-

(a) the claimant has a legitimate legal interest in the property, proceeds or instruments;

(b) no participation, collusion or involvement with respect to money laundering offence which is the subject of the proceedings can be imputed to the claimant;

(c) the claimant lacked knowledge and was not intentionally ignorant of the illegal use of the property, proceeds or instruments or if he had knowledge, did not freely consent to its illegal use;

(d) the claimant did not acquire any right in the property, proceeds or instruments from a person proceeded against under circumstances that give rise to a reasonable inference that any right was transferred for the purpose of avoiding the subsequent forfeiture of the property, proceeds or instruments and:

(e) the claimant did all that could reasonably be expected to prevent the illegal use of the property, proceeds or instruments.

Limitations on freezing or forfeiture of property

21. The provisions of sections 18 and 19 shall only apply to property coming into the possession or under the control of a person after the coming into force of this Act.

PART V: INTERNATIONAL COOPERATION

Assistance to foreign countries

22. (1) The court or other competent authority shall co-operate with the court or other competent authority of another State, taking the appropriate measures to provide assistance in matters concerning money laundering, in accordance with this Act, and within the limits of their respective legal systems.

(2) The court or other competent authority may receive a request from the court or other competent authority of another State to identify, trace, freeze, seize or forfeit the property, proceeds, or instruments connected to money laundering, and may take appropriate action.

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

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

(5). Any provisions referring to bank secrecy or confidentiality shall not be an impediment to compliance with this section, when the information is requested by or shared with the court or other competent authority.

(6) Assistance referred to in this section shall be provided only to those countries with whom Swaziland has entered into mutual assistance treaties on a bilateral or multilateral basis. and ail such assistance shall be subject to the terms of such treaties.

PART VI: MISCELLANEOUS

Money laundering an offence for extradition purposes

23. Money laundering is an offence for the purpose of any law relating to extradition or the rendition of fugitive offenders.

Secrecy obligation overridden

24. Subject to the provisions of any banking law, the provisions of this Act shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by an law or otherwise.

Amendment of Schedules

25. The Minister may, from time to time after approval by Parliament, by notice published in the Gazette. amend the Schedules to this Act.

Regulations

26. The Minister may make Regulations for the better carrying out of the provisions of this Act and for prescribing anything that needs to be prescribed.

FIRST SCHEDULE

Activities of Accountable Institutions

1. "Banking business" and "financial business" as defined in the Financial Institutions Order, 1975;
2. Offshore Banking business.
3. Venture risk capital
4. Money transmission services;
5. Issuing and administering means of payments (e.g. credit cards. Travellers' cheques and bankers , drafts);
6. Guarantees and commitments
7. Trading for own account or for account of customers in
 - (a) money marketing instruments (e.g., cheques, bills, certificates of deposits, commercial paper, etc.);

(b) foreign exchange;

(c) financial and commodity-based derivative instruments (e.g., futures, options, interest rate and foreign exchange instruments, etc.);

8. Money broking;
9. Money lending and pawning
10. Money exchange;
11. Insurance business;
12. Real property business;
13. Credit unions;
14. Building societies;
15. Trust business;
16. Safe custody services.

SECOND SCHEDULE

Prescribed Offences

Blackmail
Counterfeiting
Drug Trafficking and related offences
Extortion
False accounting
Forgery
Fraud
Illegal deposit -taking
Robbery involving more than E10,000.00
Terrorism
Thefts involving more than E10,000.00
Arms trafficking
Kidnapping
The Government Printer, Mbabane