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THE ANTI-MONEY LAUNDERING ACT, 2004

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PART I—PRELIMINARY

Interpretation.

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

“Attorney-General” means the Attorney-General and Minister of Justice;

“Authority” means the Anti-Money Laundering Authority appointed by section 12;

“business transaction” means any arrangement between two or more persons where the purpose of the arrangement is to facilitate a transaction between the persons concerned and includes the opening of an account and any related transaction between any of the persons concerned and any other person;

“business transaction record” includes, where relevant to a business transaction -

- (a) the identification records of all the parties to that transaction;
- (b) a description of that transaction sufficient to identify 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;

Act No. 10 of 2002.

“CISU” means the Central Intelligence and Security Unit referred to in section 11 of the National Security and Central Intelligence Act, 2002;

“competent authority” means the Attorney-General, the Director-General of CISU or the Governor of the

Bank of Sierra Leone and includes any person or persons appointed by any one of them to carry out the functions of the competent authority as provided in this Act;

“court” means a Magistrates’ Court or the High Court;

“document” means any record of information, and includes—

- (a) anything on which there is writing;
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; or
- (d) a map, plan, drawing or photograph;

“financial institution” means any person whose regular occupation or business is the carrying out of—

- (a) any activity listed in Part I of the First Schedule and includes the activities of the non-financial businesses and professions listed in Part II of the First Schedule; and
- (b) any other activity specified by the Authority by order made by statutory instrument;

“freezing” means restraining any transaction or dealing in anything;

“identification record” means—

- (a) where the person is a corporate body, the details—
 - (i) of the certificate of incorporation, notarised, where the corporate body is incorporated abroad;
 - (ii) of the most recent annual return to the registrar under the Companies Act, or such returns notarised where the corporate body is incorporated abroad;

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(iii) of any officer of the corporation as required in subparagraph (b) of this definition;

(b) otherwise, sufficient documentary evidence to prove to the satisfaction of a financial institution that the person is who that person claims to be;

and for those purposes “person” shall include any person who is a nominee, agent, beneficiary or principal in relation to a business transaction;

“money laundering” means the offence stated in section 2;

“proceeds of crime” means the proceeds of unlawful activity wherever committed and includes any property which is mingled with property that is proceeds of unlawful activity;

“property” includes money and all other property real or personal, heritable or moveable, including things in action and other intangible or incorporeal property wherever situate and includes any interest in such property;

“requesting State” means any State which makes a request for assistance under Part V;

“unlawful activity” means any activity which under any law anywhere is a crime and is punishable by death or imprisonment for a maximum period of not less than twelve months;

(2) A reference in this Act to a document includes a reference to—

(a) any part of a document;

(b) any copy, reproduction or duplicate of the document or of any part of the document, or

(c) any part of such copy, reproduction or duplicate.

PART II—MEASURES TO COMBAT MONEY LAUNDERING

2. (1) It is an offence for any person to engage in money laundering. Offence of money laundering.

(2) A person engages in money laundering if he—

(a) engages directly or indirectly in any transaction which involves property that is the proceeds of crime; or

(b) receives, possesses, conceals, disguises, transfers, converts, disposes of, removes from or brings into Sierra Leone any property that is the proceeds of crime,

knowing or having reasonable grounds to believe that the property is the proceeds of crime.

3. Subject to such exceptions as may be prescribed by the Authority— Prohibition of certain cash transactions.

(a) the use of cash or bearer securities for payments exceeding in the aggregate twenty-five million leones in business transactions by financial institutions; and

(b) the transfer to or from any country outside Sierra Leone of any moneys exceeding the equivalent of ten thousand United States dollars otherwise than by or through a financial institution,

are hereby prohibited.

Identification of customers.

4. (1) Every financial institution shall verify the identity and address of every customer before opening ordinary accounts or passbooks, taking into safe custody stocks, bonds or other securities, or granting safe-deposit facilities or engaging in any other similar business transaction.

(2) In the case of an individual customer, the identity shall be verified by the presentation of an original international passport, driving licence, national identity card or such other official document bearing his photograph, a copy of which shall be retained by the financial institution, and the address shall be verified by the presentation of a document capable of providing proof thereof.

(3) In the case of a customer which is a body corporate, the identification shall be by the production of its articles of association and of any document establishing that it has been lawfully registered and that it is actually in existence at the time of the identification, a copy each of which documents shall be retained by the financial institution.

(4) Where the customer is an individual delegated as a director, employee or agent to enter into transactions on behalf of third parties, he shall produce the documents referred to in subsection (2) as well as documents authenticating the identity and addresses of the beneficial owners.

Identification of beneficial owners.

5. (1) If it is uncertain whether a customer is acting on his own behalf, the financial institution shall seek information by any means as to the true identity of the principal or party on whose behalf the customer is acting.

(2) If, following verification, any doubt remains as to the true identity of the beneficial owner, the banking relationship shall be terminated, without prejudice, where applicable, to the requirement to report suspicious business transactions.

(3) A customer who is a lawyer, a public or private accountant, an individual with public powers of attorney or an authorised agent, acting as a financial intermediary, may not invoke

professional secrecy or confidentiality in order to refuse to disclose the true identity of the transacting party or beneficial owner.

6. (1) Where a business transaction involves an amount exceeding twenty-five million leones, and is conducted in conditions of unusual or unjustified complexity or appears to have no economic justification or lawful purpose, the financial institution shall seek information as to the origin and destination of the money, the purpose of the transaction and the identity of the transacting parties. Special monitoring of certain transactions.

(2) The financial institution shall draw up a confidential report, in writing, containing all relevant information on the modalities of the business transaction and on the identity of the principal and, where applicable, of the transacting parties.

(3) The report referred to in subsection (2) shall be kept for a period of five years after the execution of the business transaction, for the purposes of any investigation under this Act relating to that business transaction.

(4) Where the financial institution has reasonable grounds for believing that the business transaction referred to in subsection (1) could constitute or be related to money laundering, the financial institution shall promptly report the matter to the Authority.

(5) It shall be an offence for the financial institution or any person required by it to make the report under subsection (4) or having knowledge thereof to disclose to any person other than a court of competent jurisdiction, competent authority or other person authorised by law that information has been furnished under subsection (4).

7. Where in any case under this Act, the report referred to in subsection (4) of section 6 is made in good faith, the financial institution and its employees, staff, directors, owners or other representatives as authorised by law shall be exempted from all criminal, civil or other liability, as the case may be, for complying with this Act or for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, regardless of the result of the report. Removal of banking or professional secrecy, etc.

Test of reasonableness of belief, etc. 8. Where under subsection (4) of section 6 or any other provision of this Act, the question arises as to the reasonableness of the grounds upon which a decision or an action was taken, that question shall be determined objectively having regard to all the facts and surrounding circumstances.

Internal anti-money laundering measures. 9. Every financial institution shall develop, to the satisfaction of the Authority, programmes for the prevention of money laundering, including—

- (a) centralization of information on the identity of customers, principals, beneficiaries, proxies, authorized agents, beneficial owners and on suspicious business transactions;
- (b) ongoing training for officials or employees;
- (c) internal audit arrangements to check compliance with and the effectiveness of the measures taken to apply this Act.

Over-the-counter exchange dealings. 10. (1) Subject to subsection (3), any person whose usual business is to undertake over-the-counter exchange transactions shall—

- (a) before the commencement of business, submit a declaration of activity to the Bank of Sierra Leone for the purpose of obtaining the requisite operating licence in which he shall furnish proof of the lawful origin of the capital required to set up the business;
- (b) prior to any transaction involving a sum exceeding ten million leones or its equivalent in foreign exchange identify the customer by requiring him to fill a standard data form and present his unexpired international passport, driving licence, national identity card or such other official document bearing his

photograph as may be prescribed, a copy of which shall be taken;

- (c) record, in chronological order, all transactions under this section, indicating each customer’s surname, forename, and address and the number of the official document submitted, in a register numbered and initialled by an officer authorized for that purpose by the Bank of Sierra Leone.

(2) A register kept under paragraph (c) of subsection (1) shall be preserved for at least ten years after the last transaction recorded therein.

(3) For the purpose of this section, an over-the-counter exchange transaction is constituted by the immediate exchange of bank notes or coin in different currencies or the handing over of cash against settlement by a different means of payment in a different currency.

(4) Any person who contravenes subsection (1) or (2) commits an offence.

11. (1) The provisions of subsection (1) of section 10 shall apply to casinos, with the necessary modifications, in relation to the proof of the lawful origin of the initial capital of the casino, the identification of gamblers and the maintenance of other business transaction record, except that the requirement for the identification of customers shall apply to gamblers who buy, bring or exchange chips or tokens for a sum exceeding five million leones. Casinos and gambling establishments.

(2) Any person who contravenes subsection (1), commits an offence.

PART III—ANTI-MONEY LAUNDERING SUPERVISION

12. (1) Subject to subsection (2), the Governor of the Bank of Sierra Leone is hereby appointed the Anti-Money Laundering Authority for the purposes of this Act. Anti-money laundering authority.

(2) For the purposes of subsection (1), there shall be established in the Bank of Sierra Leone a financial intelligence unit for the expert analysis and processing of the reports referred to in paragraph (a) of section 14.

Functions of Authority.

13. The Authority—

- (a) shall receive the reports required to be issued by financial institutions under sections 6 and 14;
- (b) shall send any reports referred to in paragraph (a) to the Director-General of CISU and the Attorney-General if, having considered the report, the Authority also has reasonable grounds to believe that the business transaction referred to in the report involves the proceeds of crime;
- (c) or a person authorised by the Authority in that behalf, may enter into the premises of any financial institution during normal working hours to inspect any business transaction record kept by that financial institution pursuant to paragraph (a) of section 14 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) send to the Director-General of CISU and the Attorney-General any information derived from an inspection carried out under paragraph (c), if it gives the Authority reasonable grounds to believe that a business transaction involves the proceeds of crime;
- (e) shall destroy any note or copy thereof made or taken under paragraph (c) within three years of the inspection except where any such note

or copy has been sent to the Director-General of CISU or the Attorney-General;

- (f) may instruct any financial institution to take such steps as may be appropriate to facilitate any investigation anticipated by the Authority following a report or investigation made under this section;
- (g) may—
 - (i) compile statistics and records on money laundering and disseminate information thereon both within and outside Sierra Leone;
 - (ii) make to such persons as it may deem appropriate recommendations arising out of any information received;
 - (iii) issue guidelines to financial institutions and advise the Minister responsible for finance with regard to matters relating to money laundering;
- (h) shall assess the training requirements and provide such training for any financial institution in respect of the business transaction record keeping and reporting obligations as provided in paragraphs (a) and (b) of section 14;
- (i) may consult with any relevant person, institution or organisation for the purposes of the Authority's functions under paragraphs (f) and (g);
- (j) shall not conduct any investigation into money laundering other than for the purpose

of ensuring compliance by a financial institution with this section and section 14.

Duties of financial institutions.

14. Every financial institution shall—

- (a) keep a business transaction record of any new or unrelated business transaction exceeding twenty-five million leones for a period of five years after the termination of the business transaction so recorded;
- (b) report to the Authority any business transaction where the identity of the persons involved, the transaction or any other circumstances concerning that business transaction gives any officer or employee of the financial institution reasonable grounds to believe that the transaction involves the proceeds of crime;
- (c) comply with any instruction issued to by the Authority under paragraph (f) of section 13;
- (d) permit any person authorised in that behalf by the Authority, upon request, to enter into any premises of the financial institution during normal working hours and inspect the records kept under paragraph (a) and to make any notes or take any copies of the whole or any part of any such records or to answer any questions of the Authority in relation to such records;
- (e) comply with the guidelines and training requirements issued or, as the case may be, provided by the Authority in accordance with paragraphs (g) and (h) of section 13;

15. The Authority or the Director-General of CISU, upon application to a court and satisfying the court that there are reasonable grounds for believing that— Authority's power to obtain search warrant.

- (a) a financial institution has failed to keep a business transaction record as required by paragraph (a) of section 14; or
- (b) a financial institution has failed to report any business transaction as required by paragraph (b) of section 14, or
- (c) an officer or employee of a financial institution is committing, has committed or is about to commit the offence of money laundering,

may obtain a warrant to enter any premises belonging to, in the possession or control of the financial 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 the Authority or the Director-General of CISU as ordered by the court and specified in the warrant.

16. The Authority or the Director-General of CISU on an application to a court and satisfying the court that there are reasonable grounds for believing that a person is committing, has committed or is about to commit the offence of money laundering may obtain an order— Authority etc. to obtain property tracking and monitoring orders.

- (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 Authority or the Director-General of CISU, as the case may be;

- (b) that a financial institution forthwith produce to the Authority or the Director-General of CISU 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 order as the court directs.

Mandatory injunction to enforce compliance.

17. (1) All officers and employees of a financial institution shall take all reasonable steps to ensure the compliance by that financial institution with its obligation under this Part.

(2) The Authority or the Director-General of CISU, upon application to a court and satisfying the court that a financial institution has failed without reasonable excuse to comply in whole or in part with any obligation imposed by section 14, may obtain a mandatory injunction against any or all of the officers or employees of that financial institution in such terms as the court deems necessary to enforce compliance with such obligation.

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

Interference with investigation.

18. (1) It is an offence for any person who knows or suspects that an investigation into money laundering has been, is being or is about to be made, or that an order has been made or may be made requiring the delivery or production of any document -

- (a) to divulge that fact or other information to another, whereby the investigation is likely to be prejudiced; or
- (b) to falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, concealment, destruction or disposal of

material which is or is likely to be relevant to the investigation.

(2) A person who commits an offence under subsection (1), shall, on conviction, be liable to a fine not exceeding twenty million leones or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

19. A person who has been convicted of any offence within the category of offences prescribed in the Second Schedule, whether in Sierra Leone or elsewhere, being offences deemed to be associated with proceeds of crime, or of an offence under this Act, may not be licensed to carry on the business of a financial institution.

Further measures to avoid money laundering.

20. (1) Notwithstanding anything to the contrary contained in any other law, a person who leaves or enters Sierra Leone with more than ten thousand United States dollars in cash or negotiable bearer securities without first having reported the fact to the Authority commits an offence.

Currency reporting at border.

(2) Where a person—

- (a) is about to leave Sierra Leone or has arrived in Sierra Leone; 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,

- (i) examine any article which a person has with him;
- (ii) if the officer has reasonable grounds to believe that an offence under subsection (1) may have been or is being committed, search the person,

for the purpose of finding out whether the person has with him or on him or in his clothing any cash or negotiable bearer securities in

respect of which a report under subsection (1) is required but a person shall not be searched except by a person of the same sex.

(3) An authorised officer, and any person assisting such officer, may board any ship or aircraft for the purposes of exercising the powers conferred by subsection (2).

(4) Where an authorised officer has reasonable grounds to believe that cash or negotiable bearer securities found in the course of an examination or search conducted under subsection (2) may afford evidence as to the commission of an offence under this section, the officer may seize the cash or negotiable bearer securities.

(5) For the purpose of this section, the term—

- (a) “authorised officer” means—
- (i) a member of the Sierra Leone Police Force not below the rank of Assistant Superintendent, or
 - (ii) a customs officer, or
 - (iii) an employee of the Bank of Sierra Leone authorised in that behalf by the Governor; or
 - (iv) an employee of the Sierra Leone Airports Authority authorised in that behalf by the General Manager of the Airports Authority;
- (b) “negotiable bearer securities” means a document representing ownership of debts or obligations, including bills of exchange, promissory notes or certificates of deposit made payable to the bearer.

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

21. (1) A competent authority, upon application to a court and satisfying the court that the Attorney-General has charged or is about to charge a person with money laundering, may apply for an order freezing the property of, or in the possession or under the control of that person, wherever it may be. Freezing of assets of suspects.

(2) The court, in making any order freezing the property of any person referred to in subsection (1), may give directions as to—

- (a) the duration, subject to subsection (3), of the freezing order;
- (b) the disposal of that property for the purpose of—
 - (i) determining any dispute as to the ownership of or other interest in the property or any part thereof;
 - (ii) its proper administration during the period of freezing;
 - (iii) the payment of debts incurred in good faith due to creditors prior to the order;
 - (iv) the payment of moneys to that person for the reasonable subsistence of that person and his family;
 - (v) the payment of the costs and other expenses of that person to defend criminal proceedings against him.

(3) An order made under subsection (1) shall cease to have effect at the end of the period of forty eight hours following the

hour the order was made should the person against whom such order was made not have been charged with the offence of money laundering within that time.

(4) The Government of Sierra Leone or the competent authority shall not be liable for any damages or cost arising directly or indirectly from the making of a freezing order unless it can be proved that the application for the freezing of the property was not made in good faith.

(5) Where the court makes an order for the administration of frozen property, the person charged with the administration of the property shall not be liable for any loss or damage to the property or for the cost of proceedings taken to establish a claim to the property or to any interest in the property unless the court in which the claim is made is of the opinion that the person has been guilty of negligence in respect of the taking of custody and control of the property.

Forfeiture of property of persons convicted under Act.

22. (1) Upon application by a competent authority to the court, any property of or in the possession or under the control of any person who is convicted of money laundering and any property of that person, the subject of a freezing order shall, unless proved to the contrary, be deemed to be derived from money laundering and forfeited by order of the court.

(2) In determining whether or not any property is derived from money laundering, the court shall apply the standard of proof required in civil proceedings.

(3) In making a forfeiture order the court may give directions—

- (i) for the purpose of determining any dispute as to the ownership of or other interest in the property or any part thereof;
- (ii) as to the disposal of the property.

(4) Upon application to the court by a person against whom a forfeiture order has been made under this section, the court

may order that a sum deemed by the court to be the value of the property so ordered to be forfeited be paid by that person to the court and upon satisfactory payment of that sum by that person the property ordered to be forfeited shall be returned to him.

23. (1) For the purpose of determining whether any property belongs to, is in the possession or under the control of any person, the court may, upon application by a competent authority and if satisfied that there are reasonable grounds for so doing, order—

Competent authority to obtain property tracking or monitoring order.

(a) that any document relevant to—

- (i) identifying, locating or quantifying property of that person;
- (ii) identifying or locating any document necessary for the transfer of property of that person;

be delivered forthwith to the competent authority;

- (b) a financial institution forthwith to produce to the competent 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 order as the court directs;
- (c) upon being satisfied by the competent authority that any person is failing to comply with, is delaying or is otherwise obstructing an order made in accordance with paragraph (a) or (b) of subsection (1), that the competent authority may enter any premises of that person, search the premises and remove any document material or other thing therein for the purposes of executing such order.

(2) Where a person produces or delivers a document pursuant to an order under this section, the production or delivery of the document or any information, document or thing obtained as a direct or indirect consequence of the production or delivery of the document, is not admissible against the person in any proceedings except a proceeding for an offence of failing to comply with an order of a court.

Offences in relation to property tracking, etc.

24. (1) It is an offence—

- (a) for any 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 is likely to be relevant to the execution of any order made in accordance with paragraph (a) or (b) of subsection (1) of section 23;
- (b) for a person who is the subject of an order made under paragraph (a) or (b) of subsection (1) of section 23 to disclose the existence or operation of the order to any person except to an officer of a law enforcement authority named in the order, an officer or agent of the institution, for the purposes of ensuring that the order is complied with or a legal practitioner, for the purpose of obtaining legal advice or representation in relation to the order.

Limitation on freezing and forfeiture of property.

25. Sections 21 and 22 shall apply only to property coming into the possession or under the control of a person after the commencement of this Act.

Appeals.

26. Nothing in this Part shall prevent the operation of any appeal normally available against orders made by the court.

PART V—MUTUAL ASSISTANCE IN RELATION TO MONEY LAUNDERING

27. Subject to section 32, where a foreign State makes a request for assistance in the investigation or prosecution of money laundering, the competent authority shall— International cooperation.

- (a) execute the request forthwith; or
- (b) inform the foreign State making the request of any reason—
 - (i) for not executing the request forthwith; or
 - (ii) for delaying the execution of the request.

28. The competent authority, upon application to a court and upon production to the court of a request, may obtain a warrant— Competent authority's power to obtain search warrant.

- (a) to enter any premises belonging to or in the possession or control of any person named in the warrant and to search the premises; and
- (b) to search the person of any person named in the warrant,

and remove any document material or other thing for the purpose of executing the request as directed in the warrant.

29. The competent authority, upon application to the court and upon production to the court of a request, may obtain an order — Property tracking, etc. for foreign State.

- (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, in the possession or under the control of any person named in the request be delivered to the competent authority;

- (b) that a financial institution forthwith produce to the competent authority all information obtained by the institution about any business transaction conducted by or for a person named in the request with the institution during such period before or after the date of the order as the court directs.

Freezing and forfeiture of property in international cooperation.

30. (1) Subject to section 32, the competent authority upon application to the High Court and upon production to the High Court of a request for the freezing or forfeiture of property of or in the possession or under the control of a person named in the request may obtain an order-

- (a) freezing the property of or in the possession or under the control of the person named in the request for such period as is indicated in the order;
- (b) giving directions as to the disposal of that property for the purpose of-
 - (i) determining any dispute as to ownership of or other interest in the property or any part thereof;
 - (ii) its proper administration during the period of freezing;
 - (iii) the payment of debts, incurred in good faith, due to creditors prior to the request;

- (iv) the payment of moneys to that person for the reasonable subsistence of that person and his family; and

- (v) the payment of costs and other expenses to defend any criminal proceedings referred to in the request, and

- (c) forfeiting the property of or in the possession or under the control of any person named in the request.

(2) This section shall apply only to property coming into the possession or under the control of a person after the commencement of this Act.

31. (1) Subject to section 32, the competent authority may upon application to the High Court and upon production to the High Court of a request accompanied by an order issued by a Court of the requesting State directed to any person within the jurisdiction of the High Court to deliver himself or any document or material in his possession or under his control to the jurisdiction of the Court of the requesting State for the purpose of giving evidence in specified proceedings in that Court, obtain an order directed to that person in the same terms as in the order accompanying the request.

Request to be accompanied by an evidence order.

(2) Upon being served with an order issued in accordance with subsection (1), the person served shall, for the purposes of the order either-

- (a) deliver himself to the jurisdiction of the High Court; or
- (b) deliver himself to the jurisdiction of the Court of the requesting State,

in accordance with the directions in the order.

(3) If a person served with an order issued in accordance with subsection (1) elects to deliver himself to the jurisdiction of the Court of the requesting State and fails to comply with any direction

in the order, he shall be deemed immediately to have delivered himself to the jurisdiction of the High Court as provided in paragraph (a) of subsection (2).

(4) The High Court shall conduct such proceedings as are necessary to take the evidence of any person delivering himself to the jurisdiction of the High Court pursuant to paragraph (a) of subsection (2) and the evidence shall subsequently be transmitted by the competent authority to the foreign State.

Limitations on compliance with request.

32. The competent authority may refuse to comply with a request if—

Act No. 6 of 1991.

- (a) the action sought by the request is contrary to the Constitution of Sierra Leone; or
- (b) the execution of the request is likely to prejudice the national interest.

Request to other States.

33. The competent authority may issue to a foreign State a request accompanied, if required, by an order issued in accordance with section 35.

Issuing evidence order against foreign resident.

34. The competent authority upon application to the High Court may in respect of any proceedings for money laundering apply for an order directed to any person resident in a foreign State to deliver himself or any document or material in his possession or under his control to the jurisdiction of the High Court or, subject to the approval of the foreign State, to the jurisdiction of the Court of the foreign State for the purpose of giving evidence in relation to those proceedings.

Evidence pursuant to requests.

35. Evidence taken pursuant to a request in any proceedings in a Court of a foreign State shall be received as *prima facie* evidence in any proceedings to which such evidence relates.

Form of requests.

36. A request shall be in writing, including facsimile transmitted writing, dated and signed by or on behalf of the person making the request.

37. The request shall—

Contents of requests.

- (a) confirm either that an investigation or prosecution is being conducted into or for a suspected money laundering offence or that a person has been convicted of a money laundering offence;
- (b) state the grounds on which any person is being investigated or prosecuted for the money laundering offence referred to in paragraph (a) or give details of the convictions of the person referred to in paragraph (a);
- (c) give particulars sufficient to identify any person referred to in paragraph (b);
- (d) give particulars sufficient to identify any financial institution or other person believed to have information, documents or material of assistance to the investigation or prosecution referred to in paragraph (a);
- (e) request the competent authority to whom the request is addressed to obtain from a financial institution or other person referred to in paragraph (d) all and any information, documents or material of assistance to the investigation or prosecution referred to in paragraph (a);
- (f) specify the manner in which and to whom any information, documents or materials obtained pursuant to the request is to be produced;
- (g) state whether or not a freezing or forfeiture order is required and identify the property to be the subject of such an order; and

(h) contain such other information as may assist the execution of the request.

Request for forfeiture. 38. A request for forfeiture shall have attached to it a copy of the final forfeiture order to the Court and a statement signed by a judge of that Court to the effect that no further appeal against such order can be made.

Request not to be invalidated. 39. A request shall not be invalidated for the purpose of any legal proceedings by virtue of any failure to comply with section 37, if the competent authority is satisfied that there is sufficient compliance to enable it properly to execute the request.

Offence of interference with mutual assistance orders. 40. It is an offence—
 (a) for any 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 is likely to be relevant to the execution of any order made in accordance with this Part;
 (b) for any person who knows or has reasonable grounds for believing that an investigation into money laundering has been, is being or is about to be made, or that an order has been made or may be made requiring the delivery or production of any document to divulge that fact or other information to another whereby the investigation is likely to be prejudiced.

Asset sharing. 41. Where the Minister responsible for finance considers it appropriate, either because an international arrangement so requires or permits or in the interest of comity, he may order that the whole or any part of any property forfeited under this Part, or the value thereof, be given or remitted to the requesting State.

PART VI - MISCELLANEOUS PROVISIONS

42. Any request for extradition of an offender shall be subject to the Extradition Act, 1974 which shall be applied as if money laundering is an offence for which extradition may be granted. Extradition Act No. 11 of 1974.

43. An attempt or conspiracy to commit money laundering or aiding, abetting, counselling, commanding or procuring the commission of money laundering shall be punishable as if the offence had been completed. Attempts, aiding and abetting etc.

44. Where an offence under this Act is committed by a body of persons— Offence by body of persons.

- (a) if the body of persons is a body corporate, every director or officer of that body shall be deemed to have committed that offence;
- (b) if the body of persons is a firm, every partner of that firm shall be deemed to have committed that offence:

Provided that no such person referred to in paragraph (a) or (b) shall be deemed to have committed an offence under this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence.

45. Any person who contravenes or fails to comply with any requirement of this Act for which no offence is specifically created commits an offence; and any offence for which no penalty is provided shall be punishable by a fine not exceeding thirty million leones or by imprisonment for a term not exceeding five years or by both such fine and imprisonment. General offence and penalty.

46. A court may, in addition to any other penalty, permanently or for a maximum period of five years, ban any person convicted of an offence under section 2 or section 43 from pursuing the trade or occupation which provided the opportunity for the commission of the offence. Court may impose ban.

Regulations. 47. The Authority may, by statutory instrument, make regulations for carrying out the provisions of this Act and may, where necessary, amend the Schedule.

FIRST SCHEDULE (Section 1)

PART I—ACTIVITIES OF FINANCIAL INSTITUTIONS

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|---------------------|---|
| Act No. 10 of 2000. | 1. Deposit-taking business as defined in the Banking Act, 2000. |
| Act No. 7 of 2001. | 2. Financial activity as defined in the Other Financial Services Act, 2001. |
3. Finance leasing.
 4. Providing venture risk capital.
 5. Money transmission services.
 6. Issuing and administering such means of as payment e.g. credit cards, travellers' cheques, drafts or other similar means;
 7. Providing financial guarantees and commitments.
 8. Underwriting share issues and participation in such issues.
 9. Money brokering.
 10. Money and currency changing.
 11. Investment business.
 12. Bullion dealing.
 13. Insurance business.
 14. Credit services or credit unions.
 15. Merchant or investment banking.

16. Safe custody services.
17. Stock brokerage and dealing in securities and commodities.

PART II—RELATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

1. Casinos (which also includes internet casinos).
2. Real estate agents.
3. Dealers in precious metals.
4. Dealers in precious stones.
5. Lawyers, notaries, other independent legal professionals and accountants - this refers to sole practitioners, partners or employed professionals within professional firms. It is not meant to refer to "internal" professionals that are employees of other types of businesses, nor to professionals working for government agencies, who may already be subject to measures that would combat money laundering.
6. Trust and Company Service Providers which refers to all persons or businesses that provide any of the following services to third parties: -
 - (a) acting as a formation agent of legal persons;
 - (b) 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;
 - (c) providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal persons or arrangement;
 - (d) acting as (or arranging for another person to act as) a trustee of an express trust;

- (e) acting as (or arranging for another person to act as) a nominee shareholder for another person.

SECOND SCHEDULE (Section 19)

DISQUALIFYING CATEGORIES OF OFFENCES

1. Participation in an organised criminal group and racketeering.
2. Terrorism, including terrorist financing.
3. Trafficking in human beings and migrant smuggling.
4. Sexual exploitation, including sexual exploitation of children.
5. Illicit trafficking in narcotic drugs and psychotropic substances.
6. Illicit arms trafficking.
7. Illicit trafficking in stolen and other goods.
8. Corruption and bribery.
9. Fraud.
10. Counterfeiting currency.
11. Counterfeiting and piracy of products.
12. Environmental crime.
13. Murder, grievous bodily injury.
14. Kidnapping, illegal restraint and hostage-taking.
15. Robbery or theft.
16. Smuggling.

17. Extortion.
18. Forgery.
19. Piracy.
20. Insider trading and market manipulation.

MEMORANDUM OF OBJECTS AND REASONS

The object of this Bill is to provide a legal framework for combating the laundering of illicit money in Sierra Leone. Generally, the purpose of money laundering is to conceal or disguise the illegality so that the money appears to have originated from clean or legitimate sources, without exposing the perpetrators behind the crime.

Money laundering is, therefore, a financial or monetary issue and the Bill is accordingly addressed predominantly to persons who, in their trades or occupations, carry out, supervise or advise on transactions involving deposits, exchange operations, investments, conversions and other movement of capital, but especially, to financial institutions.

The Bank of Sierra Leone has therefore been identified as the foremost public authority to work with those institutions to stamp out the menace of money laundering. It is now required to establish a financial intelligence unit for the expert analysis and processing of the relevant information from the financial sector. Reports will then be made to the Central Intelligence and Security Unit which under the National Security and Intelligence Act, 2002 (Act No. 10 of 2002) is responsible for the national security aspects of the offence; and ultimately, to the Attorney-General and Minister of Justice who is responsible for the prosecution of offences detected.

The Bill is in six Parts.

Part I provides for the definition of certain important terms used in the Bill.

Part II defines the offence of money laundering as consisting of acts to conceal or disguise the origin of illicit money with prior knowledge of that illicit origin. It also provides for the removal of both banking and professional secrecy to

facilitate the reporting of suspect transactions to the public authorities, including the identification of the persons behind those suspect transactions.

Part III constitutes the Governor of the Bank of Sierra Leone as the Anti-Money Laundering Authority for Sierra Leone, in the Bill referred to as the “Authority” and requires the Governor to report or transmit cases to the law enforcement agencies in this area namely, the Director-General of the Central Intelligence Unit (CISU) of the President’s Office and the Attorney-General and Minister of Justice. Clause 13 (h) of this Part reinforces the Governor’s duty under clause 11, for drawing up internal awareness and training programmes for the personnel of financial institutions as part of the measures to combat money laundering, while clause 16 provides for court orders for the seizure of evidence relevant to suspect transactions. Under Clause 19, persons convicted of any of the crimes listed in the Second Schedule to the Bill may be banned from the financial sector on account of the close association of those crimes with the proceeds of crime referred to in the Bill.

Part IV authorizes the issue of court orders to either the Governor, the Director-General of CISU or the Attorney-General for the freezing of money and business transactions bearing on money and other assets likely to be seized or forfeited under the Bill. Under clause 25, however, only assets acquired by a suspect or an offender before the commencement of the Bill can be frozen or forfeited.

Part V deals with mutual assistance among countries for the global detection and punishment of money laundering since economic globalization has offered opportunity for criminals to transfer money almost instantaneously across the globe.

Under Part VI, money laundering is now to be treated as an extraditable offence under the Extradition Act, 1974 (Act No. 11 of 1974) and there is provision

also thereunder for equating the inchoate offences of attempts, conspiracy, aiding and abetting and others to money laundering for the purposes of punishment.

The Bill has two Schedules the first of which extends in Part II thereof the definition of financial institutions to include the non-financial businesses and professions which are normally targeted by launderers because of their ability to absorb very large sums of money as for instance real estate agents and traders in such very expensive articles as paintings, precious stones and metals.

J. B. DAUDA,
Minister of Finance.

FREETOWN
SIERRA LEONE
MARCH, 2004.