

**ANTI-MONEY LAUNDERING AND COUNTERING THE  
FINANCING OF TERRORISM (AMENDMENT) BILL, 2021**

*(Bill No. 6 of 2021)*

**OBJECTS AND REASONS**

The Anti-Money Laundering the Countering the Financing of Terrorism Act, 2020 (Act 5 of 2020) (hereinafter referred to as AMLCFT Act) was enacted for the prevention, detection and combating of money laundering and terrorist financing activities; for collection, analysis and managing information on suspicious financial transactions and activities; to create and empower institutions to suppress money laundering and the financing of terrorism and for matters connected therewith or incidental thereto. The said Act was brought into force from 28<sup>th</sup> August, 2020.

2. A review of the Act was conducted while implementing the provisions of the Act and certain shortcomings have been identified to meet with the recommendations of the FATF and the observations made in the Mutual Evaluation Report of the ESAAMLG. Accordingly, it is proposed to amend sections 2, 3, 5, 7, 27, 28, 32, 41, 45, 48, 50, 53, 56, 58, 60, 74, PART-A, PART-B and PART-C of the FIRST SCHEDULE, THIRD SCHEDULE and FIFTH SCHEDULE. It is also proposed to insert new sections 30A, 45A, 53A and section 63A.

3. The salient features of the proposed amendments, inter alia, are as follows:

- (a) defining the terms “consolidated supervision”, “cross border wire transfer”, money value transfer service provider or MVTTS provider”, “originator”, “payable-through account” and “wire transfer” to interpret those terms for the intended purpose;
- (b) to amend section 3 of the Act to cover the aspect of self-laundering;

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- (c) to amend marginal note in section 5 to align with the provision;
  - (d) to amend section 7 of the Act to extend the functions of the Committee;
  - (e) to amend section 27 of the Act for extending the period from existing 7 days to 10 days for filing an application before the court for extension of time;
  - (f) to insert new subsections (7) to (9) in section 28 of the Act empowering the FIU to impose administrative sanctions on the reporting entities for failure to comply with the request for information; to provide accurate information by the reporting entities; and to impose fine, if a reporting entity fails to comply with subsections (7) and (8);
  - (g) to insert a new section 30A to designate NPO on the basis of risk assessment;
  - (h) to amend subsection (3) of section 41 to align with FATF recommendation number 19;
  - (i) to amend section 45 of the Act to align the same with FATF recommendation number 16 and to cover money value transfer services also under the purview of the Act;
  - (j) to insert a new section 45A relating to retention of records in the case of cross border wire transfers;
  - (k) to insert a new section 53A providing for overriding effect on the confidentiality clauses of any other written law;
  - (l) to amend section 58 of the Act to bring in the concept of consolidated supervision;

- (m) to amend section 60 of the Act to empower registering authority also to suspend or revoke the licence or registration in respect of those entities to whom licence or registration has been granted by the registering authority;
- (n) to insert a new section 63A for entering into an MoU amongst the FIU and law enforcement agencies to cooperation between them; and
- (o) amendments in the FIRST, THIRD AND FIFTH SCHEDULES to align those Schedule with respective domestic laws.

**Dated this 24<sup>th</sup> day of February, 2021.**

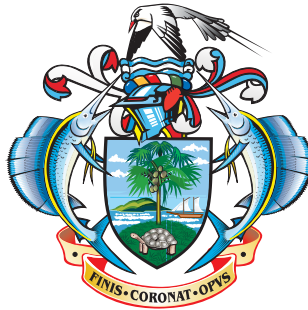
**FRANK D.R. ALLY  
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FINANCING OF TERRORISM (AMENDMENT) BILL, 2021**

*(Bill No. 6 of 2021)*



**A BILL**

**FOR**

**AN ACT to amend the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020 (Act 5 of 2020).**

**ENACTED** by the President and the National Assembly.

**Short title**

1. This Act may be cited as the Anti-Money Laundering and Countering the Financing of Terrorism (Amendment) Act, 2021.

## Amendments to Act 5 of 2020

2. The Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020 (hereinafter referred to as the principal Act) is hereby amended as follows —

- (a) in section 2 of the principal Act, —
- (i) after the definition “Committee”, the following definition shall be added —
- ‘ “consolidated supervision” means supervision of the financial group by a regulatory body on the basis of the totality of its business, wherever conducted;’;
- (ii) after the definition “Court of Appeal”, the following definition shall be added —
- ‘ “cross border wire transfer” means any wire transfer where the ordering financial institution and beneficiary financial institution are located in different countries; and any chain of wire transfers in which at least one of the financial institutions involved is operating in a different country;’;
- (iii) after the definition “Director”, the following definition shall be added —
- ‘ “domestic wire transfer” means any wire transfer where the ordering financial institution and beneficiary financial institution are operating in the Republic;’;
- (iv) after the definition “monetary instruments”, the following definition shall be added —
- ‘ “money value transfer service provider or MVTs provider” means a body corporate licensed by the Central Bank of Seychelles to carry on the business of money or value transfer services;’;

- (v) after the definition “offence”, the following definitions shall be added —

‘ “originator” means the account holder who authorises the wire transfer from his account, or where there is no account, the person who places the order with the ordering financial institution to perform the wire transfer;

“payable-through account” means a correspondent account that is used directly by third parties to transact business on their own behalf;’;

- (vi) after the definition “virtual asset”, the following definition shall be added —

‘ “wire transfer” means any transaction carried out on behalf of an originator through a financial institution by electronic means with a view to making an amount of funds available to a beneficiary person at a beneficiary financial institution, irrespective of whether the originator and the beneficiary are the same person;’;

- (b) Section 3 of the principal Act is hereby amended —

- (i) by repealing subsection (1) and substituting therefor the following subsection —

“3.(1) A person is guilty of money laundering if —

(A) he directly or indirectly acquires property from the proceeds of the criminal conduct;

(B) knowing or believing that property is or represents the benefit of criminal conduct or being reckless as to whether the property is or represents such benefit,

the person, without lawful authority or excuse (the proof of which shall lie on the person) —

- (a) converts, transfers or handles the property, or removes it from the Republic;
- (b) conceals or disguises the true nature, source, location, disposition, movement or ownership of the property or any rights with respect to it; or
- (c) acquires, possesses or uses the property.”;

(ii) by inserting after subsection (13), the following subsection —

“(14) The offence of money laundering shall be an extraditable offence for the purposes of Extradition Act (Cap.78).”;

(c) Section 5 of the principal Act is hereby amended by repealing the word “Currency” in the marginal note and substituting therefor the word “Cash”;

(d) Section 7(1) of the principal Act is hereby amended —

(i) in paragraph (e), after the words “national risk assessments” the following shall be inserted —

“and internationally accepted standards of best practices”;

(ii) in paragraph (l), repeal the word “and”;



(iii) after paragraph (m), the following paragraphs shall be inserted —

“(n) foster cooperation and coordination between relevant authorities to ensure the compatibility of anti-money laundering and countering the financing of terrorism requirements with data protection and privacy rules and any other similar provisions;

(o) ensuring cooperation and coordination amongst relevant authorities in combating the financing of proliferation of weapons of mass destruction;

(p) coordinating with the relevant authorities to maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of their anti-money laundering and countering the financing of terrorism systems; and

(q) fostering and enhancing partnership between stakeholders, through the provision of guidance and feedback, to support the application of national measures to combat money laundering and terrorism financing.”;

(e) Section 27 (1) (g) of the principal Act is amended, by repealing the words “clause (d) for a further period of seven days” and substituting therefor the words “clause (e) for a further period of ten days”;

(f) Section 28 of the principal Act is amended by inserting after subsection (6), the following subsections —

“(7) The FIU may impose administrative sanctions referred to in section 60(3) on a reporting entity to whom this Act applies if satisfied that the reporting entity has failed to fully comply with a lawful request for information made

under subsection (1) or to a directive issued under section 27(1)(d) or (e).

(8) Reporting entities shall take all necessary measures to ensure the accuracy of the information submitted to the FIU under subsection (1) or to comply with a directive issued under section 27(1)(d) or (e).

(9) A reporting entity which intentionally fails to provide the FIU with accurate information under subsection (1) or to comply with a directive issued under section 27(1)(d) or (e), commits an offence and is liable on conviction to a fine not exceeding SCR50,000.”;

- (g) The principal Act is amended, by inserting after section 30, the following section —

#### **Designation of the NPO's**

“**30A.**(1) The FIU shall, following the conduct of a risk assessment of the NPO sector, in consultation with the Registrar and the Committee, determine the appropriate risk levels for the purpose of designating any NPO as a high-risk NPO, through a directive.

(2) Upon review of the risk assessment referred to in subsection (1) and on deriving the updated risk levels, if a designated NPO is no longer considered as a high-risk NPO, the FIU shall notify the said NPO accordingly.

(3) The list of the designated NPOs shall be confidential and shall not be accessible to the general public.

(4) The FIU may impose administrative sanctions referred to in section 60(3) on the NPOs to whom this section applies.

(5) Any NPO aggrieved by the decision of the FIU under subsection (4) may appeal to the Appeals Board under section 62, as if it is a reporting entity.”;

- (h) Section 41 of the principal Act is hereby amended by repealing subsection (3) and substituting therefor the following subsection —

“(3) Without limiting the generality of subsection (1), a reporting entity shall proportionate to risk, apply enhanced customer due diligence measures and enhanced ongoing monitoring in respect to business relationships and transactions with legal and natural persons from countries which do not apply or fully apply the Financial Action Task Force Recommendations.”;

- (i) Section 45 of the principal Act is hereby amended —

(I) in subsection (2) —

(a) by repealing the words “reporting authority” and substituting therefor the words “reporting entity”;

(b) in paragraph (b), by repealing the words “information traceable” and substituting therefor the words “information that is fully traceable”;

(II) by repealing subsections (3) and (4) and substituting therefor the following subsections —

“(3) The provisions of subsection (1) and (2) shall not apply to any transfer that flows from a transaction carried out using a credit or debit or prepaid card for the purchase of goods or services as long as the credit or debit or prepaid card number accompanies all transfers flowing from the transaction.

(4) The provisions of subsections (1) and (2) shall not apply to transfers and settlements between financial institutions, where both the originator person

and the beneficiary person are financial institutions acting on their own behalf.”;

(III) in subsection 5(d), repeal the word “affected” and therefor substitute the word “effected”;

(IV) in subsection (6), repeal paragraphs (a) and (b) and therefor substitute the following paragraphs —

“(a) ensure that the required originator and beneficiary information relating to a domestic wire transfer is retained with the transfer;

(b) ensure that the required originator and beneficiary information relating to a cross border wire transfer is retained with the transfer.”;

(V) by repealing subsection (7) and therefor substituting the following subsection —

“(7) Every reporting entity shall take reasonable measures, which may include post-event monitoring or real-time monitoring where feasible, to identify wire transfer which may lack the information required under subsections (1) and (2).”;

(VI) by repealing subsection (8) and therefor substituting the following subsection —

“(8) In respect of any transfer, which lack information required under subsections (1) and (2), reporting entities which are processing an intermediary element of wire transfer or receiving a wire transfer shall apply risk based policies and procedures to determine whether to reject, suspend or execute the cross-border wire transfer and take appropriate follow-up actions.”;

(VII) by inserting after subsection (8) the following subsections —

“(9) MVTS providers shall comply with all of the relevant requirements of this section in the countries in which they operate directly or through their agents.

(10) An MVTS provider that controls both the ordering and the beneficiary side of a wire transfer shall —

- (a) take into account all the information from both the ordering and beneficiary sides in order to determine whether a suspicious transaction report under section 48 is to be filed; and
  - (b) file a suspicious transaction report in any country affected by the suspicious wire transfer and make relevant transaction information available to the FIU in a timely manner.”;
- (j) The principal Act is amended, by inserting after section 45, the following section —

#### **Retention of records**

**45A.** Where technical limitations prevent the required originator or beneficiary information accompanying a cross-border wire transfer from remaining with a related domestic wire transfer, the intermediary financial institution shall be required to keep a record for at least 7 years as required under section 47, of all the information received from the ordering financial institution or another intermediary financial institution.”;

- (k) Section 48 (1) (a) of the principal Act is hereby amended by repealing the word “service” and therefor substituting the word “activity”;
- (l) in section 50(1) of the principal Act —

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- (a) in paragraph (e), repeal the words “production order;” and therefor substitute the words “production order; or”;
- (b) by repealing paragraphs (f) and (g) and substitute therefor the following —
- “(f) an investigation has commenced concerning the circumstances that gave rise to the suspicious transaction report, the warrant or the production order,
- makes any disclosure, commits an offence and is liable on conviction to imprisonment up to six months or to a fine not exceeding SCR200,000 or to both.”;
- (m) The principal Act is amended, by inserting after section 53, the following section —

### **Overriding of confidentiality**

“**53A.** A reporting entity shall comply with the requirements of this Act notwithstanding any obligation as to the confidentiality or other restrictions on the disclosure of information, imposed by any written law or otherwise.”;

- (n) Section 58 of the principal Act is hereby amended —
- (i) in subsection (2), by repealing the word “and” in paragraph (a) and by inserting the following paragraph after paragraph (b) —
- “(c) the application of consolidated supervision to financial institutions for the purposes of anti-money laundering and countering the financing of terrorism.”;
- (ii) by inserting after subsection (8), the following subsection —

“(9) Every reporting entity shall apply risk-based counter measures against any country when called upon to do so by the FIU, their respective supervisory authority or any law enforcement agency, as communicated from time to time.”;

- (o) Section 60 (3) (d) of the principal Act is hereby amended —
- (i) by inserting the words “or registration authority” after the words “licencing authority”;
  - (ii) by inserting the words “or registration” after the words “suspend the licence”;
- (p) The principal Act is amended, by inserting after section 63, the following section —

**Written memorandum of understanding between FIU and law enforcement agencies.**

“**63A.** For the purposes of promoting and supporting the intelligence sharing between the FIU and law enforcement agencies, the FIU and law enforcement agencies shall enter into a written memorandum of understanding which shall provide for sharing of information and cooperation between them or any other information or support as may be prescribed by regulations.”;

- (q) Section 67(1)(d) is hereby amended by repealing the word “FCIU” and thereby substituting the words “law enforcement officer”;
- (r) Section 74 (1) of the principal Act is hereby amended by repealing the words “a person within the jurisdiction” and therefor substituting the words “a person at the border or functional equivalent of the border”;
- (s) **FIRST SCHEDULE** of the principal Act is hereby amended—

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- (i) in PART A, by inserting the words “excluding the Central Bank of Seychelles” after the words “National Payment System Act”;
- (ii) in PART B, —
- (A) by repealing the words “A licensee under the Mutual Fund and Hedge Fund Act” and substituting therefor the following words “A Fund Administrator licensed under the Mutual Fund and Hedge Fund Act;
- (B) by repealing the words “A licensee under the Securities Act” and substituting therefor the following words “A licensee under the Securities Act, except an investment advisor's representative or a securities dealer's representative;”;
- (iii) in PART C, repeal serial number 9 and entry thereof and substitute therefor the following entry —
- “9. A person who, by way of business invests, administers or manages funds or money on behalf of third parties.”;
- (t) **THIRD SCHEDULE** of the principal Act is hereby amended —
- (i) Serial number 2 and entries thereunder shall be repealed and the following shall be substituted therefor —
- “2. REPORTING THRESHOLD APPLICABLE TO WIRE TRANSFERS**
- Every financial institution that sends domestically or cross border or receives cross border wire transfers, including electronic fund transfers shall report all wire transfers of SCR50,000 or more of the equivalent money in the currency of other countries.”;



- (ii) In serial number 4, insert the following words “(including the banks acting as Bureau de Change for forex trading in respect of their non-customers)” after the words “Every Bureau de Change”;
- (u) **FIFTH SCHEDULE** of the principal Act is hereby amended by repealing the word “Funding” and substituting therefor the word “financing”.