



**ANTI-MONEY LAUNDERING (AMENDMENT)
ACT, 2011**

(Act 24 of 2011)

I assent



J. A. Michel
President

22nd December, 2011

AN ACT to amend the Anti-Money Laundering Act, 2006 as last amended by the Anti-Money Laundering (Amendment) Act, 2008 to prescribe customer due diligence measures by regulations, allow exchange of information between FIU and the FIU of a foreign country or international organisation for intelligence purposes only and provide a more structured process for the FIU to issue directions to reporting entities not to provide a service or proceed with a transaction within a specified time and to provide for connected matters.

ENACTED by the President and the National Assembly.

1. This Act may be cited as the Anti-Money Laundering (Amendment) Act, 2011.

Short title

Amendment
of Act 5 of
2006 as last
amended by
Act 18 of
2008

2. The Anti-Money Laundering Act, 2006, as last amended by the Anti-Money Laundering (Amendment) Act, 2008, is amended as follows—

(a) in section 2—

(i) by adding after the definition “property” the following new definitions —

““regulated business” means a business for which a regulatory licence is required;

“regulatory licence” means a licence specified in the First Schedule;

“regulated reporting entity” means a reporting entity who holds a regulatory licence;”

(ii) by repealing the definition “reporting entity” and substituting therefor the following —

“reporting entity” means a person specified in the Second Schedule;”

(b) in section 3 by repealing in subsection (13), the bracket and letter “(c)” and substituting therefor the bracket and figure “(4)”;

(c) by repealing section 4 and substituting therefor the following —

“Application
of customer
due diligence
measures and
ongoing
monitoring

4. A reporting entity shall apply customer due diligence measures in respect of customers, business relationships and transactions, and conduct ongoing monitoring of business relationships in the manner as prescribed in regulations.”

(d) by repealing section 5 and substituting therefor the following—

“Requirement
to cease
transaction

5.(1) Where in relation to any customer, a reporting entity is unable to

apply customer due diligence measures in accordance with the regulations prescribed under this Act, the reporting entity shall—

- (a) not carry out a transaction with or for the customer through a bank account;
- (b) not establish a business relationship or carry out a one-off transaction with the customer;
- (c) terminate any existing business relationship with the customer.

(2) Where a reporting entity is unable to undertake ongoing monitoring with respect to a business relationship, it shall terminate the business relationship.

(3) Where subsections (1) or (2) applies in relation to any customer, the reporting entity shall make a suspicious transaction report under section 10 of this Act or a disclosure under section 34 or 35 of the Prevention of Terrorism Act 2004, as applicable.

(4) Subsections (1) and (2) shall not apply to—

- (a) a lawyer in the course of ascertaining the legal position of his client or in defending or representing the client in, or concerning, legal

proceedings, including advice on the institution or avoidance of proceedings;

(b) a reporting entity who has made a suspicious transaction report under section 10 of this Act or a disclosure under section 34 or 35 of the Prevention of Terrorism Act 2004, to the extent that the reporting entity is acting—

(i) in the case of a suspicious transaction report, with the consent of the FIU; or

(ii) in the case of a disclosure under section 34 or 35 of the Prevention of Terrorism Act 2004, with the consent of the Commissioner of Police.”;

(e) in section 6 by repealing paragraph (a) of subsection (1) and substituting therefor the following—

“(a) customer due diligence measures prescribed by regulations;”;

(f) by repealing section 10 and substituting therefor the following—

“Reporting
suspicious
Transaction 10.(1) (a) Where a reporting entity has —

(i) knowledge or reasonable grounds to suspect that any service, or transaction may be related to the commission of criminal conduct including an offence of money laundering

or of financing of terrorism or to money or property that is or represents the benefit of criminal conduct;

(ii) information that may be—

- (a) relevant to an act preparatory to an offence or to money or property referred to in paragraph (a) (i) of subsection (1);
- (b) relevant to an investigation or prosecution of a person for an offence referred to in paragraph (a) (i) of subsection (1); or
- (c) of assistance in the enforcement of this Act or the Proceeds of Crime (Civil Confiscation) Act, 2008,

the reporting entity shall make a suspicious transaction report to the FIU within two working days of ascertaining the knowledge, forming the suspicion or receiving the information.

(b) The FIU shall acknowledge receipt of the suspicious transaction report within 24 hours of receipt.

(c) Where a suspicious transaction report relates to a service or transaction in respect of property in the possession or control of a reporting entity, the reporting entity shall not provide the service nor proceed with the transaction within a period of 10 working days from the date of the suspicious transaction report without the written consent of the FIU.

(d) If no such consent is received within a period of 10 working days from the date of the suspicious transaction report, the reporting entity may provide the service or carry out the transaction, and section 3(2) shall not apply unless the FIU issues a direction under subsection (4) and the reporting entity complies with the direction.

(e) For the purpose of paragraph (c), the FIU may consent to a service being provided or the transaction to proceed in whole or in part.

(f) Paragraph (c) shall not apply to inward transfers in a bank account or to any service or transaction that will increase the value of the property.

(2) (a) A report under this section shall—

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

- (ii) be in such form and contain such details as may be prescribed;
- (iii) contain a statement of the grounds on which the reporting entity has the knowledge, holds the suspicion or receives the information; and
- (iv) be signed or otherwise authenticated by the reporting entity.

(b) A person shall not commit an offence under this section or under section 3 of this Act if the person complies with the directions of the FIU or order of the Court where—

- (i) a suspicious transaction report is made in relation to property, or
- (ii) the person is informed by the FIU in writing or verbally and confirmed in writing within 24 hours, that property in his or her possession or control is suspected to be the benefit from criminal conduct.

(3) A reporting entity that has made a suspicious transaction report shall give the FIU or the law enforcement agency that is carrying out an investigation arising from, or relating to, the information contained in the

report, any further information that it has about the transaction or about the parties to the transaction if requested to do so by the FIU or the law enforcement agency.

(4) The Director, the Deputy Director or an assets agent of the FIU duly authorised by the Director or the Deputy Director may, by notice in writing, direct a reporting entity not to carry out any specified service or transaction during the period specified in the direction, not exceeding 180 days, if—

- (a) a suspicious transaction report has been made to the FIU in relation to the service or transaction within the preceding 30 days; or
- (b) the FIU has obtained or received information, whether or not in a suspicious transaction report, in relation to the service or transaction, and
- (c) such a direction is reasonably necessary to enable the FIU to investigate whether or not there are reasonable grounds to suspect that the property represents the proceeds of or benefit from criminal conduct including an offence of money laundering and financing of terrorism.

(5) A reporting entity in receipt of a direction shall not without the consent of the FIU or by order of a Court under this

section carry out any service or transaction specified in the direction.

(6) The FIU shall, as soon as practicable after giving a direction under subsection (4), take all reasonable steps to notify in writing any person whom the FIU is aware is affected by the direction except where —

- (a) it is not reasonably practicable to ascertain the whereabouts of the person; or
- (b) there are reasonable grounds for believing that notice to the person will prejudice —
 - (i) the investigation in respect of which the direction or order is given;
 - (ii) any other investigation by a law enforcement agency in any jurisdiction;
 - (iii) a restraint order, pecuniary penalty order or forfeiture order made or to be made under this Act; or
 - (iv) an order made or to be made under the Proceeds of Crime (Civil Confiscation) Act, 2008.

(7) (a) A Court may, on an ex-parte application, extend a direction issued under subsection (4) on such terms and conditions where the Court is satisfied on oath that—

- (i) there are reasonable grounds to suspect that the property represents the proceeds of criminal conduct including an offence of money laundering or of financing of terrorism, or may be related to money or property that is or represents the benefit from criminal conduct;
- (ii) there are reasonable grounds to suspect that service or transaction will constitute or assist in the commission of criminal conduct including an offence of money laundering or of financing of terrorism;
- (iii) an investigation by the FIU or by another law enforcement agency is taking place.

(b) The direction issued under subsection (4) may be further extended for periods not exceeding 180 days.

(8) (a) The FIU may, to expedite its investigations while a direction is in force require from a person reasonably appearing to have relevant knowledge, information,

documents or materials in his or her possession or control to furnish such information, materials or documents in the manner and within the required time.

(b) Any information, materials or documents furnished by a person pursuant to paragraph (a) shall not be used as evidence in any criminal prosecution of that person except for the prosecution of the offence under subsection (11)(d).

(c) In this subsection "person" means—

- (i) in the case of a bank account, the beneficial owner of the account, any person having signing authority on the account and any servant or agent of any other person reasonably appearing to the FIU to have the relevant knowledge, including any shareholders, or directors, secretary or other officers of a corporate body and any trustee or beneficiary of a trust;
- (ii) in the case of property other than a bank account, the registered owner of the property or any servant or agent of the registered owner;

(9) (a) Any person who is aggrieved by a direction given under subsection (4) may apply to Court for revocation.

(b) An application under paragraph (a) shall be heard inter-partes.

(c) A Court may revoke the direction under subsection (4) in whole or in part if the Court is satisfied that the—

(i) applicant has established a legitimate source of the funds or property as the case may be;

(ii) revocation will not prejudice the investigation in respect of the direction given or a restraint order, pecuniary penalty order or forfeiture order or order made or to be made under this Act or under the Proceeds of Crime (Civil Confiscation) Act, 2008, as applicable.

(d) A Court shall not revoke a direction issued under subsection (4) if the applicant failed to furnish the information requested by the FIU under subsection (8) (a).

(10) The FIU shall not be obliged to furnish any details of any information held in its possession or the grounds of any suspicion if the FIU reasonably believes that the disclosure will prejudice—

- (a) the investigation in respect of which the direction is given;
 - (b) any other investigation by a law enforcement agency in any jurisdiction;
 - (c) a restraint order, pecuniary penalty order or forfeiture order made or to be made under this Act; or
 - (d) an order made or to be made under the Proceeds of Crime (Civil Confiscation) Act, 2008.
- (11) Any person who—
- (a) fails or refuses to comply with a request by the FIU under subsection (8)(a);
 - (b) knowingly, directly or indirectly furnishes false or misleading information, documents or material to a reporting entity relating to a service, transaction or property;
 - (c) fails to comply with a direction or order under this section;
 - (d) directly or indirectly furnishes false or misleading information, documents or materials to

the FIU or to the Court in support of an application under subsection (9),

commits an offence and is liable on conviction to a fine not exceeding SCR3,000,000 or a term of imprisonment not exceeding 5 years or to both such fine and term of imprisonment.

(12) In this section “transaction” means a transaction or a proposed transaction.”

(g) in section 12 by repealing in paragraph (a) of subsection (1) the bracket, figure, letter and word “(1)(e) or 10(2)(b)(ii)” and substituting therefor bracket and figure “(4)”;

(h) in section 16A—

(i) by inserting between the figure and letter “16A” and the word “The”, the figure and bracket “(1)”;

(ii) by adding after the renumbered subsection (1), the following—

“(2) (a) The FIU may, for intelligence purposes only, disclose any report or information as set out in paragraph (o) of the Table to section 16 or any other information in its possession to the FIU of a foreign country, international organisation or institution or agency established by governments of foreign countries having similar powers and duties as the FIU.

(b) For the purpose of subsection (2) (a), the FIU may enter into a Memorandum

of understanding with the FIU of a foreign country, international organisation, institution or agency established by the government of foreign countries.”;

(i) in section 21 (5), by inserting between the word “sections” and “21(1)” the figures and brackets “12(1),”;

(j) in section 34—

(i) in subsection (1)(a)—

(aa) by repealing in paragraph (i), the word “and”;

(bb) by repealing in paragraph (ii), the “.” fullstop after the word “conduct” and substituting therefor “; and”;

(cc) by adding after paragraph (ii), the following new paragraph—

“(iii) the cash in excess of the sum prescribed under section 34A was not declared by person when entering or leaving the Republic.”

(ii) in subsection (9), by repealing the letter and figures “R50,000” and substituting therefor the following letters and figures “USD 10,000”;

(iii) by adding after subsection (11), the following new section—

“Declaration
of cash

34A.(1) Any person entering or leaving the Republic who has cash in his or

her possession in excess of the prescribed sum shall declare the particulars of the currency in the manner and form prescribed by regulations.

(2) Any person who—

(a) fails to make a declaration in accordance with this section; or

(b) knowingly makes a declaration which is false or misleading,

commits an offence and is be liable on conviction to a fine not exceeding double the amount of cash found in his or her possession in excess of the prescribed sum and the cash in his or her possession shall be liable to forfeiture.”;

(k) by repealing section 46 and substituting therefor the following—

“46. A reporting entity that contravenes section 4, 5(1), (2) and (3) commits an offence.”

(l) by inserting after section 66 the following Schedules—

**"FIRST SCHEDULE
REGULATORY LICENCES**

(Section 2)

Any licenses issued under the following Acts —

- (a) Financial Institutions Act;
- (b) International Corporate Service Providers Act;
- (c) Insurance Act;
- (d) Mutual Funds and Hedge Funds Act; and
- (e) Securities Act.

**SECOND SCHEDULE
REPORTING ENTITIES**

(Section 2)

**PART 1 - REPORTING ENTITIES CARRYING ON
REGULATED BUSINESS**

- 1. A person carrying on a regulated business.

**PART 2 - REPORTING ENTITIES CARRYING ON A
BUSINESS OTHER THAN A REGULATED BUSINESS**

- 2. Accountants

2.1 A person who, by way of business, provides any of the following services —

- (a) external accountancy services;
- (b) tax advice;
- (c) audit services; or
- (d) insolvency services.

2.2 In this paragraph—

- (a) “external accountancy services” means accountancy services provided to customers for remuneration and excludes services provided by accountants employed by public authorities or by undertakings which do not by way of business provide accountancy services to third parties;
- (b) “audit services” are audit services provided by way of business pursuant to any function under any enactment; and
- (c) “insolvency services” are services provided by a person if, by way of business, that person accepts appointment as a liquidator under the Companies Act, International Business Companies Act or the Foundations Act.

3. **Lawyers**

3.1 An independent legal professional.

3.2 In this paragraph “independent legal professional” means a person or firm who by way of business provides legal or notarial services to third parties when preparing for or in carrying out transactions concerning any of the following—

- (a) buying and selling of immovable property or business entities;
- (b) managing client's money, securities or other assets;
- (c) opening or managing bank, savings or securities accounts;
- (d) the organisation of contributions necessary for the creation, operation or management of companies; or

- (e) the creation, operation or management of trusts, companies or similar structures, excluding any activity that requires a licence under the International Corporate Services Act.

3.3 Sub-paragraph 3.2 does not include legal professionals employed by public authorities or undertakings which do not by way of business provide legal services to third parties.

4. Estate agency services

4.1 A person who, by way of business, provides real estate agency services for or on behalf of third parties concerning the buying or selling of immovable property.

5. High value dealers

5.1 A high value dealer.

5.2 In this paragraph, "high value dealer" means a person who, by way of business trades in goods when he receives, in respect of any transaction, a payment or payments in cash of at least SCR.200,000, or the equivalent in any other currency, whether the transaction is executed in a single operation or in several linked operations.

6. Casinos

6.1 A person who, by way of business, operates a casino, including an internet-based casino.

7. Other services

7.1 A person who, by way of business, provides any of the following services to third parties, where the business is not otherwise included in this Schedule—

(a) acceptance of deposits and other repayable funds from the public;

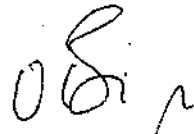
(b) lending, including consumer credit, mortgage credit,

- factoring, financing of commercial transactions, including forfeiting;
- (c) financial leasing;
 - (d) money transmission services;
 - (e) issuing and administering means of payment, such as credit and debit cards, cheques, travellers' cheques, money orders and bankers' drafts, and electronic money;
 - (f) financial guarantees and commitments;
 - (g) trust and company service providers, in relation to the following activities—
 - (i) acting as a formation agent of legal persons;
 - (ii) acting 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;
 - (iii) providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
 - (iv) acting or arranging for another person to act as a trustee of an express trust;
 - (v) acting or arranging for another person to act as a nominee shareholder for another person.
 - (h) trading for the account of third parties in—
 - (i) money market instruments including cheques, bills, certificates of deposit and derivatives;
 - (ii) foreign exchange;
 - (iii) futures and options including financial and commodity;

- (iv) exchange, interest rate and index instruments;
- (v) shares and other transferable securities;
- (i) participation in securities issues and the provision of financial services related to such issues;
- (j) advice on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings;
- (k) money broking or currency changing;
- (l) portfolio management and advice;
- (m) safekeeping and administration of securities;
- (n) safe custody services;
- (o) otherwise investing, administering or managing funds or money on behalf of third parties.

7.2 A reference in this paragraph to providing services to third parties shall not include a company's providing a service to an associated company."

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 14th December, 2011.



Veronique Bresson
Clerk to the National Assembly