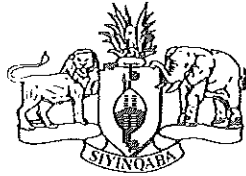


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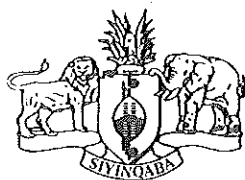
05. The Money Laundering and Financing of Terrorism (Prevention) (Amendment) Act, 2016 S1

PART B

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THE MONEY LAUNDERING AND FINANCING OF TERRORISM (PREVENTION) (AMENDMENT) ACT, 2016

(Act No. 05 of 2016)



I ASSENT

MSWATI III
King of Swaziland

16th September, 2016

AN ACT ENTITLED

AN ACT to amend the Money Laundering and Financing of Terrorism (Prevention) Act, 2011, and to provide for incidental matters.

ENACTED by the King and the Parliament of Swaziland.

Short title and commencement.

1. (1) This Act may be cited as the Money Laundering and Financing of Terrorism (Prevention) (Amendment) Act, 2016 and shall be read as one with the Money Laundering and Financing of Terrorism (Prevention) Act, 2011 (hereinafter referred to as the "the Principal Act").

(2) This Act shall come into operation on the date of publication in the Gazette.

Amendment of section 2.

2. Section 2 of the Principal Act is amended by -

(a) replacing the definition of "Accountable Institution" with a new definition as follows -

"Accountable Institution" means an Institution listed in Schedule 3"

(b) inserting, in alphabetical order, the following definitions-

"Appeals Tribunal" means the Board appointed in terms of section 35ter of this Act";

"Council" means the Council of the Task Force established in terms of section 39 of this Act";

"funds" means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form including electronic or digital, evidencing title to, or interest in, such assets including but not limited to cash, bank credits, travelers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit;"

"Institution" means an Accountable institution";

"instrumentality" means any property which is concerned in the commission or suspected commission of an offence at any time before or after the commencement of this Act whether committed within Swaziland or elsewhere;

"law enforcement agent" means an officer from a law enforcement agency;

"shell bank" means a bank incorporated in a jurisdiction in which it has no physical presence and which is unaffiliated with a regulated financial group. "Task Force" means the Council and the Technical Committee established in section 39 of this Act; and

"Technical Committee" means the Technical Committee of the Task Force established in terms of section 39 of this Act".

Amendment of section 4.

3. Section 4 of the Principal Act is amended by deleting paragraph (1) (c) and replacing it with a new paragraph (1) (c) as follows-

"(c) acquires, possesses or uses property, knowing or having reason to believe that it is derived directly or indirectly from an act or omission-

- (i) in Swaziland which constitutes an offence under any law; or,
- (ii) outside Swaziland which, had it occurred in Swaziland, would have constituted an offence; or,"

Amendment of section 5.

4. Section 5 of the Principal Act is amended by inserting a new-subsections (6) as follows-

"(6) The offence under subsection (1) shall be deemed to have occurred whether or not -

- (a) an act of terrorism actually occurred or the funds in question are linked to a particular act of terrorism, individual or group of terrorists;
- (b) the accused was physically in or not in the same country as the terrorist, terrorist group or act of terrorism is situated; or,
- (c) the funds are from a legitimate source."

Amendment of Part 3.

5. Part 3 of the Principal Act is amended by –

- (i) inserting the words "RISK ASSESSMENT AND," before the word "OBLIGATIONS" in the heading ;
- (ii) inserting a new section 6 before the existing section 6 as follows -
"Risk Assessment and management.

6. (1) An accountable institution shall put in place appropriate processes to identify, assess, monitor, manage, and mitigate money laundering and financing of terrorism risks, including, but not limited to risks that may arise in relation to the development of new products, business practices and delivery channels or risks that may arise through the use of new or developing technologies.”

(2) An accountable institution shall ensure that it has adequate resources to fulfil the requirements of subsection (1).

(3) An accountable institution shall create, maintain and update regularly, a record of the actions taken in pursuance of subsection (1).” and,

(iii) renumbering the existing as section 6*bis*.

Amendment of section 8.

6. Section 8 of the Principal Act is amended by inserting new subsections (6), (7) and (8) at the end of subsection (5) as follows—

“ (6) Notwithstanding the provisions of subsection (2), an accountable institution shall maintain particular records beyond the minimum period of five years when requested to do so by —

(a) the SFIU;

(b) a Law Enforcement Agency; or

(c) a Supervisory Authority.

(7) An accountable institution may use the services of a third party for the keeping and maintenance of records.

(8) Where an accountable institution relies on a third party as envisaged in subsection (7) that accountable institution shall be liable for ensuring that the requirements of this section are met.”

Insertion of new section 12bis.

7. The Principal Act is amended by inserting a new section 12*bis* immediately after section 12 as follows—

“Cash Threshold Reports.

12.*bis* (1) An accountable institution shall, within the prescribed period, and in the prescribed form, report to the SFIU the particulars of any transaction which falls above an amount prescribed by the Minister.

(2) The Minister may, by Notice published in the Gazette, prescribe the amount or amounts above which an accountable institution shall report as required under subsection (1).”

Amendment of section 15.

8. Section 15 of the Principal Act is amended in subsection (1) by deleting the following words which appear at the end of the section —

“except for the purpose of-

- (i) the investigation or prosecution of a person or persons for an unlawful activity, a money laundering offence or an offence of financing of terrorism; or,
- (ii) the enforcement of this Act.”

Amendment of section 18

9. Section 18 of the Principal Act is amended by inserting the following new subsections (4) and (5) –

“ (4) A financial institutions shall –

- (a) not enter into, or continue, a correspondent banking relationship with a shell bank; and,
- (b) develop and implement sufficient policies and procedures to guard against establishing relations with a respondent foreign financial institution that permits their accounts to be used by shell banks.

(5) A financial institution shall pay special attention to business relationships and transactions with persons, including companies and financial institutions, from countries which do not or insufficiently apply the FATF Recommendations and, where these transactions have no apparent economic or visible lawful purpose, their background and purpose should, as far as possible, be examined, and the findings reduced in writing, and be made available to competent authorities.”

Insertion of new section 18bis.

10. The Principal Act is amended by inserting a new section 18bis immediately after section 18 as follows –

“Responsibility of Supervisory Authority.

18bis A supervisory authority shall, for the purposes of this Act, –

- (a) conduct inspections and facilitate training for accountable institutions under the supervision of the supervisory authority; and
- (b) issue guidelines relating to risk management, customer identification, record keeping, reporting obligations, identification of suspicious transactions, politically exposed persons and such other actions required for that accountable institution to be in compliance with this Act.

Amendment of Section 23.

11. Section 23 of the Principal Act is amended in by deleting subsection (1) and replacing it with a new subsection (1) as follows-

“(1) The Minister may remove the Director from office on the recommendation of the Board and after there has been an independent inquiry into the Director's violation of this Act, misconduct, incapacity or incompetence.”.

Amendment of Section 25.

12. Section 25 of the principal Act is amended as follows –

(a) in subsection (1) by –

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(i) deleting the word “and” which appears at the end of paragraph (b);

(ii) inserting the word “and” at the end of paragraph (c); and,

(iii) inserting the following new paragraph (d) –

“(d) an employee of a supervisory authority, Law Enforcement Agency or Government Department seconded to the SFIU under agreement between the SFIU and the relevant supervisory authority, Law Enforcement Agency or Government Department”;

(b) in subsection (2) by replacing the words “and (c)” with the words “(b), (c) and (d) shall” and,

(c) by inserting the new subsections (3) and (4) after subsection (2) as follows- “ (3) The period of service of a person seconded to the SFIU as contemplated in section (1)(d) shall be calculated as part of, and continuous with, the service of that person with the employer from whose service that person is seconded to the SFIU for the purposes of leave, pension, or any other condition of service.

(4) A staff member of the SFIU whether, employed or seconded, shall not strike or induce or conspire with any other member of the staff of the SFIU to strike.”

Insertion of new section 25bis.

13. The principal Act is amended by inserting a new sub-section 25bis as follows-

“Security screening of staff.

25bis (1) A person shall not be employed in or seconded to the SFIU unless –

(a) that person has been subjected to a security screening process; and,

(b) the Board, in the case of the Director or the Director, in the case of staff, is satisfied after evaluating the information arising out of the security screening process, that that person –

(i) does not constitute a security risk; and,

(ii) will not act in a manner that is prejudicial to the objectives or functions of the SFIU.

(2) Where the Board or the Director is satisfied as envisaged in sub section (1)(b), the Board or the Director, as the case may be, shall issue a certificate in respect of the person who was the subject of the security screening process certifying that that person has successfully undergone a security screening process.

(3) The Director and staff of the SFIU may at any time determined by the Board or the Director be subjected to a further screening process as contemplated in sub section (1).

(4) The Board or the Director, may withdraw a certificate issued in terms of sub section (2) if, on the basis of a further screening process conducted as envisaged in sub section (3), the Board or the Director believe that the person no longer satisfies the conditions referred to in subsection (1)(b).

(5) Where a certificate has been withdrawn as provided for in subsection (4), the person concerned may not perform any functions of the SFIU and the Board or the Director shall discharge that person from the SFIU.”

Amendment of section 26.

14. Section 26 of the Principal Act is amended in sub-section (1) paragraph (a), by replacing sub-paragraph (i) with a new sub-paragraph (i) as follows –

“(i) on an annual basis declare their assets and liabilities to the Integrity Commission;”.

Amendment of section 27.

15. Section 27 of the Principal Act is amended in paragraph (2) (c) by replacing the word “prescribe” with the word “approve”.

Amendment of section 28.

16. Section 28 of the Principal Act is amended –

(1) in paragraph (1) (b) by –

(a) replacing paragraph (b) with the following new paragraph (b) –

“(b) four members of high repute, of whom one shall be a person with substantial experience in the legal profession, two shall be persons with substantial experience in the financial services industry representing the banking and non-banking financial sectors and one shall be a person with substantial experience in a designated non-financial businesses and professions sector other than law”;

(b) inserting the words “at least” between the words “whom” and “one”; and,

(c) replacing the word “the” which appears between the words “and” and

“other” with the words “at least one”

(2) inserting the following new subsection (3) as follows –

“(3) The Director may, subject to the approval of the Board, appoint a suitably senior staff member of the SFIU to perform the duties of secretary to the Board.” and,

(3) renumbering the existing subsections (3) and (4) as (4) and (5) respectively.

Amendment of section 30.

17. Section 30 of the Principal Act is amended in subsection (1) by replacing the word “officer” with the words “staff member”.

Amendment of section 31.

18. Section 31 of the Principal Act is amended as follows –

(a) by deleting paragraph (d) and replacing it with a new paragraph (d) as follows –

“(d) shall analyse and assess all reports and information and shall in the process conduct operational and strategic analysis;”;

(b) by deleting in paragraph (e) the words "as set out in section 35" and replacing them with the words "for the purposes of this Act";

(c) by deleting paragraph (f) and replacing it with a new paragraph (f) as follows—

"(f) shall send any information derived from such report or any other information it receives to the appropriate competent authority or supervisory authority if, on the basis of its analysis and assessment, the SFIU has determined that there is an element of money laundering, financing of terrorism, proliferation of weapons of mass destruction or criminal activity or unlawful activity;"

(d) by deleting paragraph (i) and replacing it with a new paragraph (i) as follows -

"shall issue guidelines to an accountable institution not under the jurisdiction of a supervisory authority relating to risk based supervision, customer identification, record keeping, reporting obligations, identification of suspicious transactions, politically exposed person and such other related actions required for that accountable institution to be in compliance with this Act;"

(e) inserting new paragraphs (r) and (s) as follows –

"(r) shall provide feedback to Accountable institutions on reports made to the SFIU;

(s) shall implement a registration system for Accountable institutions;" and, (f) renumbering the existing paragraph (q) as "(s)".

Amendment of section 33.

19. Section 33 of the Principal Act is amended by inserting a new subsection (3) at the end as follows –

"(3) Notwithstanding the provisions of subsection (3) the Auditor General may approve the appointment of an independent audit firm to audit the accounts of the SFIU."

Amendment of section 35.

20. Section 35 of the Principal Act is amended as follows by –

(i) inserting the words "shall be conducted using a risk based approach or on a risk sensitive basis and" between the words "institutions: and "shall" which appear in subsection (1);

(ii) deleting subsection (3);

(iii) inserting the words "Notwithstanding the provisions of Section 35bis," at the beginning of subsection (4);

(iv) replacing the words "subsection (3)" with the words "Section 35bis (3)" which appear in subsection (4);

(v) replacing the number "(4)" with the number "(3)" which appears in subsection (5); and,

(vi) renumbering the existing subsections (4) and (5), as (3) and (4) respectively.

Insertion of new sections 35bis, 35ter, and 35quat.

21. The Principal Act is amended by inserting new sections 35bis, 35ter, and 35quat immediately after section 35 as follows –

“Administrative Sanctions.

35bis. (1) The SFIU or a supervisory Authority may impose an administrative sanction referred to in subsection (3) on any accountable institution or person to whom this Act applies when satisfied on available facts and information that the institution or person has failed to comply with a –

- (a) provision of this Act or any regulation, guideline, order, determination or directive issued in terms of this Act;
- (b) condition of a licence, registration, approval or authorisation issued or amended in accordance with this Act or any other law; or,
- (c) directive issued in terms of subsection 3 (c).

(2) In determining an appropriate administrative sanction, the SFIU or the Supervisory authority shall consider –

- (a) the nature, duration, seriousness and extent of the relevant non-compliance;
- (b) whether the institution or person has previously failed to comply with any law;
- (c) any remedial steps taken by the institution or person to prevent a recurrence of the non-compliance;
- (d) any steps taken or to be taken against the institution or person by –
 - (i) another supervisory authority; or,
 - (ii) a voluntary association of which the institution or person is a member; and,
- (e) any other relevant factor, including mitigating factors.

(3) In pursuance of subsection (1), the SFIU or a supervisory authority may, after consultation with each other, and where applicable, after consultation with a relevant regulatory body –

- (a) caution the institution not to repeat the conduct which led to the non-compliance referred to in subsection (1);
- (b) reprimand the institution;
- (c) issue a directive to the institution to take remedial action or to make specific arrangements;
- (d) issue a restriction or suspension of certain identified business activities of the institution;
- (e) suspend the institution’s licence to carry on business activities; or,
- (f) impose a financial penalty, not exceeding E5,000,000 (five million Emalangeni) as determined by the SFIU after consultation with the relevant supervisory authorities or regulatory bodies.

(4) The SFIU or a supervisory authority may -

- (a) in addition to the imposition of an administrative sanction, make recommendations to the relevant institution or person in respect of compliance with this Act or any regulation, guideline, order, determination or directive issued in terms of this Act;
- (b) direct that a financial penalty be paid by a natural person for whose actions the relevant institution is accountable in law, provided that person was personally responsible for the noncompliance;
- (c) suspend any part of an administrative sanction on any condition the SFIU or the supervisory authority considers appropriate for a period not exceeding five years.

(5) The SFIU or the supervisory authority shall, before imposing an administrative sanction, give the institution or person reasonable notice in writing of the -

- (a) nature of the alleged non-compliance;
- (b) intention to impose an administrative sanction;
- (c) amount or particulars of the intended administrative sanction;

(6) An institution or person that has been served with a notice in terms of sub section (5) may in writing, within a period specified in the notice, make representations as to why the administrative sanction should not be imposed.

(7) After considering any representations and the factors referred to in subsection (2), the SFIU or the supervisory authority may impose an administrative sanction as the SFIU or supervisory authority considers appropriate.

(8) Upon imposing the administrative sanction the SFIU or a supervisory authority shall, in writing, notify the institution or person of the -

- (a) decision and the reasons therefor; and,
- (b) right to appeal against the decision in accordance with 35 *quat*.

(9) The SFIU shall, prior to taking a decision contemplated in subsection (6), consult the relevant regulator, where applicable.

(10) A financial penalty imposed under this Act shall be paid into the bank account of the SFIU, within the period and in the manner as may be specified in the relevant notice.

(11) If the institution or person fails to pay the financial penalty within the specified period and an appeal has not been lodged within the required period, the SFIU or the supervisory authority may forthwith file with the clerk or registrar of a competent court a certified copy of the notice contemplated in subsection (5) and the notice shall thereupon have the effect of a civil judgement lawfully given in that court in favour of the SFIU or the supervisory authority.

(12) An administrative sanction contemplated in this section may not be imposed if the respondent has been charged with a criminal offence in respect of the same set of facts.

(13) A court in assessing the penalty to be imposed on a person convicted of an offence in terms of this Act, may take into account any administrative sanction imposed under this section in respect of the same set of facts.

(14) An administrative sanction imposed in terms of this Act shall not constitute a previous conviction as contemplated section 155 of the Criminal Procedure and Evidence Act, 1938.

(15) Unless the Director or the head of a supervisory authority is of the opinion that there are exceptional circumstances present that justify the preservation of the confidentiality of any decision, the Director or the head of the Supervisory authority shall make public the decision and the nature of any sanction imposed if –

- (a) an institution or person does not appeal against a decision of the SFIU or supervisory authority within the required period; or,
- (b) the Appeals Tribunal confirms the decision of the SFIU or supervisory authority.

Appeals Tribunal.

35ter (1) Upon receipt of a notice of appeal by an institution or person made under section 35quat against a decision of the SFIU or a supervisory authority, the Minister, on recommendation of the Council, shall appoint an Appeals Tribunal to hear and decide the appeal.

(2) The Appeals Tribunal shall consist of -

- (a) a person who has a qualification in law and with at least 10 years' experience, who shall be the chairperson; and,
- (b) two other persons who have experience and extensive knowledge of financial institutions or financial services provision or financial services financial institutions or financial services provision or financial services regulation.

(3) The Minister may prescribe additional qualifications, terms and conditions and other requirements for appointment as members of the Appeals Tribunal.

(4) If, before or during the consideration of an appeal, it transpires that any member of the Appeals Tribunal has a direct or indirect personal interest in the outcome of that appeal, that member shall declare the interest of that member and recuse himself and shall be replaced with another person.

(5) A member of the Appeals Tribunal may be paid such remuneration and allowances as the Minister may determine.

(6) The SFIU shall be responsible for the expenditure of and administrative support for the Appeals Tribunal.

Appeals.

35quat (1) An institution or person may appeal to the Appeals Tribunal against a decision of the SFIU or a supervisory authority made against that institution or person in terms of section 35bis of this Act.

(2) An appeal shall be lodged within 30 days of the delivery of the decision of the SFIU or a supervisory authority, in the manner, and on payment of the fees prescribed by the Minister.

(3) An appeal under subsection (1) shall take place on the date, at the place and time determined by the Appeals Tribunal.

(4) An appeal shall be decided on the affidavits and supporting documents presented to the Appeals Tribunal by the parties to the appeal.

(5) Notwithstanding the provisions of subsection (4), the Appeals Tribunal may -

- (a) summon any person whom, in its opinion, may be able to give information for the purposes of deciding the appeal or whom it believes that persons has possession, custody or control of any document which has a bearing upon the decision under appeal, to appear before it on a date, time and place specified in the summon;
- (b) summon any person to be questioned or to produce any relevant document and retain for examination any document so produced;
- (c) administer an oath to or accept an affirmation from any person called as a witness at an appeal; and,
- (d) call any person present at the appeal proceedings as a witness and interrogate that person and require that person to produce any document in the possession, custody or control of that person.

(6) The chairperson of the Appeals Tribunal may determine any other procedural matters relating to an appeal.

(7) An appellant or a respondent to an appeal shall be entitled to be represented at that appeal by a legal practitioner or any other person of the appellant or respondents' choice.

(8) The Appeals Tribunal may -

- (a) confirm, set aside or vary a decision of the SFIU or supervisory authority; or,
- (b) refer a matter back for consideration or reconsideration by the SFIU or the supervisory authority concerned in accordance with the directions of the Appeals Tribunal.

(9) The decision of a majority of the members of the Appeals Tribunal shall constitute the decision of that Board.

(10) The decision of the Appeals Tribunal shall be in writing, and a copy shall be made available to the appellant, the SFIU and the supervisory authority.

(11) If the Appeals Tribunal sets aside any decision of the SFIU or supervisory authority, the fees contemplated in subsection (2) paid by the appellant in respect of the appeal in question shall be refunded to the appellant.

(12) Subject to subsection (13), a decision of the Appeals Tribunal may be taken on appeal to the High Court as if it were a decision of a magistrate in a civil matter.

(13) The launching of appeal proceedings does not suspend the operation or execution of a decision, unless the SFIU or supervisory authority directs otherwise.

Replacement of sections 39 and 40.

22. Sections 39 and 40 of the Principal Act are deleted and replaced with the new sections 39 and 40 as follows -

"Composition of the Task Force.

39.(1) The Task Force shall consist of -

- (a) a Council;
- (b) a Technical Committee;
- (c) other *ad hoc* Committees as the Council may appoint, and
- (d) a Secretariat as may be designated by the Ministry of Finance.

(2) The Council shall consist of the –

- (a) Attorney General;
- (b) Chief Executive Officer of the Financial Service Regulatory Authority;
- (c) Commissioner General of the Swaziland Revenue Authority;
- (d) Commissioner of the Anti-Corruption Commission;
- (e) National Commissioner of Police;
- (f) Director;
- (g) Director of Public Prosecutions;
- (h) Governor of the Central Bank of Swaziland; and,
- (i) Principal Secretary in the Ministry of Finance.

(3) The Technical Committee shall consist of –

- (a) a representative of the Principal Secretary in the Ministry of Finance;
- (b) a representative of the Principal Secretary in the Ministry of Foreign Affairs;
- (c) a representative of the Director;
- (d) a representative of the Attorney-General;
- (e) a representative of the Director of Public Prosecutions;
- (f) a representative of the President of the Swaziland Law Society;
- (g) a representative of the Bankers' Association;
- (h) a representative of the Central Bank of Swaziland;
- (i) a representative of the Financial Services Regulatory Authority;
- (j) a representative of the Commissioner of Police;
- (k) a representative of the Anti-Corruption Commissioner; and,
- (l) not more than three other persons appointed by the Minister on the recommendation of the Council to represent accountable institutions or supervisory authorities not otherwise represented in the Technical Committee.

(4) The Council shall meet at least on a quarterly basis and the Technical Committee shall meet at least on a monthly basis.

(5) The Council and the Technical Committee shall determine their own procedure.

(6) Members of Council and the Technical Committee shall be paid such allowances as are payable to members of statutory Boards.

(7) The Minister may, on the advice of the Council and by Notice published in the Gazette, amend the composition of the Task Force.

Functions of the Task Force.

40. (1) The Council shall advise the –

- (a) Minister on the anti-money laundering and counter financing of terrorism national strategy plan for Swaziland;
- (b) Minister on the Government policy on anti-money laundering and counter financing of terrorism;
- (d) Ministry of Finance on legislative and practical initiatives necessary to secure compliance with international and regional standards in anti-money laundering and counter financing of terrorism;
- (e) Minister on the composition of the Technical Committee; and,
- (f) Minister on the exercise of the powers entrusted on the Minister in terms of this Act

(2) The Technical Committee shall –

- (a) develop the anti-money laundering and counter financing of terrorism national strategy plan for Swaziland and ensure its implementation on approval;
- (b) co-ordinate the national anti-money laundering and counter financing of terrorism risk assessment;
- (c) facilitate collaboration between the stakeholders in the antimoney laundering and counter financing of terrorism arena;
- (f) act as the point of contact for international agencies in the anti-money laundering and counter financing of terrorism arena, including donor agencies;
- (g) ensure that Government policy on anti-money laundering and counter financing of terrorism is implemented;
- (h) produce and submit quarterly reports on the national strategy plan and the progress to the Council; and,
- (i) within three months after the close of each financial year, produce an annual report on its activities, which shall be presented to the Minister after approval by the Council.

(3) The Technical Committee may delegate any of its functions to a subcommittee consisting of at least one member of the Technical Committee.

(4) The Council and the Technical Committee may co-opt other members with certain expertise and skill where the need arises.

(5) The Minister shall determine the allowances and remuneration of the co-opted members.”

Amendment of section 41.

23. Section 41 of the Principal Act is amended -

- (a) by renumbering the second subsection (4) and the subsections which follow thereafter to read (5), (6), (7) and (8) respectively;
- (b) in the existing second subsection (4) by replacing the reference to subsection "(3)" to read "(4)";
- (c) in the existing subsection (5) by replacing the reference to subsection "(3)" to read "(4)";
- (d) in the existing subsection (6) by replacing the reference to subsection "(5)" to read "(6)"; and,
- (e) inserting the following new subsection (7) after subsection(6) --

"(7) a courier shall report to the SFIU cash movements in excess of fifteen thousand Emalangeni E15,000 in such manner as the Minister, acting on the recommendation of the Director, may determine."

Amendment of Part 7

24. Part 7 of the Principal Act is amended by deleting it and replacing it with a new Part 7 as follows -

"PART 7
RESTRAINT, SEARCH, SEIZURE AND FORFEITURE

Applications

44. (1) An application brought under this Act for a restraining order or for a forfeiture order may be brought whether or not a person has been charged or convicted of an offence and whether or not an application has been brought for a confiscation order, a pecuniary penalty order or a forfeiture or after a criminal conviction

(2) A Court may, on the application of the Attorney General or the Director of Public Prosecutions order that proceedings under this Part be postponed pending the outcome of proceedings under another Act if the Court is satisfied that to do so would clearly be in the interests of justice.

(3) An order made on an application brought under this Part shall not be construed as being a final order for the purposes of any matter between the parties in proceedings other than those brought under this Part.

Restraint of property

45. (1) Where a law enforcement officer investigating an unlawful activity, a money laundering offence or a financing of terrorism offence has reasonable grounds to believe that any money or property whether located inside or outside of Swaziland, relating to an unlawful activity, a money laundering offence or a financing of terrorism offence is held or is under the control of any person, the relevant law enforcement agency may apply to a Court in accordance with subsection (2) for a restraint order prohibiting the person from disposing of or otherwise dealing with that property except in such manner as may be specified in the order.

(2) An application under subsection (1) may be made *ex parte*, and shall be in writing and be accompanied by an affidavit in support of the application.

(3) The hearing of an application made under subsection (1) may be held *in camera*.

(4) A Court shall make an order under this section if satisfied that there are reasonable grounds for making the order.

(5) A Court may, in granting any order under sub-section (4), or on application at any time thereafter, give direction as to the-

- (a) effective period of the order;
- (b) proper administration of the money or property during the effective period of the order, including the appointment of a person to take care of, administer or otherwise deal with the property, or a part of the property and where the property is a business or undertaking, to carry on, with due regard to any applicable law, the business or undertaking;
- (c) handing over of the property to the person appointed to take care of the property by any person having possession of the property; and,
- (d) disposal of that money or property for the purpose of determining any dispute as to the ownership of, or other interest in, the property thereof, payment of debts incurred in good faith to creditors prior to the order, or payment of the costs of the person mentioned in sub-section (2) to defend criminal proceedings against him or her.

(6) The power of administration under subsection 4(b) shall include, in the case of perishable or rapidly depreciating property, the power to sell that property including stocks and bonds.

(7) An application made as contemplated in subsection (5) after the granting of an order under subsection (4) may be held *in camera*.

(8) Before the person restrained under this section disposes of any property referred to under this subsection, that person shall apply to a Court for a disposal order.

(9) In making an order under this section in respect of money or property held or under the control of a person, the Court may make provision for the payment out of that money or property of the-

- (a) reasonable living expenses of the person in respect of whom the investigation is being made, including that of the dependants of that person; and,
- (b) reasonable expenses of that person in defending any criminal charge or any other proceedings under this Act.

(10) Compliance with an order under this section shall not be treated as a breach of any restriction or obligation, imposed by any written law or otherwise, of the person complying with the order.

(11) Any order under sub-section (4) shall cease to have effect at the end of a period of six months following the hour the order was made if the person against whom such order was made has not been charged with an unlawful activity, a money laundering or financing of terrorism offence within the period.

(12) The Government shall not be liable for any damages or costs arising directly or indirectly from the making of an order under sub-section (2) or (3) unless it can be proved that the application for the order was not made in good faith.

Service of and registration of restraining order

46. (1) A copy of a restraining order shall be served on a person affected by the order in such manner as the Court directs or as may be prescribed by rules of court.

(2) A copy of a restraining order which affects land in Swaziland shall be registered with the Registrar of Deeds.

(3) A restraining order is of no effect with respect to registered land unless it is registered as a charge under the Deeds Registry Act, 1968.

(4) Where particulars of a restraining order are registered under the Deeds Registry Act, 1968, a person who subsequently deals with the property shall, for the purposes of section 45, be deemed to have notice of the order at the time of the dealing.

Contravention of restraining order

47. (1) A person who knowingly contravenes a restraining order by disposing of, or otherwise dealing with, property that is subject to the restraining order commits an offence and shall be liable on conviction to-

(a) a fine of twenty-five thousand Emalangeni (E25,000) or imprisonment for a period of 3 years or both, in the case of a natural person; or,

(b) a fine of fifty thousand Emalangeni (E50,000) in the case of a body corporate.

(2) Where a restraining order is made against property and the property is disposed of, or otherwise dealt with, in contravention of the restraining order, and the disposition or dealing was not for sufficient consideration or not in favour of a person who acted in good faith and without notice, the competent authority may apply to the Court that made the restraining order for an order that the disposition or dealing be set aside.

(3) Where the competent authority makes an application under subsection (2) in relation to a disposition or dealing, the Court may-

(a) set aside the disposition or dealing as from the day on which the disposition or dealing took place; or,

(b) set aside the disposition or dealing as from the day of the order under this subsection and declare the respective rights of any persons who acquired interests in the property on, or after the day on which the disposition or dealing took place, and before the day of the order under this subsection.

Extension of Restraining Order

48. (1) A competent authority may apply to the Court that made a restraining order for an extension of the period of the operation of the order.

(2) Where the competent authority makes an application under subsection (1), the Court may extend the operation of a restraining order for a specified period, if it is satisfied that a forfeiture order may be made in respect of the property or part thereof or that a pecuniary penalty order may be made against the person.

Seizure of Property subject to restraint order

49. (1) In order to prevent property subject to a restraining order from being disposed of or removed contrary to that order, any law enforcement agent may seize any such property if he or she has reasonable grounds to believe that such property will be so disposed of or removed.

(2) Property seized under subsection (1) shall be dealt with in accordance with the Court which made the relevant restraining order.

Powers to search for and seize tainted property or terrorist property

50. (1) A law enforcement agent may-

- (a) search a person for tainted property or terrorist property;
- (b) enter upon land or upon or into premises and search the land or premises for tainted property or terrorist property; and,
- (c) in either case, seize any property found in the course of the search that the law enforcement agent believes, on reasonable grounds, to be tainted property or terrorist property;

provided that the search or seizure is made-

- (i) with the consent of the person or the occupier of the land or premises as the case may be;
- (ii) under warrant issued under section 52; or,
- (iii) under section 53.

(2) Where a law enforcement agent is empowered to search a person, he or she may also search-

- (a) the clothing that is being worn by the person; and,
- (b) any property in, or apparently in, the person's immediate control.

Search warrants in relation to tainted property or terrorist property

51. (1) Where a law enforcement agent has reasonable grounds for suspecting that there is, or may be within the next 72 hours, tainted property or terrorist property of a particular kind-

- (a) on a person;
- (b) in the clothing that is being worn by a person;
- (c) otherwise in a person's immediate control; or,
- (d) upon land or upon or in any premises,

the law enforcement agent may lay before a magistrate information on oath setting out those grounds and apply for the issue of a warrant to search the person, the land or the premises as the case may be, for property of that kind.

(2) Where an application is made under subsection (1) for a warrant to search a person, land or premises, the magistrate may, subject to subsection (4), issue a warrant authorising a law enforcement agent (whether or not named in the warrant) with such assistance and by such force as is necessary and reasonable to-

- (a) search the person for property of that kind;
- (b) enter upon the land or in or upon any premises and to search the land or premises for property of that kind; and,
- (c) seize property found in the course of the search that the law enforcement agent believes on reasonable grounds to be property of that kind.

(3) A magistrate shall not issue a warrant under subsection (2) in respect of tainted property or terrorist property unless the magistrate is satisfied that there are reasonable grounds to believe that a forfeiture order may be made under this Act in respect of the property.

(4) A warrant issued under this section shall state-

- (a) the purpose for which it is issued including, in respect of tainted property, a reference to the nature of the relevant offence;
- (b) a description of the kind of property authorised to be seized;
- (c) a time at which the warrant ceases to be in force; and,
- (d) whether entry is authorised to be made at any time of the day or night or during specified hours.

(5) If during the course of searching under a warrant issued under this section, a law enforcement agent finds-

- (a) property that the law enforcement agent believes on reasonable grounds to be tainted property or terrorist property of a type not specified in the warrant, or tainted property in relation to an unlawful activity; or,
- (b) any thing the law enforcement agent believes on reasonable grounds will afford evidence as to the commission of an unlawful activity;

the law enforcement agent may seize that property or thing and the warrant shall be deemed to authorise such seizure.

Search warrants may be granted by telephone, etc

52. (1) Where by reason of urgency a law enforcement agent considers it necessary to do so, that law enforcement agent may make application for a search warrant under section 51 by telephone or by other means of communication.

(2) A Magistrate, to whom an application for the issue of a warrant is made by telephone or other means of communication, may sign a warrant if that Magistrate is satisfied that it is necessary to do so, and shall inform the law enforcement agent of the terms of the warrant so signed.

(3) The law enforcement agent shall complete a form of warrant in the terms furnished by the magistrate.

(4) The law enforcement agent to whom a warrant is granted by telephone or other means of communication shall, not later than the next working day following the execution of the warrant, give the magistrate a duly sworn information and the form of warrant completed by the law enforcement agent.

Searches in emergencies

53. Where a law enforcement agent suspects on reasonable grounds that-

- (a) particular property is tainted property or terrorist property;
- (b) it is necessary to exercise the power of search and seizure in order to prevent the concealment, loss or destruction of the property; and,
- (c) the circumstances are so urgent that they require immediate exercise of the power without the authority of a warrant or the order of a court,

the law enforcement agent may-

- (i) search a person;
- (ii) enter upon land, or upon or into premises and search for the property; and
- (iii) if property is found, seize the property.

(2) If, during the course of a search conducted under this section, a law enforcement agent finds-

- (a) property that the law enforcement agent believes on reasonable grounds to be tainted property or terrorist property; or
- (b) any thing the law enforcement agent believes on reasonable grounds will afford evidence as to the commission of an unlawful activity,

the law enforcement agent may seize that property or thing.

Record of property seized

54. A law enforcement agent who seizes property under section 49 or section 50 shall detain the property seized, make a written record thereof, and take reasonable care to ensure that the property is preserved.

Return of seized property

55. (1) Where property has been seized under section 51 or section 53 (otherwise than because it may afford evidence of the commission of an offence), a person who claims an interest in the property may apply to the Court for an order that the property be returned to the person.

(2) Where a person makes an application under subsection (1) and the Court is satisfied that-

- (a) the person is entitled to possession of the property;
- (b) the property is not tainted property or terrorist property; and,
- (c) in the case of tainted property, the person in respect of whose conviction, charging or proposed charging the seizure of the property was made has no interest in the property, the Court shall order the return of the property to the person.

Search for and seizure of property in relation to foreign offences

56. Where a foreign State requests assistance to locate or seize property suspected to be tainted property in respect of an offence within its jurisdiction or property suspected to be terrorist property, the provisions of sections 52, 53 and 54 apply in so far as is applicable, provided that the Minister of Justice and Constitutional Affairs has, under the Criminal Matters (Mutual Assistance) Act, 2001, authorised the giving of assistance to the foreign State.

Forfeiture of property

57. (1) Where, on application of a competent authority or a person authorised by a competent authority a Court is satisfied that the property has been derived, obtained or realised, directly or indirectly, from the commission of an unlawful activity, an offence of money laundering or financing of terrorism the Court may make an order of forfeiture in respect of that property.

(2) Property subject to forfeiture order under subsection (1) may include-

- (a) the assets laundered or terrorist property, the proceeds, income, and gains from such assets;
- (b) the assets intended to be laundered;
- (c) assets used to facilitate or commit the unlawful activity; and,
- (d) instrumentalities used or intended to be used in the commission of the offence, money laundering or financing of terrorism.

(3) Where the Court is satisfied that a forfeiture order should be made in respect of the property of a person convicted of an unlawful activity or instrumentalities used or intended to be used in the commission of the offence, money laundering or financing of terrorism but that the specified property or any part thereof or interest therein cannot, for whatever reason, be made subject to such an order and, in particular-

- (a) cannot, on the exercise of due diligence be located;
- (b) has been transferred to a third party in circumstances which do not give rise to a reasonable inference that the title or interest was transferred for the purpose of avoiding the forfeiture of the property;
- (c) is located outside Swaziland;
- (d) has been substantially diminished in value or rendered worthless; or,
- (e) has been commingled with other property that cannot be divided without difficulty,

the Court may, instead of ordering the property or part thereof or interest therein to be confiscated, order the person to pay to the State an amount equal to the value of the property, part or interest.

(4) Where property subject to forfeiture has been commingled with property acquired legitimately or acquired using funds from legitimate sources, the Court shall in the forfeiture order, declare the nature, extent and value of the property which is to be forfeited only in regard of property subject to the unlawful activity or money laundering offence or financing of terrorism offence.

(5) A Court shall not make an order of forfeiture under this section in respect of any property where the Court is satisfied that the person who is in possession of the property or purports to be its owner acquired the property.

- (a) in good faith and for good cause; and,
- (b) without knowing and in circumstances such as not to arouse a reasonable suspicion, that the property was, at the time of its acquisition, property derived, obtained or realised from the commission of the unlawful activity or money laundering offence or financing of terrorism offence.

(6) A person who under this section claims an interest in any property in respect of which an application for forfeiture has been made may-

- (a) before the Court makes an order of forfeiture; or,
- (b) when the Court has made an order of forfeiture, within 30 days after the order was made,

apply to the Court against the granting of the order or, where the Court has made an order of forfeiture, for an order declaring the nature, extent and value of the claimant's interest; and-

- (i) directing the Government to transfer the property to the claimant; or,
- (ii) declaring that there is payable to the claimant by the Government an amount equal in value to the value of the claimant's interest declared under this section.

(7) If a Court is satisfied that a person referred to in subsection (5)-

- (a) has an interest in the property which is the subject of the application; and,
- (b) has exercised reasonable care to ensure that the property is not the proceeds of a crime, or terrorist property, or would not be used to commit or facilitate the commission of an act of terrorism and would not be used by a terrorist group; and,
- (c) is not a member of a terrorist group,

the Court shall order that the interest shall not be affected by the order and the order shall stipulate the nature and extent of the interest in question.

(8) Where-

- (a) a Court has made an order of forfeiture under this section; and,
- (b) the conviction of the person in relation to whom the order was made is set aside,

the order of forfeiture shall cease to have effect and a person who claims to have an interest in any property in respect of which the order was made may apply to the Court for an order declaring the nature, extent and value of the claimant's interest; and,

- (a) directing the Government to transfer the property to the claimant; or,
- (b) declaring that there is payable to the claimant by the Government an amount equal in value to the value of the claimant's interest declared under this subsection.

(9) Where-

- (a) the Court has made an order of forfeiture under this section; and,
- (b) the conviction of the person in relation to whom the order was made is set aside,

the competent authority shall, as soon as is practicable after the quashing of the conviction, give notice to any person the competent authority has reason to believe may have an interest in any money or property in respect of which the order of forfeiture was made immediately before the order was made or to any other person or class of persons whom the Court considers appropriate.

(10) A person who makes an application under subsection (5) or subsection (6) shall give notice to the competent authority and the competent authority shall be a party to a proceeding on the application.

(11) Where an application has been made under subsection (1), the Court may, for the purpose of tracing of the property or preventing the circumventing of an order of forfeiture which the Court may make under this section, make such order or give such direction as the Court thinks necessary and may in particular make-

- (a) a prohibition order against any registration under the Deeds Registry Act, 1968, or a restraining order;
- (b) a production order; or,
- (c) an order that any property be transferred to a named person to be held by the person pending the determination of the application.

(12) For the purpose of an order of forfeiture under this section, it shall be presumed that any money or property which appears-

- (a) to have been under the control of a person or held by that person any time after the person committed the offence and before the Court makes an order under subsection (1); or,
- (b) to have been transferred to or by, or deposited with or by, the person convicted at any time after that person committed an offence and before the Court makes an order under subsection (1),

is the proceeds of crime or used in or intended to be used in the commission of an unlawful activity, the offence of money laundering or the offence of financing of terrorism.

(13) In determining whether or not any property is derived from an unlawful activity or money laundering or related to financing of terrorism, the Court shall apply the standard of proof required in civil proceedings.

Application of procedure for enforcing fines

58. (1) Where the Court orders a person to pay an amount under section 57(3), that amount shall be treated as if it were a fine imposed upon him or her in respect of a conviction for an unlawful activity or offence, and the Court shall-

- (a) notwithstanding anything contained in any other Act, impose in default of the payment of that amount, a term of imprisonment of-
 - (i) 1 year, where the amount does not exceed twenty thousand Emalangeni (E20, 000);
 - (ii) 3 years, where the amount exceeds fifty thousand Emalangeni (E50, 000) but does not exceed one hundred thousand Emalangeni (E100, 000);
 - (iii) 5 years, or more where the amount exceeds one hundred thousand Emalangeni (E100,000) and,

- (b) direct that the term of imprisonment imposed pursuant to subsection (a) be served consecutively to any other form of imprisonment imposed on that person, or that the person is then serving;

Effect of forfeiture order

59. (1) Subject to subsection (2), where a Court makes a forfeiture order against any property, the property vests absolutely in the Government by virtue of the order.

(2) Where property ordered to be forfeited is registrable property-

- (a) the property does not vest in the Government until the applicable registration requirements have been complied with;
- (b) the Government shall be entitled to be registered as owner of the property; and,
- (c) the competent authority has power on behalf of the Government to do or authorise the doing of anything necessary or convenient to obtain the registration of the Government as owner, including the execution of any instrument to be executed by a person transferring an interest in property of that kind.

(3) Where the Court makes a forfeiture order against property-

- (a) the property shall not, except with the leave of the Court and in accordance with any directions of the Court, be disposed of, or otherwise dealt with, by or on behalf of the Government before the relevant appeal date; and,
- (b) if, after the relevant appeal date, the order has not been discharged, the property may be disposed of and the proceeds applied or otherwise dealt with in accordance with the direction of the competent authority.

Procedure for in rem forfeiture order where person dies or absconds

60. (1) Where-

- (a) information has been laid alleging the commission of the offence by a person; and,
 - (b) a warrant for the arrest of the person has been issued in relation to that information,
- the competent authority may apply to the Court for a forfeiture order in respect of any tainted property if the defendant has died or absconded.

(2) For the purposes of subsection (1), a person is deemed to have absconded if reasonable attempts to arrest the person pursuant to the warrant have been unsuccessful during the period of 12 months commencing on the day the warrant was issued.

(3) Where the competent authority applies under this section for a forfeiture order against any tainted property the Court shall, before hearing the application-

- (a) require notice of the application to be given to any person who, in the opinion of the Court, appears to have an interest in the property; and,
- (b) direct that notice of the application to be published in the Gazette and in a newspaper published and circulating in Swaziland containing such particulars and for so long as the Court may require.

Forfeiture where a person dies or absconds

61. (1) Subject to section 60(3), where an application is made to the Court under section 60(1) for a forfeiture order against any tainted property in consequence of a person having died or absconded in connection with an unlawful activity and the Court is satisfied that-

- (a) any property is tainted property in respect of the offence;
- (b) an information has been laid alleging the commission of the offence by that person and a warrant for the arrest of that person has been issued in relation to that information; and,
- (c) the accused charged with the offence referred to in subsection (b) has died or absconded,

the Court may order that the property or such property as is specified by the Court in the order be forfeited.

Voidable Transfers

62. The Court may, before making a forfeiture order, set aside any conveyance or transfer of property that occurred during or after the commission of an unlawful activity or offence, unless the conveyance or transfer was made for good cause to a person acting in good faith and without notice.

Establishment of Fund

62.bis (1) There is hereby established in the accounts of Swaziland an account to be known as the Confiscated and Forfeited Assets Fund.

(2) The Minister shall, by notice in the Gazette, designate a staff member of the Ministry of Finance or appoint a person to be the accounting officer of the Fund.

(3) The staff member or person referred to in subsection (2) shall be accountable to the Committee established under Section 62quat.

(4) The staff member designated or person appointed in terms of subsection (2) shall, with the approval of the Auditor-General, open a bank account at a commercial bank and all money received on behalf of the Fund shall be deposited into that account.

(5) The Fund shall be audited by the Auditor-General.

Receipts and Disbursements

62.ter (1) There shall be credited to the Fund -

- (a) all moneys derived from the fulfilment of confiscation or forfeiture orders under this Act or any other Act;
- (b) any sums of money allocated to the Fund from time to time by parliamentary appropriation;
- (c) any voluntary payment, grant or gift made by any person for the purposes of the Fund;
- (d) any income derived from the investment of any amount standing to the credit of the Fund;

- (e) the balance of all moneys derived from the execution of foreign confiscation orders in terms of the Criminal Matters (Mutual Assistance) Act, 2001 (Act 7 of 2007), after payments have been made to requesting States in terms of that Act;
 - (f) any property or amount of money lawfully received or acquired from any source; and
 - (g) all property or moneys transferred to the Fund in terms of this Act.
- (2) The Committee may authorise payments out of the Fund to --
- (a) compensate victims who suffered losses as a result of criminal offences, terrorism unlawful activity;
 - (b) satisfy a compensation order under sub-sections 57(6) or (8);
 - (c) enable the appropriate law enforcement agencies to continue their fight against serious offences, terrorism and unlawful activities;
 - (d) share confiscated property with foreign States pursuant to any relevant treaties or arrangements.

Establishment of Committee

62. *quat.* (1) There is established a Committee to be known as the Confiscated and Forfeited Assets Fund Committee.

(2) The Committee consists of-

- (a) the Principal Secretary in the Ministry of Finance or a representative of the Principal Secretary, who shall be the chairperson of the Committee;
- (b) the Attorney-General or a representative of the Attorney General;
- (c) the National Commissioner of Police or a representative of the National Commissioner;
- (d) the Commissioner of the Anti-Corruption Commission or a representative of the Commissioner of the Anti-Corruption Commission;
- (e) the Commissioner-General or a representative of the Commissioner General;
- (f) the Director or a representative of the Director; and,
- (g) if necessary, not more than four persons designated by the Minister to deliberate on any relevant matter.

(3) The Committee shall designate one of its members as deputy chairperson of the Committee, and when the chairperson is not available, the deputy chairperson shall act as chairperson.

(4) The Accounting officer appointed under section 62*bis* together with such other staff members as may be designated by the Principal Secretary in the Ministry of Finance shall perform the administrative functions of the Committee.

Meetings of Committee

62quin. (1) A meeting of the Committee shall be held at a time and place determined by the chairperson.

(2) The procedure, including the manner in which decisions shall be taken, to be followed at meetings of the Committee and the manner in which the Committee shall conduct its affairs shall be determined by the Committee, if the procedure has not been otherwise prescribed.

Objects of Committee

62sext. The objects of the Committee are to-

- (a) advise the Minister Cabinet in connection with all aspects of confiscation or forfeiture of property to the State and the transfer of confiscated or forfeited property to the Fund in terms of this Act or any other Act;
- (b) advise the Minister Cabinet in connection with the rendering of financial assistance to law enforcement agencies in order to combat organised crime, money laundering, criminal gang activities and crime in general; and
- (c) advise the Minister Cabinet in connection with the rendering of financial assistance to any other institution, organisation or fund established with the object to render assistance in any manner to witnesses, including protected witnesses, and victims of crime.

Functions and powers of Committee

62sept. (1) The Committee may make recommendations to Cabinet with regard to the -

- (a) policy to be adopted concerning the confiscation, forfeiture and realisation of property and the transfer of that property to the Fund in terms of this Act or any other Act;
- (b) allocation of property and moneys from the Fund to specific law enforcement agencies;
- (c) allocation of property and moneys from the Fund to any institution, organisation or fund contemplated in section 62Sext(c); and
- (d) allocation of moneys for the administration of the Fund.

(2) In order to fulfil the functions referred in subsection (1) the Committee may -

- (a) exercise any powers and perform any functions conferred or imposed on it by this Act, and any powers that are necessary or expedient for or incidental to the achievement of its objects; and
- (b) co-opt any person to advise it on any specific matter.

Annual Report to Parliament

62.quat The Minister of Finance shall, not later than the first sitting of Parliament after the expiry of 90 days from the end of the financial year, table a report in Parliament, detailing the -

- (a) amounts credited to the Fund;

- (b) investments made with the amounts credited to the Fund; and
- (c) payments made from the Fund, including the specific purpose for which each payment was made and to whom it was made.”

Insertion of new section 75bis.

24. The Principal Act is amended by inserting a new subsection *75bis* immediately after section 75 as follows—

“United Nations Security Resolutions.

75bis (1) The Minister referred to in section 29 of the Suppression of Terrorism Act, 2008, shall act in consultation with the Task Force in the implementation of Security Council Resolutions as envisaged in that section.

(2) Notwithstanding the provisions of the Suppression of Terrorism Act, 2008, the measures referred to in section 29 shall include measures relating to the combating of the proliferation of weapons of mass destruction.”

Amendment of section 78

25. Section 78 of the Principal Act is amended by replacing the words “Section 6(1) or (2) or (3) or (4)” with the words “Sections 6(1) and (3) and 6bis (1), (2), (3) and (4).”

Amendment of section 81.

26. Section 81 is amended as follows —

(a) by deleting the words “suspicious transactions” which appear in the title of the section; and,

(b) by inserting new subsections (3) and (4) —

“ (3) An institution that fails to make a cash transaction report to the SFIU as required under section 12*bis* commits an offence.

(4) A supervisory authority or an auditor that fails to report a suspicious transaction as required under section 13 commits an offence.”

Amendment of section 83

27. Section 83 of the Principal Act is amended by inserting the following new subsection (3) —

“A person who contravenes the provisions of section 33(2) commits an offence.”

Insertion of new section 85bis

28. The Principal Act is amended by inserting the following new section *85bis* immediately after section 85 —

“Dealing with Shell banks

85bis. A financial institution which fails to act in accordance with section 18 (4) commits an offence.”

Amendment of section 89

29. Section 89 of the Principal Act is amended in subsection (3) by inserting the number "85bis" between the numbers "83" and "86".

Insertion of new section 92bis

30. The Principal Act is amended by inserting the following new section 92bis immediately after section 92 –

"Schedules

92bis. The Minister may, acting in consultation with the Director, amend any of the Schedules to this Act"

Replacement of Schedule 2.

31. Schedule 2 to the Principal Act is deleted and replaced with a new Schedule 2 as follows-

"Schedule 2

OATH OF CONFIDENTIALITY
(Under Section 26)

I, (here set out the full name), do swear or solemnly affirm, that, in the office of (here set out the capacity) of the (Swaziland Financial Intelligence Unit (SFIU)/ Board of Directors of the Swaziland Financial Intelligence Unit (SFIU)/Anti-Money Laundering and Counter Financing of Terrorism Task Force)*, I shall not disclose to any person any information relating to the affairs of the SFIU or of any accountable institution or other person which I have acquired in the performance of my duties or the exercise of my functions.

I also declare that my attention has been drawn to all the provisions of section 26 of the Money Laundering and Financing of Terrorism (Prevention) Act, [2009].

Thus subscribed by me this day 20

.....
(Deponent's signature) Before me:

.....
Commissioner of Oaths
(*Delete whichever is inapplicable)"

Insertion of new Schedule 3.

33. The Principal Act is amended by insertion of a new Schedule 3 as follows -

"Schedule 3

ACCOUNTABLE INSTITUTIONS
(Under Section 2)

"Accountable Institution" means any person who carries on the business or activity of –

- (a) a financial institution licensed under the Financial Institutions Act, 2005;

- (b) acceptance of deposits and other repayable funds from the public, lending, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions;
- (c) financial leasing;
- (d) money transmission services;
- (e) issuing and administering means of payment (such as credit cards, travellers' cheques and bankers' drafts);
- (f) financial guarantees and commitments;
- (g) trading for that person's own account or for the account of that person's customers in money market instruments (such as cheques, bills, certificates of deposit), foreign exchange, financial futures and options, exchange and interest rate and index instruments, commodity futures trading and transferable securities;
- (h) participation in securities issues and the provision of services related to such issues;
- (i) money-brokering;
- (j) individual and collective investment schemes or trustees of collective investment schemes;
- (k) safekeeping and administration of cash or liquid securities on behalf of other persons;
- (l) safe custody services;
- (m) investing, administering or managing funds or money on behalf of other persons
- (n) an insurer, an insurance broker or an insurance underwriter;
- (o) trustee administrator or investment manager of a retirement scheme but excluding closed-ended schemes;
- (p) bureaux de change or foreign exchange dealer;
- (q) operating a gambling house, casino or lottery, including an operator who carries on such operations through the internet;
- (r) a trust or company service provider, not otherwise covered by this section, which as a business, provides, to third parties, the services of-
 - (i) acting as a formation agent of legal persons;
 - (ii) 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;
 - (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 as, or arranging for another person to act as, a trustee of an express trust;
or

- (v) acting as, or arranging for another person to act as, a nominee shareholder for another person;
- (s) an offshore entity;
- (t) a lawyer, notary, conveyancer, other independent legal professional, or an accountant when preparing or carrying out transactions for a client concerning the following activities –
 - (i) buying and selling of immovable property;
 - (ii) managing of client money or trust funds, securities or other assets;
 - (iii) management of bank, savings or securities accounts;
 - (iv) organisation of contributions for the creation, operation or management of companies; or
 - (v) creation, operation or management of legal persons or arrangements, and buying and selling of business entities.
- (u) dealing in immovable property when the persons dealing are involved in transactions for their client concerning the buying and selling of real estate;
- (v) dealing in precious metals or stones, when the persons dealing engage in any cash transaction with a customer equal to or above the applicable designated threshold; or,
- (w) dealing in the trade, including the lease of motor vehicles;