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Money Laundering

Anti - Money Laundering

2012

Anti -Money Laundering (Ammendment),2012

The United Republic of Tanzania

Ministry of Finance

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THE ANTI-MONEY LAUNDERING ACT, 2006

ARRANGEMENT OF SECTIONS

Section

Title

PART I

PRELIMINARY PROVISIONS

1. Short title and commencement.
2. Application.
3. Interpretation.

PART II

THE FINANCIAL INTELLIGENCE UNIT AND THE NATIONAL COMMITTEE

4. Establishment of the Financial Intelligence Unit.
5. Appointment of the Commissioner.
6. Powers and duties of FIU.
7. Employees of the FIU.
8. Establishment and composition of the National Committee.
9. Functions of the National Committee.
10. Meetings of the National Committee.
11. Allowances and remunerations.

PART III

PROHIBITION OF MONEY LAUNDERING

12. Offence of money laundering.
13. Penalties for acts of money laundering.
14. Offences by corporate bodies.

PART IV

ANTI-MONEY LAUNDERING SUPERVISION

15. Reporting persons to verify customer's identity.
16. Reporting persons to establish and maintain customer records.
17. Reporting persons to report suspicious transactions.
18. Reporting persons to establish and maintain internal reporting procedures.

- 19. Additional preventive measures by reporting persons.
- 20. Tipping off.
- 21. Secrecy obligation overridden.
- 22. Protection of reporting persons.
- 23. Obligation to report physical cross boarder transportation of cash or bearer negotiable instruments.

PART V
FINANCIAL PROVISIONS

- 24. Sources of fund.
- 25. Financial year.
- 26. Accounts and audit.

PART VI
MISCELLANEOUS PROVISIONS

- 27. Immunity.
- 28. Application of proceeds of crime.
- 29. Regulations.



No. 12 OF 2006

I ASSENT,

[*Jawahar M. Nkomo*.....]

President

[05 January, 2007.....]

An Act to make better provisions for prevention and prohibition of money laundering, to provide for the disclosure of information on money laundering, to establish a Financial Intelligence Unit and the National Multi-Disciplinary Committee on Anti-Money Laundering and to provide for matters connected thereto.

[.....]

ENACTED by Parliament of the United Republic of Tanzania.

PART I

PRELIMINARY PROVISIONS

- 1. This Act may be cited as the Anti-Money Laundering Act, 2006 and shall come into operation on such date as the Minister may, by notice published in the *Gazette*, appoint. Short title and commencement
- 2. This Act shall apply to Mainland Tanzania as well as to Tanzania Zanzibar. Application
- 3. In this Act, unless the context requires otherwise: Interpretation
 - “Act” means the Anti-Money Laundering Act, 2006;
 - “bank” has the meaning ascribed to it under the Banking and Financial Institutions Act, 2006;

“Bank” has the meaning ascribed to it under the Bank of Tanzania ;

“cash dealer” means –

- (a) A person who carries on a business of an insurer, an intermediary insurance broker, a securities dealer or broker;
- (b) a person who carries on a business of dealing in gold bullion, of issuing, selling or redeeming traveler’s cheques, money orders or similar instruments, or of collecting, holding and delivering or transmitting money;
- (c) an operator of a gaming activity;
- (d) a trustee or a manager of a Collective Investment Scheme; and
- (e) an operator of a bureau de change;

“Chairman” means the Chairman of the National Committee appointed under section 8;

“Commissioner” means the Commissioner of the FIU appointed under section 5;

“Comparable body” means an overseas Government agency with functions similar to those of the FIU;

“financial institution” has the meaning ascribed to it under the Banking and Financial Institutions Act, 2006;

Cap. 256

“forfeiture” has the meaning ascribed to it under the Proceeds of Crime Act;

“Government” means the Government of the United Republic and where appropriate includes the Revolutionary Government of Zanzibar;

“Minister” means the Minister for the time being responsible for monetary affairs;

“money laundering” means engagement of a person or persons, direct or indirectly in conversion, transfer, concealment, disguising, use or acquisition of money or property known to be of illicit origin and in which such engagement intends to avoid the legal consequence of such action and includes offences referred in section 12;

“National Committee” means the National Multi-disciplinary Committee on Anti-Money Laundering Committee established by section 8;

“politically exposed person” means a foreign individual entrusted with prominent public functions including heads of state or government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations or agencies;

“predicate offence” means -

- (a) any dealing which amounts to illicit drug trafficking under the law for the time being relating to narcotic drugs and psychotropic substances;

- (b) terrorism, including terrorist financing;
- (c) illicit arms trafficking;
- (d) participating in an organized criminal group and racketeering;
- (e) trafficking in human beings and smuggling immigrants;
- (f) sexual exploitation, including sexual exploitation of children;
- (g) illicit trafficking in stolen or other goods;
- (h) corrupt practice;
- (i) counterfeiting;
- (j) armed robbery;
- (k) theft;
- (l) kidnapping, illegal restraint and hostage taking;
- (m) smuggling;
- (n) extortion;
- (o) forgery;
- (p) piracy;
- (q) hijacking;
- (r) insider dealing and market manipulation; or
- (s) illicit trafficking or dealing in human organs and tissues;
- (t) poaching;
- (u) tax evasion;
- (v) illegal fishing;
- (w) illegal mining;
- (x) environmental crimes; or
- (y) any other offence which the Minister may, by notice published in the *Gazette*, declare, whether committed within the national boundaries of the United Republic or outside the country;

“property” has the meaning ascribed to it under the Proceeds of Crime Act;

Cap. 256

“regulator” includes the Bank of Tanzania, the Capital Markets and Securities Authority, the Insurance Supervisory Department, Gaming Board or any other regulator who the Minister may, by Order published in the *Gazette*, specify;

“reporting person” means -

- (a) banks and financial institutions;
- (b) cash dealer;
- (c) an accountant, real estate agent, dealer in precious stones work of arts or metals;
- (d) a regulator;
- (e) customs officer;
- (f) attorneys, notaries and other independent legal professionals when:

- (i) assisting clients in preparing or executing transactions involving:
 - (aa) the purchase or sale of real property or commercial enterprises;
 - (bb) management of funds, securities or other assets which belong to a client;
 - (cc) the opening or management of bank accounts, saving accounts or portfolios;
 - (dd) the organization of contributions required to create, manage or direct corporations or legal entities;
 - (ee) the creation, management or direction of corporations or legal entities; and
 - (ff) the buying or selling of business entities;
 - (ii) acting on behalf of a client in any financial or real estate transaction; and
 - (g) auctioneers; and
 - (h) any other person who the Minister may, by notice published in the *Gazette*, specify;
- “terrorist financing” means -
- (a) the provision of, or making available such financial or other related services to a terrorist, group or entity which is concerned with terrorist act; or
 - (b) entering into or facilitating, directly or indirectly, any financial transaction related to a dealing in property owned or controlled by or on behalf of any terrorist or any entity owned or controlled by a terrorist.

PART II

THE FINANCIAL INTELLIGENCE UNIT AND THE NATIONAL COMMITTEE

Establishment of the Financial Intelligence Unit

4.—(1) There shall be established under the Ministry of Finance an Extra Ministerial Department to be known as a Financial Intelligence Unit also known by an acronym FIU.

(2) The FIU shall be responsible for receiving, analyzing and disseminating suspicious transaction reports and other information regarding potential money laundering or terrorist financing received from the reporting persons and other sources from within and outside the United Republic.

Appointment of the Commissioner

5.—(1) The President shall appoint a person who has adequate knowledge and experience in either economics, monetary affairs, finance,

law, financial crimes or any other field that is beneficial to the execution of this Act, to be the Commissioner of FIU.

(2) The Commissioner shall be responsible for the general administration of the FIU.

Powers
and
duties
of FIU

6. For the purposes of section 4, the Financial Intelligence Unit shall:-

- (a) receive and analyze reports of suspicious transactions submitted by the reporting persons pursuant to section 17;
- (b) disseminate any such reports to the appropriate law enforcement agencies if, after having considered the report, FIU has reasonable grounds to suspect that, the transaction involves money laundering or any other predicate offence;
- (c) disseminate to the appropriate law enforcement agencies any information derived from an inspection carried out pursuant to paragraph (d), if it gives the FIU reasonable grounds to suspect that, a transaction involves the proceeds of crime or financing of terrorism;
- (d) instruct any reporting person to take such steps as may be appropriate to facilitate any inspection anticipated by the FIU;
- (e) compile statistics and records, disseminate information within the United Republic or elsewhere, make recommendations arising out of any information received and advise the National Committee as appropriate;
- (f) in consultation with the regulatory authorities of the relevant reporting persons, issue guidelines to banks, financial institutions and other reporting persons in respect of suspicious transactions, record-keeping and reporting obligations provided for in sections 16, 17, 18 and 19;
- (g) create training requirements and provide such training for reporting persons, judicial officers and law enforcement officers;
- (h) consult with any relevant person, institution or organization for the purpose of discharging its duties under this section;
- (i) exchange information with overseas financial intelligence units and comparable bodies; and
- (j) liaise with the relevant investment and business registration and licensing authorities in assessing genuine investors.

7.—(1) There shall be appointed such number and categories of employees of the Government or other public institutions of such

Emplo-
yees of
FIU

qualifications as may be considered necessary to assist the Commissioner in the performance of FIU.

(2) In appointing such employees, the appointing authority shall in particular have regard to persons with experience in law, finance, customs and law enforcement.

(3) The employees referred to under subsection (1), shall hold office for a term of five years and shall be eligible for re-appointment

(4) The employees of the FIU shall be subject to initial and periodical disclosure of financial position in the manner as may be prescribed under the regulations.

Establishment and composition of the National Committee

8.—(1) There is established for the purposes of this Act, a National Multi-Disciplinary Committee on Anti-Money Laundering.

(2) The National Committee shall be composed of -

- (a) one representative of the Bank of Tanzania, who shall be the Chairman;
- (b) one representative of the Ministry of Finance;
- (c) one representative of the Ministry of Finance of the Revolutionary Government of Zanzibar;
- (d) one representative of the Attorney-General's Chambers;
- (e) one representative of the Attorney-General's Chambers of the Revolutionary Government of Zanzibar;
- (f) two representative of the Directorate of Criminal Investigation, one of whom shall come from its office in Tanzania Zanzibar;
- (g) one representative of the Ministry responsible for foreign affairs;
- (h) the Commissioner of the FIU;
- (i) one representative of the Capital Markets and Securities Authority; and
- (j) one representative of the Tanzania Intelligence and Security Service.

(3) The National Committee may co-opt any person who appears to it to have special knowledge or experience in investigation of matters relating to anti-money laundering.

(4) Members of the National Committee established under subsection (1) shall be appointed by the Minister.

(5) The Minister shall appoint any employee from the public service to be the Secretary of the National Committee.

(6) The tenure of office for members of the Committee shall be three years but shall be eligible for re-appointment for another term.

9. The functions of the National Committee shall be to -

- (a) formulate, assess and improve the effectiveness of the policies and measures to combat money laundering;
- (b) advise the Government on legislative, regulatory and policy reforms in respect of anti-money laundering and combating predicate offences;
- (c) generally, advise the Government in relation to such other matters relating to anti-money laundering and predicate offences.

Func-
tions of
the
National
Com-
mittee

10.-(1) The Members of the National Committee shall elect one from their number to be the Vice-Chairman.

Meeting
of the
National
Committee

(2) The Chairman shall preside at every meeting of the National Committee and in his absence the Vice-Chairman shall preside at the same.

(3) In the absence of both, the Chairman and Vice-Chairman, the members present shall elect one of their number to preside at that meeting.

(4) A majority of the members of the National Committee shall constitute a quorum at any meeting.

(5) The National Committee may regulate its own procedure for the conduct of its meetings.

11. There shall be paid to the members of the National Committee such allowances or remunerations and other payments as shall be determined by the Minister.

Allowa-
nces and
remunera-
tions

PART III

• PROHIBITION OF MONEY LAUNDERING

12. A person who -

- (a) engages, directly or indirectly, in a transaction that involves property that is proceeds of a predicate offence while he knows

Offence
of money
launders-
ing

or ought to know or ought to have known that the property is the proceeds of a predicate offence;

(b) converts, transfers, transports or transmits property while he knows or ought to know or ought to have known that such property is the proceeds of a predicate offence, for the purposes of concealing, disguising the illicit origin of the property or of assisting any person who is involved in the commission of such offence to evade the legal consequences of his actions;

(c) conceals, disguises or impedes the establishment of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, while he knows or ought to know or ought to have known that such property is the proceeds of a predicate offence;

(d) acquires, possesses, uses or administers property, while he knows or ought to know or ought to have known at the time of receipt that such property is the proceeds of a predicate offence; or

(e) participates in, associates with, conspires to commit, attempts to commit, aids and abets, or facilitates and counsels the commission of any of the acts described in paragraphs (a) to (d) of this section,

commits offence of money laundering.

Penalties
for acts
of money
launder-
ing

13. Any person who contravenes the provisions of section 12 shall, on conviction:

(a) if the person is an individual, be sentenced to a fine not exceeding five hundred million shillings and not less than one hundred million shillings or to a term of imprisonment not exceeding ten years and not less than five years; or

(b) if the person is a body corporate, be liable to a fine not exceeding one billion shillings and not less than five hundred million shillings or be ordered to pay the amount equivalent to three times the market value of the property, whichever amount is greater.

Offences
by
corporate
bodies

14.—(1) Where an offence under the provisions of section 12 is committed by a body corporate or an association of persons, every person who, at the time of the commission of the offence, was -

(a) a director, manager, controller or partner; or

(b) concerned in the management of its affairs, may be convicted of that offence and shall be liable to a penalty specified in section 13 unless that person proves that, the offence was committed without his consent or connivance and that he exercised such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to the circumstances pertaining to commission of the offence.

(2) The director, manager, controller, partner or a person concerned in the management of affairs of a body corporate or an association may be convicted for an offence under subsection (1) notwithstanding that, such body corporate or association of persons has not been convicted of the offence.

(3) Any person who would have committed an offence if any act had been done or omitted to be done by him personally, commits that offence and shall on conviction be liable to the same penalty as if such act had been done or omitted to be done by his agent or officer in the course of that agent's business or in the course of that officer's employment, as the case may be, unless he proves that the offence was committed without his knowledge or consent and he took all reasonable precautions to prevent the doing of, or omission to do, such an act.

PART IV

ANTI-MONEY LAUNDERING SUPERVISION

15.-(1) A reporting person shall:

- (a) take reasonable measures to satisfy himself as to the true identity of any applicant seeking to enter into a business relationship with him or to carry out a transaction or series of transactions with him, by requiring the applicant to produce an official record reasonably capable of establishing the true identity of the applicant;
- (b) in relation to politically exposed persons, in addition to performing normal due diligence measures:
 - (i) have appropriate risk management systems to determine whether the customer is a politically exposed person;
 - (ii) obtain senior management approval for establishing business relationship with such customer;

Report-
ing
persons
to verify
customer's
identity

- (iii) take reasonable measures to establish the source of wealth and source of funds; and
 - (iv) conduct enhanced on-going monitoring of the business relationship.
- (2) The official record referred to under subsection (1) shall include:
- (a) a birth certificate or an affidavit to that effect;
 - (b) a passport or other official means of identification;
 - (c) in the case, of a body corporate, a copy of the organizations Memorandum and Articles of Association and a certificate of incorporation together with latest annual reports certified by the the Chief Executive Officer of the Business Registration and Licensing Authority; and
 - (d) any other documents as may be prescribed by the Minister in the regulations.
- (3) Where an applicant requests a bank, financial institution or any other reporting person to enter into:
- (a) a continuing business relationship;
 - (b) in the absence of such a relationship, any transaction,
- the bank, financial institution or any other reporting person shall take reasonable measures to establish whether the person is acting on behalf of another person.
- (4) Where it appears to a reporting person that, an applicant requesting him to enter into any transaction, whether or not in the course of a continuing business relationship, is acting on behalf of another person, the reporting person shall take reasonable measures to establish the true identity of any person on whose behalf or for whose ultimate benefit the applicant may be acting in the proposed transaction, whether as trustee, nominee, agent or otherwise.
- (5) In determining what constitutes reasonable measures for the purposes of subsection (1), (2) or (4), regard shall be had to all the circumstances of the case, and in particular:
- (a) to whether the applicant is a person based or incorporated in a country in which there are in force provisions applicable to it to prevent the use of the financial system for the purpose of money-laundering or terrorist financing; and
 - (b) to custom and practice as may from time to time be current in the relevant field of business.

(6) Nothing in this section shall require the production of any evidence of identity where –

- (a) the applicant himself is a reporting person to which this Act applies; or
- (b) there is a transaction or series of transactions taking place in the course of a business relationship, in respect of which the applicant has already produced satisfactory evidence of identity.

16.-(1) Every reporting person shall establish and maintain –

- (a) records of all transactions of such amount of currency or its equivalent in foreign currency as the Minister may, by order published in the *Gazette*, specify to be carried out by that person in accordance with the requirements of subsection (3); and
- (b) where evidence of a person's identity is obtained in accordance with subsection (1) of section 15, a record that indicates the nature of the evidence obtained, and which comprises of either a copy of the evidence or such information as would enable a copy of it to be obtained.

Report-
ing
persons
to
establish
and
maintain
customer
records

(2) Records required under paragraph (a) of subsection (1) shall contain particulars sufficient to identify:-

- (a) the name, address and occupation or where appropriate business or principal activity, of each person:-
 - (i) conducting the transaction;
 - (ii) if known, on whose behalf the transaction is being conducted, as well as the method used by the reporting person to verify the identity of each such person;
- (b) the nature and date of the transaction;
- (c) the type and amount of currency involved;
- (d) the type and identifying number of any account with the reporting person involved in the transaction;
- (e) if the transaction involves a negotiable instrument other than currency, the name of the drawer of the instrument, the name of the institution on which it was drawn, the name of the payee, if any, the amount and date of the instrument, the number, if any, of the instrument and details of any endorsements appearing on the instrument; and

(f) the name and address of the reporting person, and of the officer, employee or agent of the reporting person who prepared the record.

(3) A reporting person shall keep records required under subsection (1) for such period as the Minister may, by regulations prescribe.

(4) Where a reporting person is required by any provision of law to release any document referred to in section 18 before the period prescribed by the Minister, he shall retain a copy of the document and shall maintain a register of released documents with such particulars as may be prescribed in the Regulations to be made.

Report-
ing
persons
to report
suspicious
transac-
tions

17.—(1) Where a reporting person suspects or has grounds to suspect that, funds or property are proceeds of crime, or are related or linked to or are to be used for commission or continuation of a predicate offence or has knowledge of a fact or an activity that may be an indication of money laundering or predicate offence, he shall within twenty four hours after forming that suspicion and, wherever possible, before any transaction is carried out:—

- (a) take reasonable measures to ascertain the purpose of the transaction or proposed transaction, the origin and ultimate destination of the funds or property involved, and the identity and address of any ultimate beneficiary; and
- (b) prepare a report of the transaction or proposed transaction in accordance with subsection (2), and communicate the information to the FIU by any secure means as may be specified by FIU.

(2) A report required under subsection (1) shall contain such particulars as may be specified in the Regulations to be made.

(3) A reporting person who has reported a suspicious transaction or proposed suspicious transaction in accordance with this Part shall, if requested to do so by the FIU or a law enforcement agency investigating the suspicious transaction, give such further information in relation to such transaction.

(4) Any person who contravenes the provisions of subsection (1), shall, on conviction:

- (a) if the person is an individual, be liable to a fine not exceeding five million shillings or imprisonment for a term not exceeding five years;

- (b) if the person is a body corporate, be liable to a fine of not exceeding ten million or three times the market value of the property, whichever is greater.

18. A reporting person shall establish and maintain internal reporting procedures –

- (a) by designating a person to whom its employees are to report any suspicious transaction which comes to the employee's attention in the course of employment that another person is engaged in money-laundering or an act constituting a predicate offence;
- (b) for enabling designated person to have reasonable access to information that may be relevant to determining whether sufficient basis exists to report the matter pursuant to section 17(1); and
- (c) requiring the designated person to report the matter pursuant to section 17, in the event that he determines that sufficient reasons exist.

Report-
ing
persons
to
establish
and
maintain
internal
reporting
proce-
dures

19.–(1) A reporting person shall, in addition to requirements provided for under section 18 –

- (a) take appropriate measures for the purpose of making employees aware of domestic laws relating to money laundering and terrorist financing, and the procedures and related policies established and maintained by it pursuant to this Act; and
- (b) provide its employees with appropriate training in the recognition and handling of transactions relating to money laundering or financing of terrorism.

Addi-
tional
preven-
tive
measures
by
persons

(2) No person shall open or operate an account with a bank, financial institution or any other reporting person in a false, disguised or anonymous name.

(3) A bank, financial institution or any other reporting person who commits an offence under this Part, for which no penalty is specified, shall on conviction:

- (a) if the person is an individual, be liable to a fine not exceeding five million shillings or to imprisonment for a period of twelve months; and
- (b) if the person is a body corporate, be liable to a fine not exceeding ten million shillings.

(4) In determining whether a person has complied with any requirement of subsection (1), the court shall have regard to all the circumstances of the case, including such custom and practice as may from time to time be current in the relevant trade, business, profession or employment, and may take account of any relevant guidance adopted or approved by a public authority or other body that supervises, regulates or is representative of the trade, business, profession or employment carried on by that person.

Tipping
off

20.—(1) No person shall disclose or warn any person involved in the transaction or to an unauthorised third party, during the establishment or course of customer relationship or when conducting occasional transactions—

- (a) that, a suspicious transaction report under section 17 may be prepared, or is being prepared or has been sent to the Financial Intelligence Unit; or
- (b) any other information or matter, except so far as is required by this Act.

(2) Any person who contravenes the provisions of subsection (1), shall, on conviction:

- (a) if the person is an individual, be liable to a fine of not less than five hundred million shillings and not less than one hundred million shillings or to imprisonment for a term not exceeding ten years and not less than five years;
- (b) if the person is a body corporate, be liable to a fine not exceeding one billion shillings and not less than five hundred million shillings or three times the market value of the property, whichever amount is greater.

(3) In proceedings for an offence under subsection (1), it shall be a defence to prove that, the person did not know or have reasonable grounds to suspect that, the disclosure was likely to prejudice any investigation of money laundering or a predicate offence.

Secrecy
obligation
overridden

21. The provisions of this Part shall have effect, notwithstanding any obligation as to secrecy or other restrictions, upon the disclosure of information imposed by any law or otherwise.

Protection
of
reporting
persons
witness
and
informers

22.—(1) Notwithstanding any other written law, no action, suit or other proceeding shall lie against any reporting person or any director, officer, employee or representative of the reporting person on grounds of breach of banking or professional secrecy or by reason of any loss resulting from an investigation, prosecution or other legal action taken against any person, following a report or information transmitted in good

faith under this Part whether or not the suspicion proves to be well founded.

(2) In any criminal proceedings brought under this Act, the court may, upon an application by the Attorney-General, order:

- (a) witness testimony to be given through the use of communication technology such as video conferencing;
- (b) non-disclosure or limitations as to the identity and whereabouts of a witness taking into account the security of the informer or witness; or
- (c) any other protection as the court may, upon application by the Attorney-General, order.

(3) The provisions of subsection (1) of this section shall apply equally to victims in so far as are witnesses.

23.—(1) Any person, who enters or leaves the territory of the United Republic of Tanzania while transporting or is about to transport or has transported cash or a bearer negotiable instrument in any amount equal or above the amount prescribed by the Minister in Regulations, shall be subject to customs authorities which shall transmit that information to the Financial Intelligence Unit.

Obligation to report physical cross border transportation of cash or bearer negotiable instruments

(2) The customs authority shall have power to seize the whole amount of the unreported cash or bearer negotiable instruments.

(3) Where any person fails to comply with the reporting obligation provided for under subsection (1), the competent authority may impose any administrative sanction against such person.

PART V

FINANCIAL PROVISIONS

24. The funds of the FIU shall consist of—

- (a) such sums as may be appropriated by the Parliament; and
- (b) grants and donations lawfully received by the FIU.

Sources of fund

25. The Financial year of the FIU shall be the period of twelve calendar months beginning on the first day of July of every year.

Financial year

26.—(1) The FIU shall keep accounts and records of its transactions and affairs and shall ensure that all moneys received are properly brought to account and all payments out of its moneys are correctly made and properly authorised and adequate control is maintained over its property.

Accounts and audit

(2) The Commissioner shall, as soon as practicable but not later than ninety days after the thirtieth day of June in each year, cause to be submitted to the Controller and Auditor General, accounts and financial records of the FIU, who shall audit them and prepare a report on the accounts.

PART VI

MISCELLANEOUS PROVISIONS

Immunity

27. No action shall be taken against the FIU, the Commissioner, Members of the National Committee and employees of FIU in respect of any act done or omission made by the FIU, Commissioner, members of the Committee or any employee of the FIU in good faith, in the exercise of the functions conferred on the FIU under this Act and the Criminal Procedures Act.

Cap. 256

28. The procedure in relation to arrest, information gathering powers, trial, determination, confiscation, forfeiture, pecuniary penalty and restraining orders and control of property liable to confiscation, shall be in accordance with the provisions of the Proceeds of Crime Act and the Criminal Procedure Act.

Regulations

29.—(1) The Minister may make Regulations for the better carrying out of the purposes and provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations prescribing:

- (a) matters required or permitted by this Act to be prescribed;
- (b) matters which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Passed in the National Assembly on the 13th November, 2006.



.....
Clerk of the National Assembly