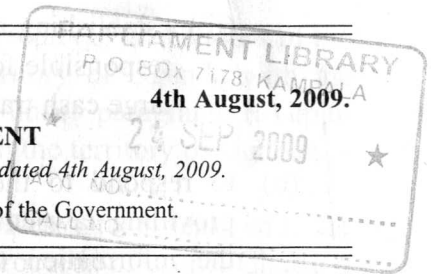


**BILLS
SUPPLEMENT No. 7**

BILLS SUPPLEMENT

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Bill No. 13 *Anti-Money Laundering Bill*

2009

THE ANTI-MONEY LAUNDERING BILL, 2009

MEMORANDUM.

1. Policy and Principles

The policy behind this Bill is to combat money laundering in the country through criminalising money laundering and controlling the financing of terrorism. A major principle of the Bill is to establish the Uganda Anti – Money Laundering Committee which shall be a policy advisory committee of Government on matters relating to anti-money laundering.

2. Object of the Bill

The object of the Bill is—

- (a) to criminalise money laundering and to provide for specific measures to detect and deter money laundering and to facilitate the investigation and prosecution of money laundering offences, including,
 - (i) establishing record keeping and customer due diligence requirements for financial services providers and other persons that engage in business, professions or activities that are susceptible to being used for money laundering;
 - (ii) the reporting of suspicious financial transactions and of cross-border movements of currency and monetary instruments, and

(iii) establishing a Financial Intelligence Authority that is responsible for dealing with reported, suspicious and large cash transaction reports and other information,

(b) to respond to the threat posed by organised crime by providing law enforcement officials and authorities with the information they need to deprive criminals of the proceeds of their criminal activities, while ensuring that appropriate safeguards are put in place to protect the privacy of persons with respect to personal information about themselves; and

(c) to enable Uganda to fulfill its international commitments to participate in the fight against transnational crime, particularly money laundering.

3. The Bill is divided into eight Parts;

3.1 Part I of the Bill in clauses 1 and 2 provides for preliminary matters relating to commencement and the interpretation of words and phrases used in the Bill. In particular, clause 2 defines an accountable person to mean any person listed in the Second Schedule to the Act. Accountable persons are the persons on whom the Bill imposes the responsibility of ensuring the prevention of money laundering under the Act. Clause 3 provides for the Jurisdiction of Uganda over crimes under the Act when—

(a) the crime is committed within the territory of Uganda;

(b) the crime is committed on board a vessel that is flying the flag of Uganda or an aircraft that is registered under the laws of Uganda at the time the crime is committed;

(c) the crime is committed by a national of Uganda or a stateless person, who has his or her habitual residence in Uganda;

(d) the crime is a crime under paragraph (g) of section 4 of the Act committed outside the territory of Uganda with the objective of committing a crime under paragraphs (a) up to (f) of section 4 of the Act within the territory of Uganda.

3.2 Part II of the Bill incorporating clauses 4 to 6 deals with the criminalization of the laundering of the proceeds of crime. Clause 4 prohibits money laundering.

3.3 Clause 5 provides that knowledge, intent or purpose required as an element of the crime of money laundering set out in this Part may be inferred from objective factual circumstances.

3.4 Part III in clauses 7 to 18 deals with money laundering prevention measures. Clause 7 provides for identification of clients, customers, other persons and other anti- money laundering measure.

3.5 Clause 8 provides for an accountable person to keep records of the information obtained under section 7 about the true identity of the person on whose behalf a business relationship is initiated or a transaction is conducted. Clause 9 deals with recording and reporting cash and money transactions.

3.6 Clause 12 requires an accountable person to make the information available to court or other competent authority for use in criminal, civil or administrative investigations, prosecutions or proceedings under the Act.

3.7 Clause 17 prohibits an accountable person from doing business with money launderers.

3.8 Part IV incorporating clauses 19 to 40 establishes the Finance Intelligence Authority. Clause 19 deals with the establishment of the Finance Intelligence Authority which is a body corporate with perpetual succession and may sue and be sued in its corporate name and do all acts and things as a body corporate may lawfully do.

3.9 Clause 20 provides for the objectives of the Authority which are to—

- (a) enhance the identification of the proceeds of crime and the combating of money laundering ;
- (b) ensure compliance with the Act;
- (c) enhance public awareness and understanding of matters related to money laundering.
- (d) make information collected by it available to competent authorities and to facilitate the administration and enforcement of the laws of Uganda; and
- (e) exchange information with similar bodies whose countries have treaties, agreements or arrangements with the Government of Uganda regarding money laundering and similar offences.

3.10 Clause 22 provides for the general powers of the Authority. Clause 23 provides for the Board which is the governing body of the Authority.

3.11 Clause 38 deals with the funds of the Authority which shall consist of money appropriated annually by Parliament for the purposes of the Authority, any Government grants made to the Authority and any other money legally acquired by the Authority.

3.12 Part V of the Bill in clauses 41 to 100 deals with seizure, freezing and forfeiture of assets in relation to money laundering. Clause 41 provides for application for a production order. Clause 42 provides for issuance of the production order.

3.13 Clause 46 allows the Authority to seize documents relevant to locating property. Under this clause, an authorised officer may—

- (a) enter upon land or into premises;
- (b) search the land or premises for any document of the type described in section 41; and

- (c) seize any document found in the course of the search that the authorised officer believes, on reasonable grounds, to be a relevant document in relation to a crime under this Act;

3.14 Clause 53 allows an authorised officer to apply ex-parte and in writing to the court for a monitoring order directing a financial institution to give information to an authorised officer.

3.15 Clause 64 provides for emergency searches and seizures where an authorised officer suspects on reasonable grounds that—

- (a) particular property is tainted 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.

3.16 Part V of the Bill in Clause 68 to 79 deals with restraining order. Clause 68 provides that, where a person is, has been charged or is about to be charged with a crime under this Act, an authorised officer may make an application to the court freezing the property, or in possession or under the control of that person, wherever such property may be.

3.17 Clause 80 deals with application for confiscation and pecuniary penalty order. This section allows an authorised officer to apply for confiscation order or pecuniary order where a person is convicted of a crime.

3.18 Clause 86 provides for protection of third parties where an application is made for a confiscation order.

3.19 Clause 90 provides for the rules of determining and assessing the value of the benefit derived by a person from the commission of a crime.

3.20 Clause 95 provides for realization of property. It provides that, where a pecuniary penalty order is made and the order is not the subject of an appeal or is not discharged, the court may, upon an application by an authorised officer, exercise the powers conferred upon the court by this section to realize the property.

3.21 Clause 96 deals with application of proceeds realized. Clause 97 provides for treatment of realizable property in bankruptcy or winding up. Clause 98 deals with disposition of confiscated property.

3.22 Clause 100 establishes a fund to be known as the Confiscated Assets Fund into which shall be paid—

- (a) proceeds from the sale of property confiscated under the Act;
- (b) the balance of any money recovered under a pecuniary penalty order under section 96; and
- (c) money paid to the Republic of Uganda by a foreign State with respect to any sharing of confiscated or forfeited property, whether under a treaty or arrangement providing for mutual assistance in criminal matters or otherwise.

3.23 Part VI in clause 102 to 110 deals with international cooperation. Clause 102 provides that a court or other competent authority of Uganda shall cooperate with courts or other competent authority of another State in taking appropriate measures to provide assistance in matters concerning money laundering and other organized crimes.

3.24 Clause 108 provides that a crime under the Act shall be deemed to be an extraditable crime under the provisions of the Extradition Act.

3.25 Clause 109 deals with provisions common to requests for mutual assistance and requests for extradition.

3.26 Part VII of the Anti –Money Laundering Bill incorporating clauses 111 to 132 deals with offences and penalties. Clause 111 prohibits money laundering. Clause 113 prohibits falsification, and concealment of documents. Clause 114 provides for failure to identify persons. Clause 115 provides for failure to keep records. Clause 116 prohibits facilitating of money laundering. Clause 119 provides for failure to report cash transactions. Clause 131 provides for penalties for the offence of money laundering. Clause 132 deals with defences.

3.27 Part VII in clauses 133 to 139 deals with miscellaneous provisions. Clause 133 provides that the Act does not limit powers of investigating authorities or supervisory bodies. Clause 134 deals with amendment of Schedules. Clause 136 provides for immunity of the Authority or an employee or representative of the Authority for anything done in good faith for furthering the provisions of the Act. Clause 138 establishes the Anti-Money Laundering Committee. Clause 139 provides for the functions of the Anti-Money Laundering Committee.

3.28 Schedule 1 of the Bill gives the value of the currency point. Schedule 2 provides for the list of accountable persons.

HON. SYDA BBUMBA,
Minister of Finance, Planning and Economic Development.

THE ANTI-MONEY LAUNDERING BILL, 2009

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A BILL for an ACT

ENTITLED

THE ANTI-MONEY LAUNDERING ACT, 2009

An Act to provide for the prohibition and prevention of money laundering, the establishment of a Financial Intelligence Authority and a Financial Intelligence Authority Board in order to combat money laundering activities; to impose certain duties on institutions and other persons, businesses and professions who might be used for money laundering purposes; to make orders in relation to proceeds of crime and properties of offenders; to provide for international cooperation in investigations, prosecution and other legal processes of prohibiting and preventing money laundering; to designate money laundering as an extraditable offence; to establish the Uganda Anti -Money Laundering Committee; and to provide for other related matters.

Be it enacted by Parliament as follows:

PART I—PRELIMINARY

1. Commencement

This Act shall come into force on date appointed by the Minister by statutory instrument

2. Interpretation

In this Act, unless the context otherwise requires—

“accountable person” means any person listed in the Second Schedule to this Act;

“authorised officer” means the director general or deputy director general of the Authority, a prosecutor of the Director of Public Prosecutions, or a police officer of the rank of assistant inspector of police or higher;

“Authority” means the Financial Information Authority established under Part IV;

“Board” means the Financial Intelligence Authority Board established under Part IV;

“cash” means coins and bank notes of Uganda or of another country that are designated as legal tender and that circulate as and are customarily used and accepted as a medium of exchange in the country of issue;

“competent authority” means investigative, prosecuting, judicial, regulatory or supervisory authorities of the Government of Uganda and includes the Financial Intelligence Authority.

“confiscation”, which includes forfeiture where applicable, means the permanent deprivation of property by an order of court;

“court” means the High Court;

“crime” means—

- (a) any activity that is a crime, offence or violation under the laws of Uganda;
- (b) any activity outside the jurisdiction of Uganda which, had it taken place in Uganda, would be a crime, offence or violation under the laws of Uganda.

“currency point” has the value given to it in the First Schedule of this Act in relation to currency point;

“defendant” means a person charged with a crime, whether or not he or she has been convicted, and includes, in the case of a proceeding for a restraining order under sections 68 through 79, a person who is about to be charged with a crime;

“document” means any record of information and includes—

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

“financial institution” means a person who carries on or transacts in the business of a bank or a credit institution, as defined in the Financial Institutions Act, or an insurance company licensed under the Insurance Act;

“freezing” or “seizure” means temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court;

“gift” means any transfer of property by a person to another person directly or indirectly—

- (a) after the commission of a crime;
- (b) for a consideration the value of which is significantly less than the value of the consideration provided by the first person; and
- (c) to the extent of the difference between the market value of the property transferred and the consideration provided by the transferee;

“gift caught by this Act” means a gift made by the defendant at any time after the commission of the crime, or if more than one, the earliest of crimes, to which the proceedings for the time being relate, and the court considers it appropriate in all circumstances to take the gift into account;

“material” means documentary material of any kind and includes information stored in a computer, disc, cassette, or on microfilm, or preserved by any mechanical or electronic device;

“Minister” means the Minister of Finance, Planning and Economic Development;

“monetary instrument” includes currency of any state or country, travelers cheques, bearer negotiable instruments, bearer investment securities, bearer securities, stock on which title is passed on delivery and similar material;

“monetary transaction” means a transaction that is conducted or concluded using a monetary instrument;

“money laundering” is the process of turning illegitimately obtained property into seemingly legitimate property and it includes concealing or disguising the nature, source, location, disposition or movement of the proceeds of crime and any activity which constitutes a crime under section 3 of this Act;

“occasional transaction” means any transaction involving cash that is conducted by any person other than through an account in respect of which the person is a customer;

“payable-through accounts” means correspondent accounts that are used directly by third parties to transact business on their own behalf.

“person” means any natural or legal person or any entity (including any charitable organization), natural or juridical, including but not limited to a corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture, or other unincorporated organization or group, capable of acquiring rights or entering into obligations;

“politically exposed persons” means individuals who are or have been entrusted with prominent functions in a country, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, and important party officials as well as family members or close associates of such individuals;

“proceeds” means any economic advantage including property derived from or obtained, directly or indirectly, from the committing of a crime, and includes property later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived from such property at any time after the committing of the crime;

“property” means property or assets of every kind, nature and description, whether movable or immovable, tangible or intangible, corporeal or incorporeal, including currency, monetary instruments, motor vehicles, ships, aircraft, boats, works of art, jewellery, precious metals, precious gems, land, and legal documents or instruments evidencing title to or interest in such property or assets;

“provisional measures” means those actions set out in sections 41 to 79 of this Act;

“realisable property” means any property held by a defendant and any property held by a person to whom a defendant has directly or indirectly made a gift caught by this Act;

“realisation” means converting any kind of property into money, such as by sale;

“recognizance” means a bond or obligation, entered into and recorded before a court or magistrate, by which a person engages himself to perform some act or observe some condition such as to appear when called upon, pay a debt or keep the peace;

“record” means any material on which data are recorded or marked and which is capable of being read or understood by a person, computer system or other device;

“requesting State” means any State which makes a request under the provisions of Part VI;

“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;

“suspicious transaction” refers to a transaction which is inconsistent with a customer’s known legitimate business or personal activities or with the normal business for that type of account or business relationship, or a complex and unusual transaction or complex or unusual pattern of transaction;

“tainted property” means property used in or in connection with the commission of a crime or constituting the proceeds of crime;

“transaction with no apparent or visible legitimate economic purpose” include—

- (a) a transaction that gives rise to a reasonable suspicion that it may involve the laundering of money or the proceeds of any crime and is made in circumstances of unusual or unjustified complexity;
- (b) a transaction whose form or features suggest that it might be intended for an illegal purpose, or the economic purpose of which is not discernible;
- (c) a customer-relationship with the financial institution that does not appear to make rational economic sense, e.g., a customer having a large number of accounts with the same bank, frequent transfers between different accounts or inordinately high liquidity;

- (d) a transaction in which assets are withdrawn immediately after being deposited, unless the customer's business activities furnish plausible reason for immediate withdrawal;
- (e) a transaction that cannot be reconciled with the usual activities of the customer(s) of the financial institution or branch office in question, and in which the reason for the customer's choice of that particular financial institution or branch cannot be ascertained;
- (f) a transaction which, without plausible reason, results in the intensive use of what was previously a relatively inactive account, such as a customer's account which shows virtually no normal personal or business related activities but is used to receive or disburse unusually large sums which have no obvious purpose or relationship to the customer and/or his business;
- (g) a transaction which is incompatible with the financial institution's knowledge and experience of the customer in question or with the purpose of the business relationship.

3. Jurisdiction

(1) Notwithstanding the provisions of any other law, Uganda shall have jurisdiction over the crimes under this Act when—

- (a) the crime is committed within the territory of Uganda;
- (b) the crime is committed on board a vessel that is flying the flag of Uganda or an aircraft that is registered under the laws of Uganda at the time the crime is committed ;
- (c) the crime is committed by a national of Uganda or a stateless person, who has his or her habitual residence in Uganda;
- (d) the crime is a crime under paragraph (g) of section 4 of this Act committed outside the territory of Uganda with the objective of committing a crime under paragraphs (a) up to (f) of section 4 of this Act within the territory of Uganda.

(2) The crimes provided for in Part II of this Act shall be investigated by a competent authority, tried, judged and sentenced by a court regardless of whether or not the crimes occurred outside the territory of Uganda.

PART II—CRIMINALISATION OF THE LAUNDERING OF PROCEEDS OF CRIME

4. Prohibition of money laundering

It is prohibited for any person to intentionally—

- (a) convert, transfer, transport or transmit property, knowing or suspecting that such property to be the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the crime generating the proceeds to evade the legal consequences of his or her actions; or
- (b) conceal, disguise or impede the establishment of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing or suspecting that such property to be the proceeds of crime; or
- (c) acquire, possess, use or administer property, knowing, at the time of receipt, that the property is the proceeds of crime; or
- (d) act to avoid the transaction reporting requirements provided in Part 3 of this Act; or
- (e) assist another to benefit from known proceeds of crime; or
- (f) use known proceeds of crime to facilitate the commission of a crime; or
- (g) participate in, associate with, conspire to commit, attempt to commit, aid and abet, or facilitate and counsel the commission of any of the acts described in subsections (a) to (f).

5. Evidence of state of mind

Knowledge, intent or purpose required as an element of the crime of money laundering set out in this Part may be inferred from objective factual circumstances.

6. Separate crime

The crime of money laundering under this Act—

- (a) is a crime distinct from and in addition to other crimes under the laws of Uganda, including the crime generating the proceeds subject to the money laundering; and
- (b) may be charged without the person having been convicted of the crime of generating the proceeds of money laundering.

PART III—MONEY LAUNDERING PREVENTION MEASURES

7. Identification of clients, customers, other persons and other anti-money laundering measures

An accountable person—

- (a) who maintains accounts for clients or customers, shall maintain such accounts in the true name of the account holder, and shall not open or keep anonymous accounts or accounts which are in fictitious or incorrect names;
- (b) shall not initiate a business relationship or carry out an occasional transaction, including the opening of a new account or issuing a passbook, entering into a fiduciary transaction, renting a safe deposit box, performing a cash transaction over two thousand five hundred currency points, or conducting a wire transfer, without undertaking customer due diligence measures, including obtaining, recording and verifying by reliable means—
 - (i) the identity of the client, including true name, address including postal and residential, employment, and occupation;

- (ii) the client's representative capacity, if any;
 - (iii) if the client is acting on behalf of another person, the identity of that other person and the client's authority to act on behalf of that other person;
 - (iv) if another person is acting on behalf of the client, the identity of that other person, and the other person's authority to act on behalf of the client; and
 - (v) such other identifying information as may be specified by the Minister, upon the advice of the Board and the Authority;
- (c) shall undertake further customer due diligence measures to—
- (i) verify the customer's identity using reliable, independent source documents, data or information, such as passports, birth certificates, driver's licenses, identity cards, voters roll cards, utility bills, bank statements, partnership contracts and incorporation papers or other identification documents prescribed by regulations made under this Act, in addition to documents providing convincing evidence of legal existence and the powers of legal representatives;
 - (ii) verify the identity of the beneficial owner of the account, in the case of legal persons and other arrangements, including taking reasonable measures to understand the ownership, control and structure of the customer obtaining information concerning provisions regulating the power to bind the legal person and verifying that any person purporting to act on behalf of the customer is so authorised, and to identify those persons;
 - (iii) obtain information on the purpose and intended nature of the business relationship; and

- (iv) conduct ongoing due diligence on the business relationship and scrutiny of transactions undertaken throughout the course of the relationship to ensure that the transactions being conducted are consistent with the accountable person's knowledge of the customer and the customer's business, including, where necessary, the source of funds;
- (d) shall verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting a transaction for an occasional customer, and complete the verification as soon as reasonably practicable following the establishment of the relationship where the money laundering risks are effectively managed and where it is essential not to interrupt the normal conduct of business;
- (e) shall apply to each of its customers due diligence measures, but may determine the extent of such measures on a risk sensitive basis depending on the type of customer, business relationship or transaction, and—
 - (i) for higher risk categories, shall perform enhanced due diligence;
 - (ii) in certain circumstances, where there are low risks, may apply reduced or simplified measures;
- (f) shall undertake enhanced customer due diligence measures to determine the true identity of the client if—
 - (i) there are any doubts that a client is acting on his or her own behalf, particularly in the case of a juridical person who is not conducting any commercial, financial, or industrial operations in Uganda where it has its headquarters or domicile;
 - (ii) there are any doubts about the veracity or adequacy of obtained customer identification data;

- (iii) there is a suspicion of money laundering or terrorist financing;
- (g) shall, in addition to normal due diligence measures, in relation to politically exposed persons—
 - (i) have appropriate risk management systems to determine whether a customer is a politically exposed person;
 - (ii) establish appropriate guidelines to monitor business relations with such customers;
 - (iii) take reasonable measures to establish the source of wealth or funds;
 - (iv) conduct ongoing monitoring of the business relations; and
 - (v) obtain the approval of senior management before establishing a business relationship with the customer;
- (h) shall, in addition to normal due diligence measures, in relation to cross-border correspondent banking and other similar relationships—
 - (i) gather sufficient information about a respondent institution to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the institution and the quality of supervision, including whether it has been subject to a money laundering or terrorist financing investigation or regulatory action;
 - (ii) assess the respondent institution's anti-money laundering and terrorist financing controls;
 - (iii) document the respective responsibilities of the accountable person and the respondent institution;

- (iv) with respect to payable-through accounts, be satisfied that the respondent institution has verified the identity of and performed on-going due diligence on the customers having direct access to accounts of the correspondent and that it is able to provide relevant customer identification data upon request to the correspondent bank;
- (v) refuse to enter into, or continue, a correspondent banking relationship with shell banks or a respondent institution that is known to permit its accounts to be used by shell banks; and
- (vi) obtain approval from senior management before establishing a new correspondent relationship;
- (i) shall not, when unable to comply with the provisions of this section, open the account, commence the business relationship, or conduct the transaction, or shall terminate the business relationship, and consider making a suspicious transactions report in relation to the customer as provided in section 9;
- (j) shall apply the provisions of this section to existing customers on the basis of materiality and risk, and shall conduct due diligence on such existing relationship at appropriate times;
- (k) shall develop programmes against money laundering and terrorist financing, including—
 - (i) the development of internal policies, procedures, and controls, including appropriate compliance management arrangements, and adequate screening procedures to ensure high standards when hiring employees;
 - (ii) an ongoing employee training programme;
 - (iii) an audit function to test the system;

- (l) shall take measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in such accountable person;
- (m) who maintains accounts for clients or customers shall appoint a Money Laundering Control Officer to oversee its anti - money laundering and control of terrorist financing programmes and the Minister upon advice from the Authority, may, by regulation, determine the managerial position and related responsibilities of such an officer;
- (n) who relies on an intermediary or a third party to undertake its obligations under this section or to introduce business to it shall—
 - (i) immediately obtain the necessary information required by section 7;
 - (ii) ensure that copies of identification data and other relevant documentation relating to the requirements in section 7 are made available to it from the intermediary or the third party upon request, without delay;
 - (iii) satisfy itself that the intermediary or third party is regulated and supervised and has measures in place to comply with the requirements set out in section 7.

8. Maintenance of records

An accountable person shall—

- (a) establish and maintain for at least ten years the information obtained under section 7 about the true identity of the person on whose behalf a business relationship is initiated or a transaction is conducted;

- (b) establish and maintain, during the period in which business relations are in effect, and for at least ten years after their conclusion, in readily recoverable form, the records of the information and documentation required under this Part;
- (c) establish and maintain records on customer identification, account files, and business correspondence as determined by the Minister, upon advice of the Authority, for at least five years after the account has been closed; and
- (d) establish and maintain records to enable the reconstruction of transactions required to be reported under this Act, for at least ten years after the conclusion of the transaction, including the—
 - (i) dates;
 - (ii) amounts involved;
 - (iii) types of currency involved;
 - (iv) parties to the transaction and their addresses;
 - (v) accounts involved;
 - (vi) nature of the transaction;
 - (vii) manner in which the identity of the client and the person acting on behalf the client was established;
 - (viii) the name of the person who obtained the information; and
 - (ix) the documents obtained to verify identity;
- (e) establish and maintain the records required in this section in electronic form.

9. Recording and reporting cash and monetary transactions

(1) For each cash and monetary transaction involving a domestic or foreign currency exceeding two thousand five hundred currency points, an accountable person shall record the cash or monetary transaction on the form designated as Form A as may be appended to regulations made by the Minister, on the advice of the Authority.

(2) The information required by Form A shall be recorded, accurately and completely, by the accountable person on the day the transaction has occurred and the Form A shall be maintained for a period of ten years from the date of the transaction.

(3) Multiple cash and monetary transactions which altogether exceed the prescribed amount shall be treated as a single transaction if they are undertaken by or on behalf of any one person during any one day or such other period prescribed by the Minister, upon advice of the Authority, and shall be recorded on Form A as if they were a single transaction under this section.

(4) Transactions conducted on their own account between accountable persons subject to supervision by authorities of the Government of Uganda are not required to be recorded on Form A.

(5) A copy of the Form A completed under the requirements of this section shall be filed with the Authority, within such time as is prescribed by the Minister, upon advice of the Authority.

10. Monitoring and reporting of suspicious transactions

(1) An accountable person shall—

- (a) pay special attention to all complex, unusual or large transactions, whether completed or not, and to all unusual patterns of transaction which have no apparent economic or lawful purpose;
- (b) pay special attention to—
 - (i) transactions made on behalf of a person whose identity has not been established to the satisfaction of the officer or employee performing the transaction;
 - (ii) business relations and transactions with persons in jurisdictions that do not have adequate systems in place to prevent or deter money laundering or the financing of terrorism;

- (iii) electronic funds transfers, other than an electronic funds transfer referred to in subsections 15(2) and (3) that do not contain complete originator information;
- (c) upon suspicion that a transaction described in subsection (1)(a) and (b) could constitute or be related to illegal activities, including facilitating the transfer of the proceeds of crime, seeking to avoid the reporting duty under section 9, the financing of terrorism, and evasion of the duty to pay any tax or duty—
 - (i) examine as far as possible and seek information as to the origin and destination of the money, the background and purpose of the transaction or business relationship, and the identity of the transacting parties, including any ultimate beneficiary;
 - (ii) as soon as practicable, after forming the suspicion or receiving the information, but not later than two working days, report the suspicious transaction to the Authority, on the form designated as Form B as may be appended to the regulations made by the Minister, on the advice of the Authority and shall be accompanied by copies of documentation directly relevant to that suspicion and the grounds on which it is based;
- (d) upon making a report or giving any information to the Authority under subsection (1)(c)(ii), if requested by the Authority, give the Authority any further information it has about the transaction or attempted transaction or the parties to the transaction;
- (e) exercise particular vigilance with regard to transactions originating from jurisdictions which do not impose sufficient obligations with regard to customer identification or the monitoring of transactions.

(2) Where a supervisory authority or an auditor of an accountable person suspects or has reasonable grounds to suspect that information that it has concerning any transaction or attempted transaction may be—

- (a) related to the commission of an offence, a money laundering offence or an offence of the financing of terrorism;
- (b) relevant to an act preparatory to an offence of the financing of terrorism;
- (c) an indication of money laundering or the financing of terrorism,

the supervisory authority or the auditor shall, as soon as practicable after forming that suspicion or receiving the information, but no later than two working days, report the transaction or attempted transaction to the Authority.

11. Cross border movements of currency and negotiable bearer instruments

(1) For domestic or foreign currency or negotiable bearer instruments which do not pass through the normal banking procedures or Uganda's financial system, exceeding 1,500 currency points, being transported or sent across the national borders of Uganda—

- (a) the person intending to transport or send such currency or monetary instrument shall, before that person transports or sends the currency or monetary instrument, notify the Customs and Excise Department of the Uganda Revenue Authority on the form designated as Form C appended to the regulations made under this Act; and
- (b) the Customs and Excise Department of the Uganda Revenue Authority shall without delay forward a copy of the Form C completed under the requirements of this section to the Authority;

(2) Any person entering into Uganda and carrying domestic cash or foreign currency or negotiable bearer instruments exceeding 1,500 currency points shall file a report designated as form D, provided by the Customs and Excise department appended to the regulations made under this Act and shall forward a copy to the Authority.

12. Availability of records

(1) In regard to information in records, reports, and other documentation required under this Part and in accordance with the laws of Uganda—

- (a) accountable persons shall make the information available to the court, or other competent authorities for use in criminal, civil, or administrative investigations, prosecutions, or proceedings, as the case may be, regarding crimes under this Act;
- (b) the competent authorities shall share the information with other appropriate competent authorities of Uganda when the information concerns crimes under this Act;
- (c) the competent authorities may share the information with the competent authorities of other countries when it concerns crimes under this Act;
- (d) the competent authorities shall treat as confidential such information, except insofar as such information is necessary for use in criminal, civil or administrative investigations, prosecution or proceedings, as the case may be, regarding crimes under this Act;

(2) Where a competent authority requests an accountable person to advise whether—

- (a) a specified person is or has been a client;
- (b) a specified person is acting or has acted on behalf of any client; or
- (c) a client is acting or has acted for a specified person,

the accountable person shall promptly provide the competent authority with the information.

13. Admissibility of records

A record, report, notice or other document kept under this Part, or a certified extract of any document, or a certified printout of any electronic record, is on its production in a matter before a court admissible as evidence of any fact contained in it of which direct oral evidence would be admissible.

14. Electronic Funds Transfers

(1) An accountable person who transacts in electronic funds transfers and other forms of funds transfers shall include accurate originator information and other messages related to those electronic funds transfers and other forms of funds transfers and such information shall remain with the transferer.

(2) Subsection (1) shall not apply to an electronic funds transfer other than a money transfer effected by the use of a credit or debit card as a means of payment that results from a transaction carried out using a credit or debit card, provided that the credit or debit card number is included in the information accompanying such transfer.

(3) Subsection (1) shall not apply to electronic funds transfers and settlements between accountable persons where the originator and beneficiary of the funds transfer are acting on their own behalf.

15. Obligations of confidentiality not an impediment

(1) An obligation as to bank or professional secrecy, confidentiality and no other restrictions on the disclosure of information whether imposed by law or any agreement shall not affect any obligation under this Act to report or furnish information.

(2) Subsection (1) shall not apply to communications between an advocate and a client which are privileged under the laws of Uganda.

16. Immunity from liability

Where a report is made or information is furnished in good faith under this Act, the accountable person, its employees, officers, directors, and agents shall not be criminally, civilly or administratively liable for complying with this Part or for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, regardless of the result of the communication.

17. Refraining from doing business with money launderers

Subject to the requirements of section 14, every accountable person shall take such measures as are reasonably necessary to ensure that neither it nor any service offered by it is used by a person to commit or facilitate the crime of money laundering and financing of terrorist activities.

18. Continuing the transaction

An accountable person who is party to a transaction and is required to make a report under sections 9 or 10 may continue with and carry out the transaction in respect of which the report is required as long as the accountable person complies with the requirements of this Act.

PART IV—FINANCIAL INTELLIGENCE AUTHORITY.**19. Establishment of the Authority**

(1) There is established a Financial Intelligence Authority.

(2) The Authority is a body corporate with perpetual succession and may sue and be sued in its corporate name and do all acts and things as a body corporate may lawfully do.

(3) The Authority shall have its head office in Kampala and may establish branches elsewhere in Uganda as it may decide.

20. Objectives

The objectives of the Authority are to—

- (a) enhance the identification of the proceeds of crime and the combating of money laundering ;
- (b) ensure compliance with this Act;
- (c) enhance public awareness and understanding of matters related to money laundering.
- (d) make information collected by it available to competent authorities and to facilitate the administration and enforcement of the laws of Uganda; and

- (e) exchange information with similar bodies whose countries have treaties, agreements or arrangements with the Government of Uganda regarding money laundering and similar offences.

21. Functions

To achieve its objectives, the Authority shall—

- (a) process, analyse and interpret information disclosed to it and obtained by it in terms of this Act;
- (b) refer any matter or information derived from any report or information it receives to the appropriate law enforcement agency in Uganda if, on the basis of its analysis and assessment, it has reasonable grounds to suspect that the transaction would be relevant to the investigation or prosecution of a money laundering offence, a terrorist financing offence or a serious offence, and in their connection the Authority may send a copy of such referral or information to the relevant supervisory authority;
- (c) inform, advise and cooperate with other competent authorities;
- (d) give guidance to accountable persons, competent authorities, and other persons regarding compliance with the provisions of this Act;
- (e) retain the information referred to in paragraph (a) in the manner and for the period prescribed by the Minister, upon the advice of the Authority;
- (f) maintain comprehensive statistics on suspicious transaction reports received and disseminated; on money laundering and terrorist financing investigations, prosecutions and convictions; on property frozen, seized and confiscated; and on mutual legal assistance or other international requests for cooperation; and
- (g) be responsible for the collection of the fines adjudicated under this Act.

22. General powers of the Authority

The Authority may do all that is necessary or expedient to perform its functions effectively, and in particular—

- (a) establish its own structure, staffing levels and the terms and conditions of service as determined by the Board and approved by the Minister;
- (b) assign employees and seconded personnel to particular posts within the Authority;
- (c) establish rules and procedures for career development and disciplining of staff;
- (d) manage the Authority's finances and assets;
- (e) obtain the services of any person by agreement, or from any government agency, to perform any specific act or function;
- (f) enter into contracts and acquire or dispose of any right in or to property;
- (g) open and operate its own bank accounts;
- (h) insure itself against any loss, damage, risk or liability;
- (i) engage in any lawful activity, whether alone or together with any other organization in Uganda or elsewhere, aimed at promoting its objectives; and
- (j) do anything that is incidental to the exercise of any of its powers.

23. Financial Intelligence Authority Board

The governing body of the Authority shall be the Board.

24. Functions of the board

(1) The board shall—

- (a) formulate the policies of the Authority;
- (b) advise the Minister on the exercise of the powers entrusted to the Minister under this Act;

- (c) ensure the proper functioning of the Authority in accordance with this Act;
- (d) act as a forum in which the Authority, associations representing categories of accountable persons, and competent authorities can consult one another;
- (e) determine the structure, staffing levels and terms and conditions of service of the Authority; and
- (f) subject to sections 28, 30 and 31 appoint, remove and suspend the members of staff of the Authority.

(2) The board shall not interfere in the day to day conduct of business of the Authority.

25. Composition of the Board

(1) The following shall be the members of the Board—

- (a) the Chairperson of the Board;
- (b) the Director General of the Authority, or in his absence, the Deputy Director General;
- (c) a representative of the Ministry of Finance Planning and Economic Development;
- (d) a representative of the Bank of Uganda;
- (e) a representative of the Ministry of Internal Affairs, in the Immigration Department;
- (f) a member from the private sector.
- (g) a representative of the Ministry of Justice and Constitutional Affairs;
- (h) a representative of the Inspector General of Government's Office; and
- (i) a representative of the President's Office (Internal Security).

(2) The Minister shall appoint the Chairperson of the board and one other member of the private sector.

(3) The members of the board shall hold office on terms and conditions specified in their instruments of appointment.

26. Tenure and removal of members of the board

(1) Members of the board shall serve a term of three years, and may be reappointed for one more term.

(2) A member of the board may resign his or she office by writing under his or she hand addressed to the Minister and the resignation shall take effect one month from the date of receipt of the letter of resignation by the Minister.

(3) Where a member of the board dies or resigns or otherwise vacates office before the expiry of the term for which he or she was appointed, the Minister may appoint another person in his or her place and the person so appointed shall hold office for the unexpired term of office of the person in whose place he or she is appointed.

(4) A member of the Board may be removed from office by the Minister if he or she—

- (a) becomes of unsound mind or is incapable of performing the duties of his or her office;
- (b) fails, omits or neglects to carry out his or her responsibilities as a board member;
- (c) becomes bankrupt or suspends payment or compounds with his or her creditors; or
- (d) is convicted of an offence punishable by more than three months imprisonment or is convicted of an offence involving fraud or dishonesty;
- (e) fails to attend, without lawful excuse, three consecutive meetings of the Board or is absent from four board meetings for a consecutive period of six months.

27. Meetings and procedures of the board

To conduct the business of the board—

- (a) the board shall meet for the discharge of its functions as often as business requires and in any case the Board shall meet not less than four times in a year ;
- (b) the board—
 - (i) may determine its own procedures at meetings;
 - (ii) may request advice and assistance from such persons as it considers necessary to assist it to perform its functions;
 - (iii) may appoint committees from its members to assist it in the performance of its functions;
- (c) a quorum constituting a majority of the members shall be present at a meeting, and a decision or action shall be approved by a majority of those present after a quorum is established;
- (d) when a decision or action is to be taken by the board and it is not feasible to call a meeting, the decision or action shall become effective and binding if—
 - (i) the proposed decision or action is circulated in writing among the members of the board;
 - (ii) an opportunity is given to each board member to comment in writing on the proposed action or decision within a reasonable time; and
 - (iii) less than a majority of the members object in writing within the time prescribed.

28. Appointment of the director general

(1) There shall be a director general of the Authority who shall be appointed by the Minister on the recommendation of and on terms and conditions determined by the board.

(2) The director general shall be a person with professional qualifications and relevant experience in law, administration, banking, finance or economics.

(3) The person appointed director general shall hold office—

- (a) for a term of five years; and
- (b) on terms and conditions set out in a written employment contract which shall include specific and objectively measurable performance standards.

(4) The Minister may on the recommendation of the board, renew the appointment of the director general for an additional term of office.

29. Responsibilities of director general

(1) The director general shall be the chief executive officer of the Authority, and shall be responsible for the day-to-day affairs of the Authority.

(2) In the performance of his or her duties, the director general shall be accountable to the Board for all decisions made on behalf of the Authority in the exercise of its powers and in the performance of its functions.

30. Removal or suspension from office

(1) The Minister may on recommendation of the board, remove the director general from office for misconduct, incapacity or incompetence.

(2) The Minister may on recommendation of the board, suspend the director general from office, pending the determination of any enquiry as to the existence of any of the grounds in subsection (1).

31. Appointment of deputy director general

There shall be Deputy Director General who shall be appointed and serve in the same manner as the director general as specified in sections 28 and 30.

32. Staff

(1) The staff of the Authority shall consist of the Director General, the Deputy Director General, and persons appointed as employees of the Authority by the Board.

(2) An employee of another component of the Government of Uganda may be seconded to the Authority as staff by agreement between the Authority and such component of the Government.

(3) Staff members shall perform their duties subject to the supervision and directions of the Director General.

(4) Where a person employed in public service is seconded to the Authority, the period of his or her service with the Authority must be calculated as part of and continuous with his or her employment in the public service, for purposes of leave, pension and any other condition of service.

(5) The provisions of any pension law applicable to a public service employee seconded to the Authority or, in the event of his or her death, to his or her dependants, which are not inconsistent with this section, must, with the necessary changes, continue so to apply.

(6) All other conditions of service of the staff of the Authority are as determined by the Board under the provisions of this Act.

33. Reports to the board

(1) The director general shall report to the Board from time to time on the performance of the Director General's responsibilities and the Authority's functions and powers under this Act.

(2) The director general shall keep the Board informed of any matter that could materially affect public policy or the strategic direction of the Authority and any other matter that the Board considers necessary.

(3) The Director General shall not disclose any information that would directly or indirectly identify an individual who provided a report or information to the Authority, or a person or an entity about whom a report or information was provided under this Act.

34. Receipt of reports and information

The Authority—

- (a) shall receive reports made under this Act, information provided to the Authority by any agency of another State that has powers and duties similar to those of the Authority, by law enforcement agencies or other components of the government, and other information about suspicions of money laundering, that is voluntarily provided to the Authority;
- (b) shall have power to collect information that the Authority considers relevant to money laundering activities, including further information on parties or transactions referred to in a report made to it under this Act from any accountable person, commercially available databases or stored in databases maintained by the Government of Uganda for purposes related to law enforcement;
- (c) shall have power to obtain information from any government agency, law enforcement agency and supervisory agency for purposes of this Act;
- (d) shall analyse and assess such reports and information; and
- (e) shall retain each report and information for the period determined by the Authority.

35. Disclosure and use of information

(1) The Authority may disclose information to an institution or agency of a foreign state or of an international organisation established by the governments of foreign states, that has powers and duties similar to those of the Authority where—

- (a) the Authority has reasonable grounds to suspect that the information would be relevant to the investigation or prosecution of a money laundering offence or a substantially similar offence; and
- (b) the Government of Uganda has a treaty, agreement or arrangement with that foreign state or international organization regarding the exchange of such information.

(2) Agreements or arrangements entered into under subsection (1) (b) shall restrict the use of information to purposes relevant to investigating or prosecuting a money laundering offence or a substantially similar offence.

(3) A person who obtained or who has or had access to such information referred to in subsection (1) in the course of exercising powers or performing duties and functions under this Act, shall not use the information for a purpose other than exercising those powers or performing those duties and functions.

(4) A suit or other legal proceedings shall not lie against any person providing information to the Authority in good faith under this Act.

36. Contracts and agreements

(1) The Authority may, for the purpose of exercising its powers or performing its duties and functions under this Act, enter into contracts, memoranda of understanding and other agreements with a department or an agency of the Government of Uganda and with any other person or organisation, whether inside or outside Uganda, in its own name.

(2) Agreements relating to the Authority's collection of information from databases referred to in this Act must specify the nature of and limit with respect to the information that the Authority may collect from the database.

37. Legal proceedings

- (a) actions, suits or other legal proceedings in respect of any right or obligation acquired or incurred by the Authority shall be brought in its own name;

- (b) no action shall not lie against the Authority, any employee of the Authority or any person acting under the direction of the Director General for anything done in good faith in the administration or discharge of any powers, duties or functions that under this Act are intended or authorised to be exercised or performed.

38. Funds of the authority

The funds of the Authority shall consist of money appropriated annually by Parliament for the purposes of the Authority, any Government grants made to it, and any other money legally acquired by it.

39. Fiscal year of the Authority

The fiscal year of the Authority shall be the same as that of Government.

40. Audit

The Auditor General, or an auditor appointed by the Auditor General to act on his or her behalf, shall audit and report on the accounts and financial records of the Authority.

PART V—SEIZURE, FREEZING AND FORFEITURE OF ASSETS IN RELATION TO MONEY LAUNDERING

Production orders

41. Application for production order

Where an authorised officer has reasonable grounds for suspecting that any person has possession or control of—

- (a) a document or documents relevant to identifying, locating or quantifying suspected tainted property of the person, or to identifying or locating a document necessary for the transfer of such property by such person; or
- (b) a document or documents relevant to identifying, locating or quantifying tainted property in relation to the crime, or to identifying or locating a document necessary for the transfer of tainted property in relation to the crime,

the authorised officer may apply *ex parte* in writing to court for an order against the person suspected of having possession or control of the document or documents and the application shall be supported by an affidavit.

42. Issuance of production order

The court may, if it considers that there are reasonable grounds for so doing, make an order requiring a person to produce to an authorised officer, at a time and place specified in the order, any document or documents of the kind referred to in section 41.

43. Authority to inspect, copy and retain under the production order

(1) An authorised officer to whom documents are produced under to a production order may—

- (a) inspect the documents;
- (b) make copies of the documents; or
- (c) retain the documents for as long as is reasonably necessary for the purposes of this Act.

(2) Where an authorised officer retains documents produced to him or her, he or she shall provide a copy of the documents to the person who produced them, acknowledging on the copies that the authorised officer possesses the original documents.

(3) A person is not entitled to refuse to produce documents ordered to be produced under section 42 on the ground that—

- (a) the document might tend to incriminate the person or make the person liable to a penalty; or
- (b) the production of the document would be in breach of an obligation whether imposed by law or otherwise of the person not to disclose either the existence or contents, or both, of the document.

44. Relief from the court

Where production of documents pursuant to an order of court under section 42 would be unreasonably oppressive or burdensome or otherwise would create extreme hardship, the person subject to the order may apply to the court for relief from the order and the court may modify or revoke the order.

45. Production orders in relation to foreign crimes

Where a foreign state requests assistance to locate or seize property suspected to be tainted property in respect of a crime within its jurisdiction, the provisions of sections 41 to 44 apply *mutatis mutandis*.

*Document search warrant***46. Authority to search for and seize documents relevant to locating property**

(1) An authorised officer may—

- (a) enter upon land or into premises;
- (b) search the land or premises for any document of the type described in section 41; and
- (c) seize any document found in the course of the search that the authorised officer believes, on reasonable grounds, to be a relevant document in relation to a crime under this Act.

(2) The entry, search or seizure under subsection (1) shall be made—

- (a) with consent of the occupier or owner of the land or the premises; or
- (b) under a warrant issued under section 48.

47. Application for document search warrant

Where—

- (a) a person has been charged or convicted of a crime, or

(b) an authorised officer has reasonable grounds for suspecting that there is, or may be within the next hours, upon any land or upon or in any premises, a document referred to in section 41, the authorised officer may make an application supported by an affidavit to a court for a search warrant in respect of that land or those premises.

48. Issuance of document search warrant

Where an application is made under section 47 for a warrant to search land or premises, the court may issue a warrant authorizing an authorised officer whether or not named in the warrant, with such assistance and by such force as is necessary and reasonable—

- (a) to enter upon the land or in or upon the premises and to search the land or premises for documents of the type referred to in section 41; and
- (b) to seize documents found in the course of the search that the authorised officer believes on reasonable grounds to be property of that type.

49. Preconditions for a document warrant

A court shall not issue a warrant under section 48 unless it is satisfied that—

- (a) a production order has been given in respect of the document and has not been complied with;
- (b) a production order in respect of the document would be unlikely to be effective;
- (c) the investigation for the purposes of which the search warrant is being sought might be seriously prejudiced if the authorised officer does not gain immediate access to the document without any notice to any person; or
- (d) the document involved cannot be identified or described with sufficient particularity for a production order to be obtained.

50. Particulars of document warrant

A warrant issued under section 48 shall state—

- (a) the purpose for which it is issued, including a reference to the nature of the relevant crime under this Act;
- (b) a description of the kinds of documents 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.

51. Authority to seize documents and other evidence

If during the course of searching under a warrant issued under section 48, an authorised officer finds—

- (a) a document of the type referred to in section 41 that the authorised officer believes on reasonable grounds to relate to the relevant crime; or
- (b) anything the authorised officer believes on reasonable grounds will afford evidence as to the commission of a crime;

the authorised officer may seize that document or thing and the warrant shall be deemed to authorize such seizure.

52. Search warrants in relation to foreign crimes

Where a foreign state requests assistance to locate or seize property suspected to be tainted property in respect of a crime within its jurisdiction, the provisions of sections 46 to 51 apply with the necessary modifications.

*Monitoring orders***53. Application for monitoring order**

(1) An authorised officer may apply *ex parte* and in writing to the court for a monitoring order directing a financial institution to give information to give information to an authorised officer.

(2) The application under subsection (1) shall be supported by an affidavit.

54. Issuance of monitoring order

Where an application is made for a monitoring order under section 53, the court may make an order directing that a financial institution disclose information obtained by the institution about transactions conducted through an account held by a particular person with the institution.

55. Particulars of monitoring order

A monitoring order issued under section 54 shall—

- (a) apply for a maximum period of three months from the date of the order;
- (b) state the name or names in which the account is believed to be held; and
- (c) state the information that the institution is required to give.

56. Preconditions for monitoring order

The court shall not issue a monitoring order under section 54 unless it is satisfied that there are reasonable grounds for suspecting that the person in respect of whose account the order is sought—

- (a) has committed or was involved in the commission, or is about to commit or be involved in the commission of a crime; or
- (b) has benefited directly or indirectly, or is about to benefit directly or indirectly from the commission of a crime.

57. Monitoring orders not to be disclosed

(1) An employee or agent of a financial institution that is, or has been subjected to a monitoring order shall not disclose the existence or operation of the order to any person other than—

- (a) another employee or agent of the institution for the purpose of ensuring compliance with the order;
- (b) a legal adviser for the purpose of obtaining legal advice or representation in respect of the order; or

- (c) an authorised officer, authorised in writing to receive the information.

(2) A person referred to in subsection (1) (a), (b), or (c) shall not disclose the existence or operation of a monitoring order except to another person so described, and may do so only for the purposes of the performance of the person's duties or functions.

(3) Nothing in this section prevents the disclosure of information concerning a monitoring order for the purposes of or in connection with legal proceedings or in the course of proceedings before a court, provided that nothing in this section shall be construed as requiring a legal advisor to disclose to any court the existence or operation of a monitoring order.

Warrant for tainted property

58. Authority to search and seize tainted property

(1) An authorised officer may—

- (a) search a person for tainted property; or
- (b) enter upon land and upon or into premises and search the land or premises for tainted property;

(2) An Authorised officer may while searching under subsection (1), seize any property found in the course of the search that the authorised officer believes, on reasonable grounds, to be tainted property.

(3) The seizure under subsection (1) shall be—

- (a) with the consent of the person, or the occupier or owner of the land or premises, as the case may be; or
- (b) under a warrant issued under section 60.

(4) Where an authorised officer may search a person under this section, 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.

59. Application for tainted property search warrant

Where an authorised officer has reasonable grounds for suspecting that there is, or may be within the next seventy two hours, tainted property of a particular kind—

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

the authorised officer may present to the court an affidavit 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 tainted property of that kind.

60. Issuance of search warrant

Where an application is made under section 59 for a warrant to search a person, land or premises, the court may issue a warrant authorising an authorised officer whether or not named in the warrant, with such assistance and by such force as is necessary and reasonable—

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

61. Charge not a prerequisite to issuance

(1) Subject to subsection (2) a warrant may be issued under section 60 in relation to tainted property whether or not a charge has been filed in respect of the relevant crime.

(2) A court shall not issue a warrant under section 61, where a charge has not been filed in respect of the relevant crime unless at the time when the application for the warrant is made, the court is satisfied that—

- (a) a charge will be filed in respect of the relevant crime within 30 days; and
- (b) the property is tainted property.

62. Particulars of search warrant

A warrant issued under section 60 shall state—

- (a) the purpose for which it is issued, including a reference to the nature of the relevant crime;
- (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.

63. Authority to seize other tainted property or evidence

(1) Where during the course of searching under a warrant issued under section 60, an authorised officer finds—

- (a) property that the authorised officer believes on reasonable grounds to be tainted property either of a type not specified in the warrant or tainted property in relation to a crime; or
- (b) anything the authorised officer believes on reasonable grounds will afford evidence as to the commission of a crime under this Act,

the authorised officer may seize that property or thing and the warrant shall be deemed to authorize such seizure.

(2) Where property is seized under subsection (1), the authorised officer shall, within five days after the seizure, apply to the court to amend the warrant to include the property seized.

(3) Where the court considers that there are reasonable grounds for doing so, it shall amend the warrant to specify the property seized under subsection (1).

(4) Where the court considers the grounds insufficient for the seizure, it shall order the authorised officer to return the property to the owner immediately.

64. Emergency searches and seizures

(1) Where an authorised officer suspects on reasonable grounds that—

- (a) particular property is tainted 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 authorised officer may—

- (a) search a person;
- (b) enter upon land, or upon or into premises and search for the property; and
- (c) if such property is found, seize the property.

(2) Where during the course of a search conducted under this section, an authorised officer finds:

- (a) property that the authorised officer believes on reasonable grounds to be tainted property; or
- (b) anything the authorised officer believes on reasonable grounds may be used as evidence as to the commission of a crime,

the authorised officer may seize that property or thing.

65. Record of property seized

An authorised officer who seizes property under sections 58 through 64 shall detain the property seized, make a written record of it, and take reasonable care to ensure that the property is preserved.

66. Return of seized property

(1) Where property has been seized under sections 58 up to 64 otherwise than because it may be evidence of the commission of a crime, 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 this section and the court is satisfied that—

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

the court shall make an order the return of the property to the person.

67. Search for and seizure of tainted property in relation to foreign crimes

Where a foreign State requests assistance to locate or seize property suspected to be tainted property in respect of a crime within its jurisdiction, sections 58 up to 66 apply with the necessary modifications.

*Restraining orders***68. Application for restraining order**

Where a person has been charged or is about to be charged with a crime under this Act, an authorised officer may make an application to the court freezing the property, or in possession or under the control of that person, wherever such property may be.

69. Contents of application for restraining order

An application made under section 68 may be made ex parte to the court and shall be accompanied by an affidavit setting out—

- (a) the crime under investigation;
- (b) a description of the property in respect of which the restraining order is sought;
- (c) the name and address of the person who is believed to be in possession of the property;
- (d) the grounds for the belief that the property is tainted in relation to the crime or that the person being investigated derived a benefit directly or indirectly from the commission of the crime under investigation;
- (e) where the application is seeking a restraining order against property of a person other than the person being investigated, the grounds for the belief that that property is tainted property in relation to the crime under investigation and is subject to the effective control of the defendant; and
- (f) the grounds for the belief that a confiscation order or a pecuniary penalty order may be or is likely to be made under this Part in respect of the property.

70. Issuance of the restraining order

Where the court is satisfied that there are reasonable grounds to believe that there exists property in respect of which a restraining order may be made under this Act, the court may make an order—

- (a) prohibiting any person from disposing of, or otherwise dealing with property specified in the order other than in such manner as may be specified in the order; and
- (b) at the request of the authorised officer, and where the court is of the opinion that the circumstances so require, appoint a person to take control of or to manage or otherwise deal with the property.

71. Contents of restraining order

(1) Subject to section 72, the court in making an order under section 70 may give directions as to the disposal of that property for the purpose of—

- (a) determining any dispute as to the ownership of the property or any part of it; or
- (b) paying for its proper administration during the period of freezing;

(2) In regard to the person subject to the order, the court may give directions as to the disposal of that property for the purpose of—

- (a) paying that person for the reasonable subsistence of that person and his or her family,
- (b) permitting the use of the property in order to enter into a recognisance required of that person by a court;
- (c) paying that person's reasonable expenses in defending the criminal charge and any proceedings under this Act, and
- (d) paying any specified debt incurred by that person in good faith.

72. Undertakings by the Government

Before making an order under section 70, the court may require the government of Uganda to give such undertakings as the court considers appropriate with respect to the payment of damages or costs, or both, in relation to the making and execution of the order.

73. Notice of application for restraining order

Before making a restraining order, the court may require notice be given to, and may hear any person who, in the opinion of the court, appears to have an interest in the property, unless the court is of the opinion that giving such notice before making the order would result in the disappearance, disposal, dissipation or reduction in value of the property.

74. Service of restraining order

A copy of the restraining order shall be served on the person affected by the order in such manner as the court directs or as may be prescribed by law.

75. Registration of restraining order

(1) A copy of the restraining order which affects any land or real estate shall be registered with the Registrar of Titles.

(2) A restraining order shall not affect registered land unless it is registered as a charge under the Registration of Titles Act.

(3) Where particulars of a restraining order are registered under the Registration of Titles Act, a person who subsequently deals with the property shall, for the purposes of section 71, be deemed to have notice of the order at the time of the dealing.

76. Setting aside disposition

(1) 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 favor of a person who acted in good faith and without notice, an authorised officer may apply to the court that made the restraining order for an order that the disposition or dealing be set aside.

(2) Where an authorised officer makes an application under this section 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 section 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 section.

77. Duration of restraining order

A restraining order shall remain in force until—

- (a) it is discharged, revoked or varied;
- (b) the expiry of a period of six months from the date on which it is made or such later time as the court may determine; or
- (c) a confiscation order or a pecuniary penalty order is made in respect of property which is the subject of the order.

78. Review of restraining orders

(1) A person who has an interest in property in respect of which a restraining order was made may, at any time, apply to the court to review the order.

(2) The application under subsection (1) shall not be heard by the court unless the applicant has given to the authorised officer at least three working days notice in writing of the application.

(3) The court may require notice of the application to be given to, and may hear any person who, in the opinion of the court, appears to have an interest in the property.

(4) Upon the application under subsection (1), the court may revoke or vary the restraining order or make the order subject to such conditions as the court thinks fit.

(5) For the purposes of this section, the court may—

- (a) require the applicant to enter into a recognizance; or
 - (b) vary the order to permit the payment of reasonable expenses of the applicant, including those of his or her dependants if any, and reasonable legal or business expenses of the applicant;
- (6) An order under this section may be made only if the court is satisfied that the—
- (a) applicant is the lawful owner of the property, has a legal interest or is entitled to lawful possession of the property, and appears to be innocent of any complicity in the commission of a crime or of any collusion in relation to such crime; and

- (b) property will no longer be required for the purposes of any investigation or as evidence in any proceedings.

79. Extension of restraining orders

An authorised officer may apply to the court that made a restraining order for an extension of the period of the operation of the order, and, upon such an application, the court may extend the operation of a restraining order for a specified period, if it is satisfied that a confiscation order may be made in respect of the property or part of it or that a pecuniary penalty order may be made against the person.

Confiscation and pecuniary penalty orders

80. Application for confiscation order or pecuniary penalty order

(1) Where a person is convicted of a crime, an authorised officer may, not later than one year after the conviction, apply to the court for one or both of the following orders—

- (a) a confiscation order against property that is tainted property in respect of the crime; or
- (b) a pecuniary penalty order against the person in respect of benefits derived by the person from the commission of the crime.

(2) An application under subsection (1) may be made in respect of more than one crime.

(3) An authorised officer may apply to amend an application under subsection (1) to include any other tainted property or benefit, as the case may be, and the court may upon being satisfied that—

- (a) the tainted property or benefit was not reasonably capable of identification when the application was made;
- (b) necessary evidence became available only after the application was originally made; and
- (c) it is in the interest of justice that the application be amended, grant the application.

(4) In determining an application under subsection (1), the court may have regard to the proceedings against the person for the crime and to the evidence given in such proceedings.

81. Notice of application

Where an authorised officer makes an application under subsection (1) or (3) of section 79 or under subsection (1) of section 81—

- (a) the authorised officer shall give not less than fourteen days written notice of the application to the person and to any other person who has an interest in the property;
- (b) the person, and any other person who claims interest in the property, may appear and adduce evidence at the hearing of the application; and
- (c) the court may, at any time before the final determination of the application, direct the authorised officer to—
 - (i) give notice of the application to any person who, in the opinion of the court, appears to have an interest in the property; and
 - (ii) publish a notice of the application in the *Gazette* or a newspaper published and circulating in Uganda.

82. Procedure for confiscation order where person dies or absconds

(1) Where—

- (a) a person has been charged with the commission of a crime under this Act and a warrant for the arrest of the person has been issued in relation to that charge, and the person has died or absconded; or
- (b) a person has been convicted of a crime,

and the person has died or absconded, an authorised officer may apply to the court for a confiscation order in respect of any tainted property and the court may, if satisfied on a balance of probabilities, order that the property or such property as is specified by the court be confiscated.

(2) For the purposes of subsection (1), the person is deemed to have absconded if reasonable attempts to arrest the person under the warrant have been unsuccessful during the period of one year commencing on the day the warrant was issued, and the person shall be deemed to have so absconded on the last day of that period.

Confiscation

83. Confiscation order on conviction

(1) Where—

- (a) an authorised officer applies to the court for an order of confiscation under sections 80 or 82; and
- (b) the court is satisfied that the property is tainted property in respect of the crime the court may, if it considers it appropriate, order that the property, or such part of the property as is specified by the court in the order, be confiscated.

(2) In determining whether property is tainted property, the court shall be satisfied that—

- (a) the property was used in or in connection with committing the crime of which the person was convicted; or
- (b) that the property was derived, obtained or realised as a result of committing the crime of which the person was convicted, and the court is satisfied on a balance of probabilities that the income of that person from sources unrelated to criminal activity cannot reasonably account for the acquisition of that property.

(3) Where the court orders that property, other than money, be confiscated, the court shall specify in the order the amount that it considers to be the value of the property at the time when the order is made and in arriving at this value, the court may seek professional advice.

(4) In considering whether to make a confiscation order under subsection (1), the court shall have regard to—

- (a) the rights and interests, if any, of third parties in the property;
 - (c) the proportionality of the value of the property to be forfeited to the gravity of the crime in question;
 - (c) the role and culpability of the owner of the property in the crime;
 - (d) the nexus between the crime and the property and the involvement of the property in the crime;
 - (e) whether the use of the property was deliberate and planned or merely incidental and fortuitous;
 - (e) whether the purpose of acquiring, maintaining or using the property was to carry out the crime; and
 - (f) the extent of the instrumentality of the property in the commission of the crime.
- (5) Where the court makes a confiscation order, the court may give such directions as are necessary or convenient for giving effect to the order.
- (6) Without limiting the generality of subsection (5), where a court makes a confiscation order against registrable property, the court may direct an authorised officer to do anything necessary to obtain possession of any document necessary for the transfer of the property.

84. Effect of confiscation order

(1) Subject to subsection (2), where a court makes a confiscation order against any property, the property vests absolutely in the Republic of Uganda by virtue of the order.

(2) Where property ordered to be confiscated is registrable property—

- (a) the property vests in the Republic of Uganda in equity but does not vest in the Republic of Uganda at law until the applicable registration requirements have been complied with;

- (b) the Republic of Uganda is entitled to be registered as owner of the property; and
 - (c) an authorised officer shall have power, on behalf of the Republic of Uganda, to do, or authorise the doing of, anything necessary or incidental to obtain the registration of the Republic of Uganda as owner, including but not limited to the execution of any instrument required to be executed by a person transferring an interest in property of that kind.
- (3) Where a confiscation order has been made against registrable property—
- (a) an authorised officer shall have power, on behalf of the Republic of Uganda, to do anything necessary or convenient to give notice of, or otherwise protect, the equitable interest of the Republic of Uganda in the property; and
 - (b) any such action by or on behalf of the Republic of Uganda is not a dealing for the purposes of subsection (4) (a).
- (4) Where the court makes a confiscation 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 Republic of Uganda 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 section 99.
- (5) In this section—
- “registrable property” means property the title to which is passed by registration in accordance with the provisions of any law.

“relevant appeal date” used in relation to a confiscation order made in consequence of a person’s conviction of a crime means—

- (a) the date on which the period allowed by law for the lodging of an appeal from a person’s conviction or for the lodging of an appeal from the making of a confiscation order expires without an appeal having been lodged, whichever is the later; or
- (b) where an appeal from a person’s conviction or from the making of a confiscation order is lodged, the date on which the appeal lapses in accordance with the law or is finally determined, whichever is the later.

85. Voidable transfers

The court may, before making a confiscation order and, in the case of property in respect of which a restraining order was made, notice for it given and the order served in accordance with this Act, set aside any conveyance or transfer of the property that occurred after the seizure of the property or the service of the restraining order, unless the conveyance or transfer was made for valuable consideration to a person acting in good faith and without notice.

86. Protection of third parties

(1) Where an application is made for a confiscation order against particular property, a person who claims an interest in the property may apply, before the confiscation order is made, to the court for an order under subsection (2).

(2) Where a person applies to the court for an order under this section in respect of the applicant’s interest in the property, and the court is satisfied on a balance of probabilities that—

- (a) the person has a legal interest in the property;
- (b) that the person was not in any way involved in the commission of the crime in respect of which confiscation of the property is sought;

- (c) where the person acquired the interest at the time of or after the commission of the crime, that he or she acquired the interest—
 - (i) for sufficient consideration; and
 - (ii) without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was, at the time of acquisition, tainted property;
- (d) the person did not acquire the interest in the property from another person under circumstances that give rise to a reasonable inference that any right was transferred for the purpose of avoiding eventual confiscation of the property; and
- (e) the person did all that could reasonably be expected to prevent the illegal use of the property,

the court shall make an order—

- (a) declaring the nature, extent and value, at the time the order is made, of the person’s interest;
- (b) if the interest is vested in the Republic of Uganda, directing the Republic of Uganda to transfer the interest to the applicant; or
- (c) declaring that there is payable by the Republic of Uganda to the applicant an amount equal to the value declared by the court.

(3) Subject to Subsection (4), where a confiscation order has already been made directing the confiscation of property, a person who claims an interest in the property may, before the end of a period of six months, commencing on the day on which the confiscation order is made, apply to the court for an order under subsection (2).

(4) A person who had knowledge of the application for the confiscation order before the order was made, or appeared at the hearing of that application, shall not be permitted to make an application under Subsection (3), except with leave of court.

(5) A person who makes an application under Subsections (1) or (3) must give not less than fourteen days written notice of the making of the application to the authorized officer who applied for the confiscation order and such officer shall be a party to any proceedings in the application.

(6) An applicant or authorised officer may, in accordance with the law, appeal against an order made under Subsection (2).

87. Discharge of confiscation order on appeal and quashing of conviction

(1) Where the court makes a confiscation order against property in reliance on a person's conviction of a crime and the conviction is subsequently quashed, the quashing of the conviction discharges the order.

(2) Where a confiscation order against property is discharged as provided by subsection (1) or by a court hearing an appeal against the making of the order, the authorised officer who obtained the confiscation order shall—

- (a) as soon as practicable after the discharge of the order, give written notice of the discharge of the confiscation order to any person the authorised officer has reason to believe may have had an interest in the property immediately before the making of the confiscation order; and
- (b) if required to do so by a court, publish a notice of the discharge of the confiscation order in the *Gazette* or in a newspaper published and circulating in the Republic of Uganda.

(3) A notice under Subsection (2) shall include a statement to the effect that a person claiming an interest in the property may apply under Subsection (4) for the transfer of the interest to that person.

(4) Where a confiscation order against property is discharged as provided for in Subsection (1) or by the court hearing an appeal against the making of the order, any person who claims to have an interest in the property immediately before the making of the confiscation order may apply to the court for the transfer of the interest to that person.

(5) On receipt of an application under subsection (4), the court shall—

- (a) where the interest is vested in the Republic of Uganda give directions that the property or part of it to which the interest of the applicant related be transferred to the person; or
- (b) in any other case, direct that there be payable to the person an amount equal to the value of the interest as of the time the order was made.

(6) Where an authorised officer is required by the court to arrange for property to be transferred to a person, the authorised officer shall have the power, on behalf of the Republic of Uganda, to do or authorise the doing of any thing necessary or convenient to effect the transfer or return of the property, including but not limited to the execution of any instrument and the making of any application for the registration of an interest in the property on any appropriate register.

88. Payment instead of a confiscation order

Where the court is satisfied that a confiscation order should be made in respect of the property of a person convicted of a crime, but that the property or any part or interest cannot 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 confiscation of the property;
- (c) is located outside the Republic of Uganda;
- (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 interest in it to be confiscated, order the person to pay to the Republic of Uganda an amount equal to the value of the property, part or interest.

(2) Where the court orders a person to pay an amount under subsection (1), that amount shall be treated as if it were a fine imposed upon him or her in respect of a conviction for a crime.

Pecuniary penalty orders

89. Pecuniary penalty order on conviction

(1) Subject to this section, where—

(a) an authorised officer applies to the court for a pecuniary penalty order against a person convicted of the crime under this Act in respect of benefits derived by the person from the commission of the crime, and

(b) the court is satisfied that the person derived benefits from the commission of the crime, the court may, if it considers it appropriate—

(i) assess, in accordance with section 90, the value of the benefits so derived, and

(ii) order the person to pay to the Republic of Uganda a pecuniary penalty equal to the assessed value of the benefits or such less amount as the court certifies in accordance with section 93(2) to be the amount that might be realised at the time the pecuniary penalty order is made.

(2) Where—

(a) property that is proceeds of the crime has been confiscated, under this Act or another law of the Republic of Uganda, in relation to the crime, or

(b) a confiscation order is proposed to be made against property that is proceeds of the crime,

the pecuniary penalty should be reduced by an amount equal to the value of the property as of the time of the making of the pecuniary penalty order.

(3) Where the court makes a reduction under subsection (2) and later an appeal against the confiscation is successful or the proposed confiscation does not take place, an authorised officer may apply to the court to increase the penalty amount by the value of the property and the court may, if it considers it appropriate to do so, vary the order accordingly.

(4) Where the court making a pecuniary penalty order is satisfied that a tax paid by the person is attributable in whole or in part to the benefits in respect of which the order is being made, the court may reduce the pecuniary penalty by an amount that, in the opinion of the court, represents the amount of tax paid attributable to such benefits.

(5) Where the court makes a reduction under subsection (4) and later an amount is repaid or refunded to the person in respect to that tax, an authorised officer may apply to the court to increase the penalty amount by the amount repaid or refunded and the court may, if it considers it appropriate to do so, vary the order accordingly.

(6) If the court considers it appropriate, it may reduce the amount payable by a person under a pecuniary penalty order made in relation to a crime by an amount equal to the amount payable by the person by way of fine, restitution, compensation, or damages in relation to the crime.

(7) An amount payable by a person to the Republic of Uganda in accordance with a pecuniary penalty order is a civil debt due by the person to the Republic of Uganda.

(8) A pecuniary penalty order against a person may be enforced as if it were an order made in civil proceedings instituted by the Republic of Uganda against the person to recover a debt due by the person to the Republic of Uganda and the debt arising from the order shall be considered to be a judgment debt.

(9) The court shall not make a pecuniary penalty order under this section—

- (a) until the period allowed by law for the filing of an appeal from a conviction has expired without such appeal having been filed; or
- (b) where an appeal from the conviction has been filed, until the appeal lapses by law or is finally determined, whichever is the later date.

90. Rules of determining benefit and assessing value

(1) The value of the benefits derived by a person from the commission of a crime shall be assessed by the court having regard to the evidence before it concerning—

- (a) the money, or the value of the property other than money, that came into the possession or under the control of that person or another person at the request or direction of that person, by reason of the commission of the crime; and
- (b) the value of any other benefit provided to that person or another person at the request or direction of that person, by reason of the commission of the crime.

(2) The court, in determining whether a person has benefited from the commission of a crime or from that crime taken together with other crimes, shall, unless the contrary is proved, deem—

- (a) all property appearing to the court to be held by the person on the day on which the application is made; and—
 - (i) all property appearing to the court to be held by the person at any time;
 - (ii) within the period between the day the crime, or the earliest crime, was committed and the day on which the application is made; or
 - (iii) within the period of six years immediately before the day on which the application is made, whichever is the longer, to be property that came into the possession or under the control of the person by reason of the commission of that crime or those crimes for which the person was convicted;

- (b) any expenditure by the person since the beginning of that period to be an expenditure met out of payments received by him or her as a result of, or in connection with, the commission of that crime or those crimes; and
- (c) any property received or deemed to have been received by the person at any time as a result of, or in connection with, the commission by him or her of that crime or those crimes as property received by him or her free of any interest in it.

(3) Where a pecuniary penalty order has been previously made against a person, in assessing the value of any benefit derived by him or her from the commission of the crime, the court shall leave out of account any benefits that are shown to the court to have been taken into account in determining the amount to be recovered under that previous order.

(4) Where evidence is given, at the hearing of the application, that the value of the person's property at any time during or after the commission of the crime exceeded the value of the person's property before the commission of the crime, then the court shall, subject to subsection (5), treat the value of the benefits as being not less than the amount of the greatest excess.

(5) After the evidence referred to in subsection (4) is given, and the person has satisfied the court that the whole or part of the excess was due to causes unrelated to the commission of the crime, subsection (4) shall not apply to that excess or, as the case may be, that part.

91. Statements relating to benefits from commission of crime

(1) Where a person has been convicted of a crime and an authorised officer tenders to the court a statement as to any matters relevant to—

- (a) determining whether the person has benefited from the crime or from any other crime of which he or she is convicted in the same proceedings or which is taken into account in determining his or her sentence; or

- (b) an assessment of the value of the person's benefit from the crime or any other crime of which he or she is convicted in the same proceedings or which is taken into account; and
- (c) the person accepts to any extent an allegation in the statement, the court may, for the purposes of so determining or making that assessment, treat his or her acceptance as conclusive of the matters to which it relates.

(2) Where a statement is tendered under subsection (1), and the court is satisfied that a copy of that statement has been served on the person, the court may require the person to indicate to what extent he or she accepts each allegation in the statement and, so far as the person does not accept any allegation, to indicate any matters he or she proposes to reply on.

(3) Where a person fails in any respect to comply with a requirement under subsection (2), he or she may be treated for the purposes of this section as having accepted every allegation in the statement other than—

- (a) an allegation in respect of which he or she complied with the requirement; and
- (b) an allegation that he or she has benefited from the crime or that any property or advantage was obtained by him or her as a result of or in connection with the commission of the crime.

(4) Where the person tenders to the court a statement as to any matters relevant to determining the amount that might be realised at the time the pecuniary penalty order is made, and the authorised officer accepts to any extent any allegation in the statement, the court may, for the purposes of that determination, treat the acceptance of the authorised officer as conclusive of the matters to which it relates.

(5) An allegation may be accepted or a matter indicated for the purposes of this section either orally before the court or in writing, in accordance with the law.

(6) An acceptance by a person under this section that he or she received any benefits from the commission of a crime is admissible in any proceedings of any crime.

92. Amount recovered under pecuniary penalty order

(1) Subject to Subsection (2), the amount to be recovered under a pecuniary penalty order shall be the amount which the court assesses to be the value of the person's benefit from the crime, or if more than one, all the crimes in respect of which the order may be made.

(2) Where the court is satisfied as to any matter relevant for determining the amount which might be realised at the time the pecuniary penalty order is made whether by acceptance under section 91 or otherwise, the court may issue a certificate giving its order as to the matters concerned, and shall do so if satisfied that the amount that might be realised at the time the pecuniary penalty order is made is less than the amount that the court assesses to be the value of the person's benefit from the crime, or if more than one, all the crimes in respect of which the pecuniary penalty order may be made.

93. Lifting the corporate veil

(1) In assessing the value of benefits derived by a person from the commission of a crime, the court may treat as property of the person any property that, in the opinion of the court, is subject to the effective control of the person, whether or not he or she has—

- (a) any legal or equitable interest in the property; or
- (b) any right, power or privilege in connection with the property.

(2) Without prejudice to the generality of subsection (1), the court may have regard to—

- (a) shareholdings in, debentures over or directorships in any company that has an interest, whether direct or indirect, in the property, and for this purpose the court may order the investigation and inspection of the books of a named company;

- (b) any trust that has any relationship to the property of the kind referred to in subsection (a); and
- (c) any relationship whatsoever between the persons having an interest in the property or in companies of the kind referred to in paragraph (a) or trust of the kind referred to in paragraph (b), and any other persons.

(3) Where the court, for the purposes of making a pecuniary penalty order against a person, treats particular property as the person's property under to subsection (1), the court may, on application by an authorised officer make an order declaring that the property is available to satisfy the order.

(4) Where the court declares that property is available to satisfy a pecuniary penalty order—

- (a) the order may be enforced against the property as if the property were of the person against whom the order is made; and
- (b) a restraining order may be made in respect of the property as if the property were owned by the person against whom the order is made.

(5) Where an authorised officer makes an application for an order under subsection (3) that property is available to satisfy a pecuniary penalty order against a person—

- (a) the authorised officer shall give written notice of the application to the person who the authorised officer has reason to believe may have an interest in the property; and
- (b) any person who claims an interest in the property may appear and adduce evidence at the hearing.

94. Discharge of pecuniary penalty orders

A pecuniary penalty order shall be discharged—

- (a) if the conviction of the crime or crimes in reliance on which the order was made is quashed and no conviction for the crimes or crimes is substituted;
- (b) if the order is quashed; or
- (c) on the satisfaction of the order by payment of the amount due under the order.

Realisation of property

95. Realisation of property

(1) Where a pecuniary penalty order is made and the order is not the subject of an appeal or is not discharged, the court may, upon an application by an authorised officer, exercise the powers conferred upon the court by this section.

(2) The court may appoint a receiver in respect of realisable property.

(3) The court may empower a receiver appointed under subsection (2) to take possession of any realisable property subject to such conditions or exceptions as may be specified by the court.

(4) The court may order any person having possession of realisable property to give possession of it to any such receiver.

(5) The court may empower any such receiver to realise any realisable property in such manner as the court may direct.

(6) The court may order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Act as the court may direct, and the court may, on the payment being made, by order transfer, grant or extinguish any interest in the property.

(7) The court shall not, in respect of any property, exercise the powers conferred by subsection (3), (4), (5) or (6), unless a reasonable opportunity has been given to persons holding any interest in the property to make representations to the court.

96. Application of proceeds of realization and other sums

(1) Subject to subsection (2), the following property provided in paragraphs (a) and (b) in the hands of a receiver appointed under subsection (2) of section 95—

- (a) the proceeds of the realisation of any property under section 95; and
- (b) any other sums, being property held by the person subject to the penalty order,

shall, after such payments, if any, as the court may have directed be made out of those sums, be payable to the registrar of the court and be applied on the defendant's behalf towards the satisfaction of the pecuniary penalty order in the manner provided by subsection (3).

(2) Where, after the amount payable under the confiscation order or pecuniary penalty order has been fully paid, any such sums as may remain in the hands of the receiver shall be distributed by the receiver among those persons who held property which has been realised under this section and in such proportions as the court may direct, after giving a reasonable opportunity for those persons to make representations to the court.

(3) Property received by the registrar of the court on account of an amount payable under a confiscation order or a pecuniary penalty order shall be applied as follows—

- (a) if received by him or her from a receiver under subsection (1), it shall first be applied in payment of the receiver's remuneration and expenses; and
- (b) the balance shall be paid or, as the case may be, transferred, to the Confiscated Assets Fund established under section 100.

97. Treatment of realisable property in bankruptcy or winding up

(1) Where a person who holds realisable property is adjudged bankrupt, such realisable property shall not be excluded from the property of the bankrupt and is therefore subject to the bankruptcy laws or any orders issued by a court under the bankruptcy laws.

(2) Where realisable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for its voluntary winding up, such realisable property shall not be excluded from the property to be distributed to the company's creditors or owners and is therefore subject to the law applicable to winding up or any order issued by a court under such law.

98. Disposition of confiscated property

Whenever property has been confiscated under this Act, the court may, in accordance with the law, order that the property shall be—

- (a) retained by or transferred to any government agency that participated directly or indirectly in the freezing, seizure or confiscation of the property, for its official use;
- (b) sold and the proceeds from such sale transferred to any government agency that participated directly or indirectly in the freezing, seizure or forfeiture of the property; or
- (c) the proceeds from its sale be deposited in the Confiscated Assets Fund established under section 101 of this Act.

99. Property of foreign crimes

The court may, in accordance with the law, order the confiscation of any property in its territorial jurisdiction when it is connected to a crime committed against the laws of another State, and when that crime would have been a crime if committed within its jurisdiction.

100. Confiscated Assets Fund

(1) There is established a fund to be known as the Confiscated Assets Fund.

(2) The Fund shall be administered by the Authority in accordance with procedures and internal controls prescribed by the Board.

(3) There shall be paid into the Fund—

- (a) proceeds from the sale of property confiscated under this Act;

- (b) the balance of any money recovered under a pecuniary penalty order under to section 96; and
- (c) money paid to the Republic of Uganda by a foreign State with respect to any sharing of confiscated or forfeited property, whether under a treaty or arrangement providing for mutual assistance in criminal matters or otherwise.

(4) The Authority may authorize the following payments to be made out of the Fund—

- (a) to satisfy an obligation of the Republic of Uganda to a foreign State in respect of the equitable sharing of confiscated or forfeited property, whether under a treaty or arrangement providing for mutual assistance in criminal matters or otherwise;
- (b) to meet the remuneration and expenses of a receiver, trustee, or manager appointed to carry out the provisions of this Act;
- (c) to pay valid mortgages and liens against confiscated property;
- (d) to pay necessary expenses for the management, maintenance, repairs, upkeep or disposition of seized or confiscated property;
- (e) to recover costs associated with administration of the Fund; and
- (f) any additional amounts remaining that, as determined by the Board and approved in writing by the Minister, are not necessary for the purposes set out in paragraph (a) up to (e) may be used by the Authority in funding its operations.

(5) There shall be an audit of the Fund conducted by the Auditor-General based on generally accepted accounting principles to be conducted on annual basis within six months following the end of the fiscal year of the Authority.

(6) The audited financial statements shall be submitted to the Minister of Finance who shall lay them before the Parliament, and be made available to the public.

101. Appointment of receivers, trustees, managers

(1) On the application of an authorised officer, the court may appoint a person or entity to take control of, and to manage or otherwise deal with, all or part of property seized or subject to a confiscation order or pecuniary penalty order under this part, upon such terms and conditions as to the court may seem fit including, but not limited to the purchase of an insurance policy or indemnity to protect such persons against claims or litigation relating to such property.

(2) The court may require any person having possession of the property to give possession of the property to the person appointed under this section.

(3) The power to manage or otherwise deal with property under this section includes—

- (a) in the case of perishable or rapidly depreciating property, the power to sell that property, and
- (b) in the case of property having little or no value, the power to destroy that property.

(4) Upon application of an authorised officer or any person appointed under this section, a court may authorise a public or private sale of the property with the sale proceeds to be placed with the court, pending conclusion of the confiscation or pecuniary penalty proceedings and the disposal of the property ordered.

(5) In approving a sale, the court may consider relevant factors, including whether—

- (a) the property is liable to perish or waste;
- (b) the property is declining in value;
- (c) the expenses to maintain the property are disproportionate to the value it; and

- (d) the parties with an interest in the property will agree to the sale.

PART VI—INTERNATIONAL COOPERATION.

102. General provisions

A court or other competent authority of Uganda shall cooperate with courts or other competent authority of another State in taking appropriate measures to provide assistance in matters concerning money laundering and other organized crimes, including the exchange of information, joint investigations and court proceedings such as provisional measures, confiscation and extradition, in accordance with this Act and any international conventions, treaties, agreements or arrangements to which Uganda is a party and within the limits of the legal systems of Uganda.

103. Request for mutual legal assistance

(1) A court or other competent authority in Uganda may receive a request from a court or other competent authority of another State to identify, trace, freeze, seize or confiscate property derived from money laundering or other crimes, and may take appropriate actions, including those authorised by this Act, to fulfill the request;

(2) Action under subsection (1) shall be taken only in accordance with the laws of Uganda, and any international conventions, treaties, agreements or arrangements to which the Republic of Uganda is a party.

(3) A request for mutual assistance may be refused where—

- (a) it was not made by a competent authority according to the legislation of the requesting State or if it was not transmitted in the proper manner;
- (b) its execution is likely to prejudice the public order, sovereignty, security or other essential interests of Uganda;
- (c) the crime to which it relates is the subject of criminal proceedings or has already been the subject of a final judgment in Uganda;

- (d) the measures requested, or any other measures having similar effects, are not permitted by the laws of Uganda or if, under the laws of Uganda, they are not applicable to the crime referred to in the request;
- (e) the measures requested cannot be ordered or executed by reason of the time-barring of the crime under the laws of Uganda;
- (f) the decision rendered in the requesting State was delivered under conditions that did not afford sufficient guarantees as to the rights of the defence;
- (g) there are substantial grounds for believing that the measure or order being sought is directed at the person in question solely on account of that person's race, religion, nationality, ethnic origin, political opinions, sex or status;
- (h) the request relates to a crime of a political nature or is motivated by a political consideration; or
- (i) the case is not sufficiently important to justify the measures requested or the enforcement of the decision rendered abroad.

(4) Mutual legal assistance may be postponed by Uganda on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

(5) Before refusing a request under to subsection (3) or postponing its execution under to subsection (4) of this section, Uganda shall consult with the requesting State to consider whether assistance may be granted subject to such terms and conditions as it deems necessary.

(6) Uganda shall have power of disposal of property confiscated in its territory at the request of another State, unless otherwise decided under an agreement concluded with the requesting State.

104. Judgment as evidence

A final judicial order or judgment that provides for the confiscation of property, connected to money laundering or other crimes, issued by a court or other competent authority of another State may be recognised by a Ugandan court as evidence that the property referred to by such order or judgment may be subject to confiscation in accordance with the laws of Uganda.

105. Request for confiscation

(1) Upon receipt of a request from another State for confiscation of property derived from money laundering or other crimes—

- (a) an authorised officer shall submit the request to the court for the purpose of obtaining an order of confiscation and, if such an order is granted, enforce it according to its terms; or
- (b) subject to subsections (2), (3), (4) and (5) of this section, an authorised officer shall enforce an order of confiscation granted by a court of the requesting State as if and to the extent such an order could be enforced if granted by a court of Uganda under to this Act, and insofar as it relates to property situated in Uganda.

(2) Upon application by an authorised officer, the court may register and enforce a confiscation order of the requesting State and treat it as if it had been rendered by a court of Uganda, if the court is satisfied that—

- (a) the order is final, not subject to an appeal, and a certified copy bearing the seal or signature of the court of the requesting State has been submitted;
- (b) the person against whom, or in relation to whose property the order has been made, received notice of the confiscation proceeding in the requesting State and had an opportunity to defend his or her interest in the property; and
- (c) enforcement of the order would not be contrary to the interests of justice.

(3) A copy of the application to register and enforce the confiscation order or judgment of the requesting State shall be served upon any person who appears to the court to own or control or otherwise have a legal interest in the property described in the order.

(4) Persons entitled to be served with a copy of the application shall have thirty days from the date of receipt to file an objection contesting the enforcement of the confiscation order of the requesting State.

(5) Unless the person contesting the enforcement of the confiscation order of the requesting State is able to establish one of the conditions in subsection (2), the court is authorised to enter such orders as may be necessary to give effect to the order or judgment of the requesting State and shall be bound by the findings of fact to the extent that they are stated in the order.

106. Other mutual assistance

(1) A court or other competent authority of Uganda may receive and take appropriate measures with respect to a request from another State, for assistance related to a civil, criminal, or administrative investigation, prosecution or proceeding, as the case may be, involving money laundering or other crimes.

(2) Mutual legal assistance to be afforded in accordance with this section may be any of the following—

- (a) obtaining testimony or statements from persons in Uganda;
- (b) facilitating the voluntary presence or availability in Uganda of persons, including those in custody, to give testimony;
- (c) effecting service of documents;
- (d) executing searches and seizures, and freezing;
- (e) instituting provisional measures under this Act;
- (f) examining objects or places;
- (g) providing information, evidentiary items and expert evaluations;

- (h) providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
- (i) locating or identifying persons;
- (j) identifying or tracing proceeds of crime, property, instrumentalities or other things for evidential purposes;
- (k) facilitating the voluntary appearance of a person in the requesting State; or
- (l) any other type of assistance not contrary to the laws of Uganda.

(3) The competent authorities of Uganda—

- (a) shall provide to the requesting State copies of Government records, documents or information in its possession that under the laws of Uganda are available to the general public; or
- (b) may, at their discretion, provide to the requesting State in whole, in part or subject to such conditions as they deem appropriate, copies of any Government records, documents or information in its possession that under the laws of Uganda are not available to the general public.

(4) Subject to the laws of Uganda, the competent authorities of Uganda may, without prior request, transmit information relating to criminal matters to a competent authority in another State where they believe that such information could assist the authority in undertaking or successfully concluding enquiries and criminal proceedings or could result in a request formulated by the other State under this Part.

107. Disposal of confiscated property

(1) Property confiscated by the court or competent authorities of Uganda under this Part shall be disposed of in accordance with regulations made under this Act.

(2) When acting on a request made by another State in accordance with this Part, the court or competent authorities of Uganda shall, to the extent permitted by the laws of Uganda and if so requested, give priority consideration to returning the confiscated property to the requesting State so that it can give compensation to the victims of the crime or return such property to the legitimate owners.

(3) When acting on a request made by another State in accordance with this Part, the court or competent authority of Uganda may give special consideration to concluding agreements or arrangements on—

- (a) contributing the value of such property or a part of it to the fund designated in section 101 and to Government bodies specializing in the fight against money laundering and other crimes; or
- (b) sharing with other States, on a regular or case-by-case basis, funds derived from the sale of such property, in accordance with the laws of Uganda.

108. Extradition

(1) A crime under this Act shall be deemed to be an extraditable crime under the provisions of the Extradition Act.

(2) Extradition under this Act shall be carried out if the crime for which extradition is sought is punishable under the laws of both Uganda and the requesting State.

(3) Where the request for extradition includes several separate crimes, some of which qualify under subsection (2) and some of which do not, Uganda may apply this section also in respect to the latter crimes.

(4) Each of the crimes to which this section applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between the requesting State and Uganda.

(5) Extradition shall be subject to the conditions provided for by the laws of Uganda or by applicable extradition treaties, including, inter alia conditions in relation to the minimum penalty requirement for extradition, and the grounds upon which Uganda may refuse extradition.

(6) Extradition shall not be granted where—

- (a) there are substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinions, sex or status, or that that person's position may be prejudiced for any of those reasons;
- (b) a final judgment has been rendered in Uganda in respect of the crime for which extradition is requested;
- (c) the person whose extradition is requested has, under the legislation of either State, become immune from prosecution or punishment for any reason, including lapse of time or amnesty;
- (d) the person whose extradition is requested has been or would be subjected in the requesting State to torture or cruel, inhuman or degrading treatment or punishment or if that person has not received or would not receive the minimum guarantees in criminal proceedings, as contained in article 14 of the International Convention on civil and Political Rights;
- (e) the judgment of the requesting state has been rendered in absentia, the convicted person has not had sufficient notice of the trial or the opportunity to arrange for his or her defence and has not had or will not have the opportunity to have the case retried in his or her presence;
- (f) a prosecution in respect of the crime for which extradition is requested is pending in Uganda against the person whose extradition is requested;
- (g) the crime for which extradition is requested has been committed outside the territory of either State and the laws of Uganda do not provide for jurisdiction over crimes committed outside its territory in comparable circumstances;

- (h) the person whose extradition is requested has been sentenced or would be liable to be tried or sentenced in the requesting State by an extraordinary or ad hoc court or tribunal;
- (i) the extradition of the person in question would be incompatible with humanitarian considerations in view of the age, health or other personal circumstances of that person; or
- (j) the crime for which extradition is requested is regarded under the laws of Uganda as having been committed in whole or in part within its territory;

(7) If Uganda refuses extradition on the grounds stated in subsection (6), it shall, at the request of the requesting State, refer the case without undue delay to its competent authorities in order that proceedings may be instituted against the person concerned in respect of the crime, which gave rise to the request.

(8) Subject to the laws of Uganda and to the rights of third parties, all property found in Uganda that has been acquired as a result of the crime committed or that may be required as evidence shall, if the requesting State so requests, be surrendered to the requesting State if extradition is granted.

(9) Subject to the laws of Uganda and its extradition treaties, upon satisfying the court that the circumstances so warrant and are urgent and at the request of the requesting State, an authorised officer may take a person whose extradition is sought and who is present in Uganda into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

(10) Any person regarding whom proceedings are being carried out in connection with any of the crimes to which this section applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the laws of Uganda.

109. Provisions common to requests for mutual assistance and requests for extradition

(1) For the purposes of this Act, the crimes referred to in this Act shall not be regarded as crimes of a political nature.

(2) Requests sent by another State for the purpose of establishing money laundering crimes or enforcing or ordering provisional measures or confiscations or for extradition shall be transmitted through diplomatic channels.

(3) All requests and their annexes shall be accompanied by a translation in English.

(4) Requests shall specify—

- (a) the identity of the authority making the request;
- (b) the subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates, and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;
- (c) a summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;
- (d) a description of the assistance sought and details of any particular procedure that the requesting State wishes to be followed;
- (e) if known, the identity, location and nationality of any person concerned;
- (f) any information necessary for identifying and tracing the persons or property in question, such as description, marital status, nationality, address, occupation;
- (g) the purpose for which the evidence, information or action is sought; and

(h) the text of the statutory provision establishing the crime or, where applicable, a statement of the law applicable to the crime and an indication of the penalty that can be imposed for the crime.

(5) In addition, requests shall include the following particulars in certain specific cases—

- (a) in the case of requests for the taking of provisional measures, a description of the measures sought;
- (b) in the case of requests for the making of a confiscation order, a description of the property to be confiscated and a statement of the facts relied upon by the requesting State to enable the court to order the confiscation under the laws of Uganda;
- (c) in the case of requests for the enforcement of orders relating to provisional measures or confiscations;
 - (i) a legally admissible copy of the order upon which the request is based issued by the requesting State, a statement of the grounds on which the order was made if they are not indicated in the order itself, and a statement of the facts and information as to the extent to which execution of the order is requested;
 - (ii) a document certifying that the order is enforceable and not subject to ordinary means of appeal;
 - (iii) an indication of the extent to which the order is to be enforced and, where applicable, the amount of the sum for which recovery is to be sought in the item or items of property;
 - (iv) where necessary and if possible, any information concerning third-party rights of claim on the property or other things in question; or

- (d) in the case of requests for extradition, if the person has been convicted of a crime, the original or a certified true copy of the judgment or any other document setting out the conviction and the sentence imposed, the fact that the sentence is enforceable and the extent to which the sentence remains to be served.
- (6) (a) Where a request requires that its existence and substance be kept confidential, such requirement shall be observed except to the extent necessary to give effect to the request and if confidentiality is not possible, the requesting State shall promptly be informed.
- (b) The communication or use, for investigations or proceedings other than those specified in the request of the other State, of evidential facts contained in the request shall be prohibited, except with the prior consent of the requesting State.
- (7) Costs incurred in complying with requests provided for under Part 7 Act shall be borne by Uganda unless otherwise agreed with the requesting State.
- (8) The decisions or actions provided for in this Part shall be taken by the court or other competent authority of Uganda in accordance with and subject to the provisions of the laws of Uganda, its procedural rules and any bilateral or multilateral treaty, agreement or arrangement to which Uganda may be bound in relation to the requesting State.
- (9) The provisions of this Part shall not be construed to prejudice the rights of *bona fide* third parties.
- (10) The provisions of this Part shall not affect the obligations of Uganda under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part mutual legal assistance.
- (11) Uganda shall not decline to render mutual legal assistance under this Part on the ground of bank secrecy or confidentiality.

(12) Uganda shall not refuse a request for mutual legal assistance, including extradition, on the sole ground that the crime is also considered to involve fiscal matters.

(13) Uganda may decline to render mutual legal assistance under this Part on the ground of absence of dual criminality.

(14) Uganda may, when it deems appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute a crime under the laws of Uganda.

(15) The requesting State shall not transmit or use information or evidence furnished by Uganda for investigations, prosecutions or judicial proceedings other than those stated in the request, without the prior consent of Uganda.

110. Witnesses in custody

A person who is being detained or is serving a sentence in Uganda whose presence in another State is requested for the purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to crimes covered by this Act may be transferred where—

- (a) the person freely gives his or her consent;
- (b) the competent authorities of both Uganda and the requesting State agree, subject to such conditions as they may deem appropriate; and
- (c) the person transferred receives credit for service of the sentence being served in Uganda for time spent in the requesting State.

PART VII—OFFENCES AND PENALTIES

111. Prohibition of money laundering

Any person who engages in money laundering prohibited in section 4 commits an offence.

112. Tipping-off

(1) It is an offence for any employee, officer, director or agent of any accountable person to notify any person, other than a court, competent authority or other person authorised by law, that information has been requested or furnished or reported or submitted to the Authority under to this Part.

(2) Any person who directly or indirectly alerts, or brings to the attention of, another person, other than an authorised officer, competent authority, court or other person authorised by law, that information has been requested or furnished under Part III or Part VI of this Act, or that an investigation is being or may be conducted as a result, commits an offence.

113. Falsification, concealment, etc of documents

A person who falsifies, conceals, destroys or otherwise disposes of or causes or permits the falsification, concealment, destruction or disposal of any document or material which is or is likely to be relevant to an investigation into money laundering or is subject to any order made in accordance with provisions of this Act, commits an offence.

114. Failure to identify persons

An accountable person who performs any act to give effect to a business relationship or a single transaction in contravention of section 7 (b) commits an offence.

115. Failure to keep records

An accountable person who fails to keep record of information in accordance of section 8 or maintain such records in accordance with section 8 commits an offence.

116. Facilitating money laundering

Any accountable person or its officers or employees, who knowingly allows it or its services to be used to commit or facilitate money laundering in contravention of section 17 commits an offence.

117. Destroying or tampering with records

Any person who willfully tampers with a record kept in terms of section 7 or willfully destroys such a record, otherwise than in accordance with section 8 commits an offence.

118. Refusal, omission, neglect or failure to give assistance

An accountable person who refuses, omits, neglects or fails to give assistance to a representative of the Authority in accordance with section 12(e) commits an offence.

119. Failure to report cash transactions

Any person who intentionally fails to report to the Authority the prescribed information in respect of cash transactions, in accordance with section 9 commits an offence.

120. Failure to report suspicious or unusual transaction

(1) Any person who intentionally fails, within the prescribed period, to report to the Authority the prescribed information in respect of a suspicious or unusual transaction or series of transactions in accordance with section 10 commits an offence.

(2) Any person referred to in section 10 who reasonably ought to have known or suspected that any of the facts referred to in section 10 exists, and who negligently fails to report the prescribed information in respect of a suspicious or unusual transaction or a series of transactions or enquiry, commits an offence.

121. Failure to report conveyance of cash into or out of Uganda

Any person who intentionally fails to notify the customs and excise department of the Uganda Revenue Authority or who intentionally files a false notification regarding the cross-border transportation or sending of currency or negotiable bearer instruments which exceed the prescribed value, in accordance with section 11, commits an offence.

122. Failure to send a report to authority

A person referred to in section 11(b) of Part 3 who fails to send a report regarding the conveyance of cash to the Authority in accordance with that section, commits an offence.

123. Failure to comply with orders made under the act

Any person who is subject to an order issued under Part 6 of this Act, and—

- (a) fails to comply with the order without reasonable cause, or
- (b) knowingly produces false or misleading information in purported compliance with the order,

commits an offence.

124. Contravening a restraining order

Any person who intentionally contravenes a restraining order issued under section 70 of Part 6, by disposing of or otherwise dealing with property that is subject to the restraining order, commits an offence.

125. Misuse of information

Any person who—

- (a) discloses confidential information held by or obtained from the Authority otherwise than in accordance with section 35;
- (b) intentionally destroys or in any other way tampers with information kept by the Authority for the purposes of this Act; or
- (c) uses information obtained from the Authority otherwise than in accordance with section 35 commits an offence.

126. Obstructing an official in performance of functions

Any person who obstructs, hinders or uses physical force, threats or intimidation to interfere with a judge of the court or an authorised officer in the performance of the duties or the exercise of the powers in terms of this Act, commits an offence.

127. Influencing testimony

Any person who uses physical force, threats or intimidation or promise, offering giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offenses under this Act, commits an offence.

128. General non-compliance with requirements of act and conducting transactions to avoid reporting duties

(1) Any person who conducts, or causes to be conducted, one or more transactions with the purpose, in whole or in part, of avoiding giving rise to a reporting duty under this Act, commits an offence.

(2) An accountable person who fails to take any reasonable step to secure compliance with the requirements of this Act or fails to do anything required by this Act commits an offence.

129. Unauthorised access to computer system or application or data

(1) Any person who, without authority to do so, willfully accesses or causes any other person to access any computer system that belongs to, or is under the control of, the Authority, or any application or data held in such a computer system, commits an offence.

(2) Any person who, without authority to do so, willfully causes any computer system that belongs to, or is under the control of, the Authority, to perform or fail to perform a function, commits an offence.

130. Unauthorised modification of contents of computer system

Any person who, without authority to do so, willfully causes a computer system that belongs to, or is under the control of, the Authority, or any application or data held in such a computer system, to be modified, destroyed, erased or the operation or reliability of such a computer system, application or data to be otherwise impaired, commits an offence.

131. Penalties

(1) The offence of money laundering referred to in section 5 is punishable—

- (a) if committed by a natural person, by imprisonment for a period not exceeding 15 years or a fine not exceeding one hundred thousand, or both;
- (b) if committed by a legal person such as a corporation, by a fine not exceeding one hundred and fifty thousand currency points.

(2) An offence mentioned in sections 112 to 130 is punishable—

- (a) if committed by a natural person, by imprisonment for a period not exceeding five years or a fine not exceeding nine thousand currency points, or both;
- (b) if committed by a legal person such as a corporation, by a fine not exceeding fifteen thousand currency points;
- (c) if a continuing offence, by a fine not exceeding five thousand currency points for each day on which the offence continues; or
- (d) if no specific penalty is provided, by a fine not exceeding nine thousand currency points and in case of a continuing offence, to an additional fine not exceeding five thousand currency points for each day on which the offence continues.

(3) Where it is necessary, for the purpose of convicting a person who has committed an offence, to establish the state of mind of the legal person, it shall be sufficient to show that a director, officer, employee or agent of the body corporate, acting in the course of employment of the director, employer or agent, had that state of mind.

132. Defences

Where a person who is an employee, director, trustee, or a partner of accountable person is charged with committing an offence under section 121, that person may raise as a defence the fact that he or she had—

- (a) complied with the applicable obligation in terms of the internal rules relating to the reporting of information of the accountable person; or
- (b) reported the matter to the person charged with the responsibility of ensuring compliance by the accountable person with its duties under this Act; or

(c) reported the matter to his or her supervisor, if any, where—

- (i) the accountable person had not appointed such a person or established such rules; or
- (ii) the internal rules were not applicable to that person.

PART VIII—MISCELLANEOUS

133. Act not to limit powers of investigating authorities or supervisory bodies

This Act does not detract from—

- (a) an investigating authority's powers in terms of other legislation to obtain information for the purpose of criminal investigations; or
- (b) a supervisory body's duties or powers in relation to the entities supervised or regulated by it.

134. Amendment of Schedules

- (1) The Minister may, by statutory instrument amend Schedule 1.
- (2) The Minister may, by notice in the *Gazette*, amend the list of accountable persons in Second Schedule by—
 - (a) adding to the list any person or category of persons if the Minister reasonably believes that that person or category of persons is used, or is likely to be used in the future, for money laundering purposes;
 - (b) deleting any person or category of persons not being used, and not likely to be used in the future, for money laundering purposes; or
 - (c) making technical changes to the list.
- (3) Before the Minister amends the Second Schedule in terms of subsection (1) (a) or (b), the Minister shall consult the Board; and where—

- (a) only one person will be affected by the proposed amendment, give that person at least thirty days' written notice to submit written presentations to the Minister; or
- (b) a category of persons will be affected by the proposed amendment, by notice in the *Gazette* give persons or persons belonging to that category at least sixty days' written notice to submit written representations to the Minister.

135. Exemptions for accountable persons

(1) The Minister may, after consulting the board, and on conditions and for a determined, exempt from compliance with any or all of the provisions of this Act, a person or category of persons or an accountable person or category of accountable persons in respect of any one or more categories of transactions.

(2) Any exemption referred to in subsection (1) shall be by notice in the *Gazette* and may be withdrawn or amended by the Minister, after consulting the board.

136. Immunity

The Authority or an employee or representative of the Authority, or any other person performing a function or exercising a power under this Act, is not liable for anything done in good faith in terms of or for furthering the objectives of this Act.

137. Regulations

The Minister may, upon advice of the board, make regulations as may be required for carrying into effect any of the provisions of this Act.

138. Establishment of the Uganda Anti-Money Laundering Committee

(1) There is established a committee to be known as the Uganda Anti-Money Laundering Committee.

(2) The committee shall consist of fifteen members appointed by the Minister and being senior representatives of relevant disciplines from legal, enforcement, judicial, financial and law enforcement sectors of Uganda and being persons with knowledge in matters relating to money laundering and the combating of the financing of terrorism.

(3) A member of the committee shall hold office for three years from the date of appointment but is eligible for reappointment.

139. Functions of the Uganda Anti-Money Laundering Committee

(1) The functions of the committee are—

- (a) to represent Uganda as the National Task Force in anti money laundering matters;
- (b) to advise the Minister in the performance of his or her functions under this Act;
- (c) to foster a sound and effective anti-money laundering regime for Uganda;
- (d) to foster and promote greater cooperation among various multi-disciplinary agencies within Uganda's regional and international partners in all anti-money laundering and combating of financing of terrorism measures and endeavours; and
- (e) to perform any other function as may be prescribed by the Minister.

(2) The activities of the committee shall be funded by the Government of Uganda.

(3) The conduct of affairs of the committee shall be regulated by regulations made by the Minister under section 137.

(4) The meetings of the committee shall subject to subsection (3) be regulated by the committee.

SCHEDULES

Section 2

FIRST SCHEDULE

CURRENCY POINT

A currency point is equivalent to Uganda shillings twenty thousand.

SECOND SCHEDULE

Section 2

LIST OF ACCOUNTABLE PERSONS

1. Advocates as defined in the Advocates Act notaries licensed and certified under the Notaries Public Act, accountants as defined in the Accountants Act, and other independent legal professionals and accountants.¹
2. A board of executors or a trust company or any other person that invests, keeps in safe custody, controls, or administers trust property within the meaning of the Trustees Act;
3. Casinos (which also includes internet casinos);
4. Real estate agents;
5. Dealers in precious metals and gems.
6. Trust and company service providers not covered elsewhere in this Schedule which as a business provide any of the following services to third parties:
 - (a) acting as a formation agent of legal persons;
 - (b) acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
 - (c) providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
 - (d) acting as (or arranging for another person to act as) a trustee of an express trust;
 - (e) acting as (or arranging for another person to act as) a nominee shareholder for another person.
7. A financial institution as defined in the Financial Institutions Act.

¹This refers to sole practitioners, partners or employed professionals within professional firms. It is not meant to refer to 'internal' professionals that are employees of other types of business nor to professionals working for government agencies.

8. A broker, dealer or investment advisor licensed under the Capital Markets Authority Act.
9. An insurance company licensed under the Insurance Act.
10. Registrars of Companies.
11. Registrars of Land.
12. The Uganda Investment Authority.
13. All licensing authorities in Uganda.
14. Any other person who conducts the business of:
 - (a) acceptance of deposits and other repayable funds from the public including private banking;
 - (b) lending including, inter alia, consumer credit, mortgage credit, factoring with or without recourse, and finance of commercial transactions);
 - (c) financial leasing (not including financial leasing arrangements in relation to consumer products);
 - (d) the transfer of money or value;²
 - (e) issuing and managing means of payment e.g., credit and debit cards, cheques, traveller's checks, money orders, bankers' drafts, electronic money;
 - (f) financial guarantees and commitments;
 - (g) trading in:
 - (i) money market instruments (cheques, bills, CDs, derivatives, etc.),
 - (ii) foreign exchange,
 - (iii) exchange, interest rate and index instruments,
 - (iv) transferable securities,
 - (v) commodity futures trading;

² This applies to financial activity in both the formal and informal sector, e.g., alternative remittance activity. It does not apply to any natural or legal person that provides other persons solely with message or other support systems for transmitting funds.

- (h) participation in securities issues and provision of financial services related to such issues;
 - (i) individual and collective portfolio management;
 - (j) safekeeping and administration of cash or liquid securities on behalf of other persons;
 - (k) otherwise investing, administering or managing funds or money on behalf of other persons;
 - (l) underwriting and placement of life insurance and other investment related insurance, including non-life insurance business;³
 - (m) money and currency changing.
15. Non-governmental organizations, churches and other charitable organizations.

³ This applies to both insurance undertakings and to insurance intermediaries (agents and brokers).

Cross reference

Accountants Act Cap 266
Advocates Act Cap 267
Capital Markets Authority Act Cap 84
Extradition Act Cap 117
Financial Institutions Acts, Act No. 2 of 2004
Insurance Act, Cap. 213
Notaries Public Act Cap 18
Registration of Titles Act Cap 230
Trustees Act Cap 164