



**PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA**

**PREVENTION OF MONEY LAUNDERING
(AMENDMENT) ACT, No. 40 OF 2011**

[Certified on 06th October, 2011]

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*Prevention of Money Laundering (Amendment)
Act, No. 40 of 2011*

[Certified on 06th October, 2011]

L.D.—O. 9/2010.

AN ACT TO AMEND THE PREVENTION OF MONEY LAUNDERING
ACT, NO. 5 OF 2006

Be it enacted by the Parliament of the Democratic Socialist
Republic of Sri Lanka as follows:-

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| <p>1. This Act may be cited as the Prevention of Money Laundering (Amendment) Act, No. 40 of 2011.</p> <p>2. Section 2 of the Prevention of Money Laundering Act, No.5 of 2006 (hereinafter referred to as the “principal enactment”) is hereby amended in paragraph (a) of that section by the substitution for the words “being resident in Sri Lanka;” of the words “in Sri Lanka;”.</p> <p>3. Section 3 of the principal enactment is hereby amended as follows:—</p> <p>(1) in subsection (1) thereof by the repeal of all the words from “knowing or having reason” to the end of that subsection and the substitution therefor of the following:—</p> <p style="padding-left: 40px;">“knowing or having reason to believe that such property is derived or realized, directly or indirectly from any unlawful activity, or from the proceeds of any unlawful activity shall be guilty of the offence of money laundering and shall on conviction after trial before the High Court be liable to a fine which shall be not less than the value of the property in respect of which the offence is committed and not more than three times the value of such property, or to rigorous imprisonment for a period of not less than five years and not exceeding twenty years, or to both such fine and imprisonment.”;</p> | <p>Short title.</p> <p>Amendment of section 2 of the Prevention of Money Laundering Act, No. 5 of 2006.</p> <p>Amendment of section 3 of the principal enactment.</p> |
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- (2) by the insertion immediately after subsection (1) thereof of the following new subsection:—

“(1A) The assets of any person found guilty of the offence of money laundering under this section shall be liable to forfeiture in terms of Part II of this Act.”;

- (3) in subsection (3) thereof by the substitution for the words “for the commission by the accused of the unlawful activity” of the words “for the commission of the unlawful activity”.

Amendment of section 6 of the principal enactment.

4. Section 6 of the principal enactment is hereby amended by the substitution for the words “be liable to a fine not exceeding fifty thousand rupees or to imprisonment of either description for a period not exceeding six months,” of the words “be liable to a fine not exceeding one hundred thousand rupees or to imprisonment of either description for a period not exceeding twelve months,”.

Amendment of section 7 of the principal enactment.

5. Section 7 of the principal enactment is hereby amended in subsection (1) thereof by the substitution for the words “not below the rank of Superintendent of Police or in the absence of such an officer an Assistant Superintendent of Police may,” of the words “not below the rank of an Assistant Superintendent of Police may,”.

Amendment of section 8 of the principal enactment.

6. Section 8 of the principal enactment is hereby amended as follows:—

- (1) in subsection (1) of that section, by the substitution for the words “provisions of section 6 shall, within the seven days during which such order shall be in force, make an application” of the words “provisions of section 7 shall within the seven days during which such order shall be in force, make an *ex parte* application”;

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(2) in subsection (2) of that section—

- (i) by the repeal of paragraph (b) thereof and the substitution therefor of the following:—

“(b) to the requirement that the maximum period of any extension so granted shall not exceed three months at any given time and in any event shall not in the aggregate exceed a period of two years from the date of the issuing of the Freezing Order by such police officer.”;

- (ii) by the substitution in the proviso thereof for the words “ indictment is filed for the offence of money laundering in respect of” and for the words “Freezing Order” wherever such words appear in such proviso, of the words “indictment is filed for an offence under section 3 of this Act in respect of” and “Freezing Order” respectively;

- (3) in subsection (3) thereof by the substitution for the words “Freezing Order” and “Order of Freezing” of the words “Freezing Order”.

7. Section 9 of the principal enactment is hereby amended by the substitution for the words “No transaction shall be effected” of the words and figures “No transaction shall, except with the sanction of Court as provided for in section 10, be effected”.

Amendment of section 9 of the principal enactment.

8. Section 10 of the principal enactment is hereby amended as follows:-

Amendment of section 10 of the principal enactment.

- (1) by the substitution for the words “make order permitting” of the words “make order sanctioning” ; and

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- (2) by the repeal of the marginal note to that section and the substitution therefor of the following:—

“High Court to sanction
essential and legitimate
transactions”.

Amendment of
section 11 of
the principal
enactment.

9. Section 11 of the principal enactment is hereby amended by the substitution for the words “not below the rank of a Superintendent of Police or in the absence of such an officer an Assistant Superintendent of Police,” of the words “not below the rank of an Assistant Superintendent of Police,”.

Amendment of
section 12 of
the principal
enactment.

10. Section 12 of the principal enactment is hereby amended as follows:—

- (1) by the repeal of all the words from “Any Police Officer” to the end of paragraph (a) of subsection (1) of that section and the substitution therefor of the following:—

“Any police officer not below the rank of an Assistant Superintendent of Police shall take possession of, and otherwise deal with, any account, property or investment, which is subject to a Freezing Order, and the Court may on application made by the said police officer and for the purpose of determining who owns, possesses or is in control of such account, property or investment to which the Freezing Order relates, order—

(a) that any document relevant to—

(i) identifying, locating or
quantifying such account,
property or investment;

(ii) establishing the ownership,
possession or control of such
account, property or investment;

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- (iii) obtaining any other information pertaining to such account, property or investment,

be delivered forthwith to such police officer; and ”;

- (2) in subsection (3) of that section, by the substitution for the words “Upon determining in whom the ownership, possession or control of any property to which the Freezing Order relates,” of the words “Upon determining who owns, possesses or is in control of any account, property or investment to which the Freezing Order relates,”.

11. Section 13 of the principal enactment is hereby amended as follows:—

Amendment of section 13 of the principal enactment.

- (1) by the repeal of subsection (1) thereof and the substitution therefor of the following:—

“(1) Subject to the provisions of subsection (2), where a person is convicted of an offence under section 3 of this Act, the Court convicting such person shall, make order that any account, property or investment, owned, possessed or under the control of such person which has been derived or realized directly or indirectly from any unlawful activity, any income or profit earned on such account, property or investment and any instrumentalities used in the commission of such unlawful activity, be forfeited to the State free from all encumbrances.”;

- (2) by the insertion immediately after subsection (1) thereof of the following new subsections:—

“(1A) Where such account, property, investment, income, profit or instrumentalities cannot be found or traced the Court convicting such person shall order him to pay to the State the equivalent value of such account, property, investment, income, profit or instrumentalities.

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(1B) Where such person fails to pay such equivalent value, the Court shall, in accordance with the provisions of the Code of Criminal Procedure Act, No. 15 of 1979, order him to pay such value as a fine within such period as may be specified by Court.”;

(3) in subsection (2) thereof by the substitutions for the words “a *bona fide* interest in such property.” of the words “a *bona fide* interest in such property, or investment or any income or profit earned on such property or investment.”;and

(4) in subsection (4) thereof by the substitution for the words “any movable or immovable property belonging to the person” of the words “any property belonging to the person”.

Replacement of
section 14 of the
principal
enactment.

12. Section 14 of the principal enactment is hereby repealed and the following section is substituted therefor:—

“Restoring
the rights of
bona fide
claimants.

14. (1) Any person, being a person to whom the provisions of paragraph (a) of section 2 do not apply, who owns, possesses or is in control of, any account, property or investment to which the Freezing Order made under section 7 relates, may within thirty days of the making of such Order apply to the Court making the same, seeking the intervention of Court to exclude from such Order any account, property or investment he owns, possesses or is in control of.

(2) Where an application is made under subsection (1), the Court shall upon being satisfied on the information before Court that—

(a) the account, property or investment which the applicant owns, possesses or is in control of, is not derived or

realized directly or indirectly, from any unlawful activity or from the proceeds of any unlawful activity or the account, property or investment is not an instrumentality used in the commission of such unlawful activity;

- (b) the applicant was not in any way involved in the commission of the offence of money laundering in relation to which the Freezing Order was made;
- (c) the applicant had acquired an interest in the account, property or investment at any time prior to the commission of the offence of money laundering and the applicant was unaware of the fact that the defendant had used or had intended to use such account, property or investment in or in connection with the commission of such offence; or
- (d) the applicant had acquired an interest in the account, property or investment at the time of or after the commission or alleged commission of the offence, that such interest was acquired in circumstances which would not give rise to a reasonable suspicion that such account, property or investment was proceeds or instrumentalities of such offence,

make Order for the release of the account, property or investment which is the subject of the application before it, from the Freezing Order made under section 7, and restore the right of the applicant in respect of the same.”.

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Replacement of
section 15 of the
principal
enactment.

13. Section 15 of the principal enactment is hereby
repealed and the following section is substituted therefor:—

“Appointment
of a Receiver
upon
Forfeiture.

15. Where any account, property or
investment or any income or profit earned on
such account, property or investment has been
forfeited to the State under section 13 of this
Act, the Court making the Order of Forfeiture
may, appoint a Receiver in accordance with
the provisions of the Civil Procedure Code
(Chapter 101) to be in charge of such account,
property, investment, income or profit so
forfeited.”.

Amendment of
section 20 of
the principal
enactment.

14. Section 20 of the principal enactment is hereby
amended as follows:—

- (1) by the addition, immediately after subsection (2)
of that section, of the following new subsections:—

“(3) No person shall—

- (a) falsify, conceal, destroy or otherwise
dispose of, or cause or permit the
falsification, concealment, destruction
or disposal of, any document or
material or thing which is or is likely to
be relevant to the execution of any
Order made in accordance with the
provisions of this Act; or
- (b) divulge, the fact that an investigation
into an offence of money laundering or
an offence under the law of any foreign
State corresponding to the offence of
money laundering, is being, or is about
to be made, or divulge to another
person any other information which is
likely to prejudice such investigation.

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(4) Any person who contravenes the provisions of subsection (3) shall be guilty of an offence under this Act and shall on conviction after trial before the High Court be liable to a fine not exceeding one hundred thousand rupees or to imprisonment of either description for a period not exceeding twelve months or to both such fine and imprisonment.”;

- (2) by the repeal of the marginal note to that section and the substitution therefor of the following new marginal note:—

“Offences”.

15. Section 21 of the principal enactment is hereby repealed.

Repeal of section 21 of the principal enactment.

16. Section 23 of the principal enactment is hereby amended by the substitution for the words “by means of any illegal activity,” of the words “by means of any unlawful activity,”.

Amendment of section 23 of the principal enactment.

17. Section 27 of the principal enactment is hereby amended as follows:—

Amendment of section 27 of the principal enactment.

- (1) in subsection (1) thereof by the substitution for the words and figure “under section 2 of this Act,” of the words and figure “under section 3 of this Act,”;
- (2) in subsection (2) of that section, by the substitution for the words “No –Commonwealth country” of the words “Non-Commonwealth country”;
- (3) by the repeal of subsection (3) of that section and the substitution therefor of the following:—

“(3) The grant of assistance to any country referred to in subsection (2) may be made subject to

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such terms and conditions as the Minister may deem appropriate in the circumstances.”.

Amendment of
section 33 of the
principal
enactment.

18. Section 33 of the principal enactment is hereby amended as follows:—

- (1) by the insertion immediately after subsection (1) thereof of the following new subsection: —

“(2) In particular and without prejudice to the generality of the powers conferred by subsection (1), the Minister may make regulations in respect of the following matters:—

- (a) prescribing any business as a “designated non finance business” taking into consideration the interests of the national economy;
- (b) prescribing any business as a “finance business” taking into consideration the interest of the national economy.”.

- (2) by the renumbering of subsections (2) and (3) of that section, as subsections (3) and (4) thereof, respectively.

Amendment of
section 35 of the
principal
enactment.

19. Section 35 of the principal enactment is hereby amended as follows:—

- (1) by the insertion immediately before the definition of the expression “designated non-finance business” of the following new definition—

“account” means any facility or arrangement by which an Institution does any of the following:—

- (a) accepts deposits of currency;

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- (b) allows withdrawals of currency; or
- (c) pays cheques or payment orders drawn on the Institution or collects cheques or payment orders on behalf of a person other than the Financial Institution,

and includes any facility or arrangement for a safety deposit box or any other form of safe deposit;”;

- (2) in the definition of the expression “designated non-finance business”—

- (a) by the repeal of paragraph (e) thereof;
- (b) by the relettering of all paragraphs from (f) to (l) as paragraphs (e) to (k) thereof, respectively;
- (c) by the repeal of paragraph (m) thereof and the substitution therefor of the following new paragraphs:—

“(l) pawn brokering under Pawn Brokers Ordinance (Chapter 90);

(m) non profit organizations or non governmental organizations registered under any written law;”;

- (3) in the definition of the expression “finance business”—

- (a) by the repeal of paragraph (b) thereof and the substitution therefor of the following paragraph:—

“(b) finance business as defined in Finance Companies Act, No. 78 of 1988 or any Act enacted in place thereof ;”;

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- (b) by the repeal of paragraph (k) thereof and the substitution therefor of the following paragraphs:—

“(k) any company, to whom a licence to carry on banking business under the Banking Act, No. 30 of 1988, is issued;

(l) any finance business carried on by any society registered under the Co-operative Societies Law, No. 5 of 1972 or any Act enacted in place thereof;

(m) any finance business carried on by the Samurdhi Authority of Sri Lanka, established by the Samurdhi Authority of Sri Lanka Act, No. 30 of 1995; and

(n) underwriting and placement of insurance as well as insurance intermediation by agents and brokers.”; and

- (4) in the definition of the expression “unlawful activity”—

- (a) by the repeal of paragraph (e) thereof and the substitution therefor of the following:—

“(e) the Exchange Control Act (Chapter 423) and any Rule, Order or Regulation made thereunder;”;

- (b) by the repeal of paragraphs (j) and (k) thereof and the substitution therefor of the following paragraphs:—

“(j) any written law for the time being in force relating to offences connected with the trafficking or smuggling of persons;

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- (k) the Customs Ordinance (Chapter 235) and any Regulation, Rule or Order made thereunder;
- (l) the Excise Ordinance (Chapter 52) and any Regulation, Rule or Order made thereunder;
- (m) the Payment Devices Frauds Act, No. 30 of 2006 and any Regulation, Rule or Order made thereunder;
- (n) the National Environmental Act, No. 47 of 1980 and any Regulation, Rule or Order made thereunder;
- (o) an offence under any other written law for the time being in force which is punishable by death or with imprisonment for a term five years or more;

Provided however that, notwithstanding anything to the contrary in the preceding provision, any offence under sections 386, 388, 399 and 401 of the Penal Code (Chapter 19) shall be deemed to be an unlawful activity for the purposes of this Act; and

- (p) an act committed within any jurisdiction outside Sri Lanka, which would either constitute an offence in that jurisdiction or which would if committed in Sri Lanka amount to an unlawful activity within the meaning of this Act.”.

20. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

Sinhala text to prevail in case of inconsistency.

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