Tonga

MONEY LAUNDERING AND PROCEEDS OF CRIME ACT 2025

Act 35 of 2025

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MONEY LAUNDERING AND PROCEEDS OF CRIME ACT 2025

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Tonga

MONEY LAUNDERING AND PROCEEDS OF CRIME ACT 2025

Act 35 of 2025

AN ACT TO ENABLE THE UNLAWFUL PROCEEDS OF ALL SERIOUS CRIME INCLUDING DRUG TRAFFICKING TO BE IDENTIFIED, TRACED, FROZEN, SEIZED AND EVENTUALLY CONFISCATED; TO ESTABLISH A TRANSACTION REPORTING AUTHORITY; AND TO REQUIRE FINANCIAL INSTITUTIONS AND DESIGNATED NON-FINANCIAL BUSINESS AND PROFESSIONS TO TAKE PREVENTATIVE MEASURES TO HELP COMBAT MONEY LAUNDERING

I assent,
TUPOU VI,
16th December 2025.

BE IT ENACTED by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

PART I - PRELIMINARY

1 Short Title

This Act may be cited as the Money Laundering and Proceeds of Crime Act 2025.

2 Interpretation

(1) In this Act, unless the contrary intention appears —

"account" means any facility or arrangement provided by an accountable person which does any one or more of the following —

(a) accepts deposits of cash;

(b) allows withdrawals of cash or transfers into or out of the account;

(c) pays cheques or payment orders drawn on an accountable person by, or collects cheques or payment orders on behalf of, a person;

(d) supplies a facility or arrangement for a safety deposit box; or

(e) an account or arrangement declared by Regulation to be an account for the purpose of this Act;

"accountable person" means a financial institution or a Designated Non-Financial Business and Professions; includes an accountable person or class of accountable persons declared by Regulation to be an accountable person for the purpose of this Act;

"AML/CFT" means Anti-Money Laundering and Countering Financing of Terrorism;

"appeal" includes proceedings by way of discharging or setting aside a judgment, and an application for a new trial or for a stay of execution;

"asset forfeiture order" means an order under section 84;

"authorised officer" means a police officer, customs officer or any person authorised by the Minister responsible for Customs pursuant to section 127 of the Customs and Excise Management Act;

"benefit" includes property and proceeds of crime;

"beneficial owner" means the natural person or persons who ultimately own or control a legal person or legal arrangement or the natural person on whose behalf a transaction is conducted, and includes those natural persons who exercise ultimate effective control over a legal person or legal arrangement;

"cash" means —

(a) currency; or

(b) monetary instruments that may be exchanged for money (such as cheques, travellers' cheques, money orders, negotiable instruments in a form in which title thereto passes on delivery);

"close associate" in respect of a PEP refers to any natural person who is known to –

(a) have joint beneficial ownership of a legal entity or legal arrangement with a PEP;

(b) be or have been in a business relationship with a PEP;

(c) be the beneficial owner of a legal entity or legal arrangement that is known to have been set up for the benefit of a PEP; or

(d) be closely associated with a PEP in some other way through a personal or business relationship that might reasonably be believed to involve the sharing or joint control of funds or other property;

"Commissioner" has the meaning given by section 3 of the Tonga Police Act;

"company" means any body corporate and includes a firm or other association of individuals;

"competent authority" refers to all administrative and law enforcement authorities concerned with combating money laundering, terrorist financing and proliferation financing, including the Transaction Reporting Authority or supervisors;

"correspondent banking relationship" means the provision of banking, payment, cash management, international wire transfers, cheque clearing, payable through accounts, foreign exchange, securities transactions, funds transfer or similar services by one financial institution (the correspondent bank) to another financial institution (the respondent bank).

"Council" means the National Anti-Money Laundering & Counter Terrorism Financing Council established under section 31 of this Act;

"Court" means the Supreme Court of Tonga;

"currency" means coin and paper money of any jurisdiction that is designated as legal tender or is customarily used and accepted as a medium of exchange;

"customer" means any of the following -

(a) the person for whom a transaction or account is arranged, opened or undertaken;

(b) a signatory to a transaction or account;

(c) any person to whom an account or rights or obligations under a transaction have been assigned or transferred;

(d) any person who is authorised to conduct a transaction or control an account;

(e) any person who attempts to take any of the actions referred to above; or

(f) such other person as may be prescribed by Regulation;

"data" means representations, in any form, of information;

"dealers in high value goods" means those entities prescribed by Regulations under this Act;

"**dealing with property**" means to deal with property by any manner and any means or engages in conduct in relation to property without limitations and includes any of the following –

(a) buying or selling, acquires, uses, possesses, or a transfer or disposition of property;

(b) making or receiving a gift of the property;

(c) removing the property from Tonga;

(d) bringing the property into Tonga;

(e) using the property to obtain or extend credit, or using credit that is secured by the property;

(f) where the property is an interest in a partnership, doing anything to diminish or increase the value of the partnership; or

(g) assist, direct or instruct any other person, directly or indirectly, to deal with property;

"Designated Non-Financial Business and Professions" or "DNFBP" means —

(a) casinos, including internet casinos;

(b) real estate agents or real estate brokers;

(c) dealers in precious metals and dealers in precious stones, and other dealers in high value goods;

(d) law practitioners, notaries, and other independent legal professionals and accountants when they prepare for, engage in or carry out transactions for their client;

(e) trust and company service providers not otherwise covered by this law, which as a business, provide any of the following services to third parties —

(i) acting as a formation agent of legal persons;

(ii) acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or similar position in relation to other legal persons;

(iii) providing a registered office, business address, accommodation, correspondence or administrative address for a company, a partnership, any other legal person or arrangement;

(iv) acting as (or arranging for another person to act as) a trustee of an express trust; or

(v) acting as (or arranging for another person to act as) a nominee shareholder for another person; and

(f) includes a business or profession declared by Regulation to be a designated non-financial business or profession for the purpose of this Act;

"Director" means the Director of Transaction Reporting Authority appointed pursuant to section 6(3)(a) of this Act;

"document" means any record of information, and includes —

(a) anything on which there is 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; or

(e) any material on which data are recorded or marked and which is capable of being read or understood by a person or a computer system or other device;

"domestic PEP" are individuals who are or have been entrusted domestically with prominent public functions, for example heads of states or of government, senior politicians, senior government, judicial or military officials, senior executives of state-owned corporations, or important political party official;

"effective control" in relation to property means the exercise of practical control over the property whether or not that control is supported by any property interest or other legally enforceable power. In determining whether property is subject to the effective control of a person –

(a) it is not necessary to be satisfied that the person has an interest in the property;

(b) regard may be had to –

(i) shareholdings in, debentures over, or directorships of a company that has an interest (whether direct or indirect) in the property;

(ii) a trust that has a relationship to the property; and

(iii) family, domestic, business or other relationships between persons having an interest in the property, or in companies referred to in paragraph (a), or trusts referred to in paragraph (b), and other persons;

(c) a court may refuse to treat property as being subject to the effective control of a person if it is satisfied that a person's ownership or control of the property is subject to a lawful, bona fide trust held for the benefit of a third party;

"enforcement authority" means Tonga Police, ministry responsible for revenue and customs, Attorney General, Director of Public Prosecutions, Anti-corruption Commissioner, Principal Immigration Officer, or any other competent authority;

"entity" means a person, group, trust, partnership, fund, association or organization, whether incorporated or unincorporated;

"family member" in respect of a PEP includes an individual related to the PEP by blood or by marriage, including any of the following –

(a) the spouse;

(b) biological or adoptive children and their spouses;

(c) parents or parents of spouses;

(d) siblings;

(e) grandparents;

(f) brother-in-law or sister-in-law; or

(g) grandchild;

"FATF" means the Financial Action Task Force;

"financial group" means a group that consists of a parent company or of any other type of legal person exercising control and coordinating functions over the rest of the group, together with branches and or subsidiaries that are subject to AML/CFT policies and procedures at the group level;

"financial institution" means any person who conducts on behalf of a customer, the business of –

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

(b) lending, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions;

(c) financial leasing;

(d) money or value transmission services;

(e) issuing and administering means of payment (such as credit cards, travellers' cheques, money orders and bankers' drafts);

(f) entering into guarantees and commitments;

(g) trading in money market instruments (such as cheques, bills, certificates of deposit), foreign exchange, financial futures and options, exchange and interest rate instruments, and transferable securities;

(h) underwriting share issues and participation in such issues;

(i) giving advice to undertakings on capital structure, industrial strategy and related questions, and advice and services relating to mergers and the purchase of undertakings;

(j) money-broking;

(k) portfolio management and advice;

(l) safekeeping and administration of cash or liquid securities;

(m) otherwise investing, administering or managing funds or money on behalf of other persons;

(n) providing safe custody services;

(o) underwriting and placement of life insurance and other investment related insurance, including insurance intermediaries such as agents and brokers;

(p) money and currency changing;

(q) a Virtual Asset Service Provider;

(r) receipt of payment held on trust for payment of future services undertaken by the financial institution; or

(s) persons who conduct business activities declared or prescribed in the Regulations;

"forfeiture order" means an asset forfeiture order, profit forfeiture order, or instrument forfeiture order;

"foreign PEP" are individuals who are or have been entrusted with prominent public functions by a foreign jurisdiction, for example heads of state or of government, senior politicians, senior government, judicial or military officials, senior executives of state-owned corporations or important political party officials;

"funds" has the same meaning as property;

"gift" includes any transfer of property by a person to another person directly or indirectly —

(a) after the commission of a serious offence by the first person;

(b) for a consideration the value of which is significantly less than the value of the property 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;

"Governor" means the Governor of the Reserve Bank appointed under section 11 of the National Reserve Bank of Tonga Act;

"instrumentality" means any property used or intended to be used, in any manner, wholly or in part in or in connection with, or otherwise facilitates, the commission of a serious offence and is deemed to include property of or available for use by a terrorist organization. In relation to property referred to this includes the proceeds of any disposition of that property or any other property into which that property is converted, after the commission of the offence, except to the extent provided otherwise by any order of the court, excluding any severable interest or relief granted;

"instrument forfeiture order" means an order under section 91;

"interest", in relation to property, means —

(a) a legal or equitable estate or interest in the property; or

(b) a right, power or privilege in connection with the property whether present or future and whether vested or contingent;

"international PEP" means persons who are or have been entrusted with prominent functions by an international organisation, including members of senior management, directors, deputy directors and members of the board or all persons with equivalent functions;

"law enforcement purposes" means –

(a) the prevention, disruption, detection, investigation and prosecution of –

(i) any offence under this Act;

(ii) any offence under the Counter Terrorism and Transnational Organized Crimes Act; or

(iii) any serious offence;

(b) the enforcement and administration of -

(i) this Act;

(ii) the Illicit Drugs Control Act; or

(iii) any other Act prescribed by Regulations;

(c) any purpose or action referred to in paragraphs (a) or (b) relating to or taken in respect of the laws of a foreign jurisdiction that is broadly equivalent, to the enactments referred to in paragraphs (a) or (b); or

(d) any other purpose prescribed by Regulations;

"legal arrangement" refers to express trusts or other similar legal arrangements or any other prescribed arrangement by Regulations;

"legal person" refers to bodies corporate, foundations, partnerships, or associations, or any similar bodies that can establish a permanent customer relationship with a financial institution or otherwise own property;

"offence" and **"criminal offence"** except when the term refers to a specific offence means –

(a) any offence under the laws of Tonga; and

(b) any offence under a law of a foreign State, in relation to acts or omissions which, had they occurred in Tonga, would have constituted an offence under subparagraph (a);

"payable-through accounts" means an account maintained at the correspondent bank by the respondent bank, but which is accessible directly by a third party to effect transactions on its own behalf;

"person" means any natural or legal person;

"politically exposed person (PEP)" means a domestic PEP, a foreign PEP or international PEP and includes family members and close associates of a PEP;

"premises" includes any place within the Kingdom and in particular includes —

(a) any vehicle, vessel, craft, aircraft or any structure in the coastal waters of the Kingdom; or

(b) any tent, caravan or other moveable structure;

"proceedings" means any procedure conducted by or under the supervision of a Judge, Magistrate or judicial officer however described, in relation to any alleged or proven offence, or any dealing with property reasonably suspected of being the proceeds of crime, or related orders under this Act, and including an inquiry, investigation and preliminary or final determination of facts;

"proceeds of crime" means any property, wholly or in part, derived or realised directly or indirectly from a serious offence and includes, property into which any property derived or realised directly from the serious offence was converted, transformed or intermingled, as well as income, capital or other benefits derived or realised from such property at any time after the offence;

"profit forfeiture order" means an order under section 86;

"property" means real or personal property of any kind situated in the Kingdom or elsewhere, tangible or intangible property, movable or immovable, and includes interest in real or personal property;

"realisable property" means —

(a) any property held in the effective control of the respondent or defendant; or

(b) any property held by a person to whom a defendant has directly or indirectly made a gift caught by this Act;

"record" means any material on which information is recorded or marked and which is capable of being read or understood by a person, or by an electronic system or other device;

"Reserve Bank" means the National Reserve Bank of Tonga established under the National Reserve Bank of Tonga Act;

"Respondent" means in relation to an application for a restraining order or forfeiture order, the person identified in the application as the respondent (if any) and in relation to a restraining order or forfeiture order that has been made the person to whom that order is made (if any);

"serious offence" means an offence against a provision of —

(a) any law of Tonga for which the maximum penalty is imprisonment or other deprivation of liberty for a period of not less than 12 months or more severe penalty;

(b) a law of a foreign state, in relation to acts or omissions which, had they occurred in Tonga, would have constituted an offence for which the maximum penalty is imprisonment or other deprivation of liberty for a period of not less than 12 months, or more severe penalty, including an offence of a purely fiscal character;

(c) any other law of Tonga subject to a penalty of imprisonment or a fine of not less than $5000 and as prescribed by Regulations; or

(d) any law of Tonga or a foreign jurisdiction from which a benefit of $5000 or more was derived;

"shell bank" means a bank that has no physical presence in the country in which it is incorporated and licensed, and which is unaffiliated with a regulated financial group, that is subject to effective consolidated supervision;

"specified entity" means a person or entity -

(a) that is a United Nations listed entity as described in section 4 or 5 of the Counter Terrorism and Transnational Organized Crime Act; or

(b) for which a declaration has been made under section 5 of the said Act;

"supervisory authority" or **"supervisors"** refers to the entities listed in section 47;

"suspicious transaction report" means a report required to be made under section 17 of this Act;

"tainted property" has the same meaning as "proceeds of crime";

"terrorist" means any natural person who -

(a) commits or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully or wilfully;

(b) participates as an accomplice in terrorist acts;

(c) organizes or directs others to commit terrorist acts; or

(d) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act;

"terrorist act" has the meaning given by section 3 of the Counter Terrorism and Transnational Organised Crime Act;

"terrorist financing" means any act related to the provision or collection, by any means, directly or indirectly of any funds or property used, or intended to be used in the commission of a terrorist act or for the benefit of a terrorist organization and includes conduct that would constitute an offence against section 10 of the Counter Terrorism and Transnational Crime Act;

"terrorist organization" means any group of terrorist that –

(a) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and wilfully;

(b) participates as an accomplice in terrorist acts;

(c) organises or directs others to commit terrorist acts; or

(d) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act;

"terrorist property" means —

(a) property that has been, is being, or is likely to be used to commit a terrorist act;

(b) property that has been, is being, or is likely to be used by a terrorist organization; or

(c) property owned or controlled, or derived or generated from property owned or controlled, by or on behalf of a specified entity;

(d) property owned or controlled, or derived or generated from property owned or controlled by or on behalf of a terrorist that is not a specified entity"; and

(e) property that is the proceeds of terrorist financing;

"transaction" means a purchase, sale, loan, pledge, gift, transfer, delivery or other disposition, or the arrangement thereof, and includes but is not limited to –

(a) opening of an account;

(b) any deposit, withdrawal, exchange or transfer of funds in any currency whether in cash or by cheque, payment or der or other instrument or by electronic or other non-physical means;

(c) the use of a safety deposit box or any other form of safe deposit;

(d) entering into any fiduciary relationship;

(e) any payment made or received in satisfaction, in whole or in part, of any contractual or other legal obligation;

(f) any payment made in respect of a lottery, bet or other game of chance;

(g) establishing or creating a legal person or legal arrangement; and

(h) such other transaction as may be prescribed by Regulation;

"virtual asset" is a digital representation of value that can be digitally traded, or transferred, and can be used for purposes of –

(a) payment; or

(b) investment,

but does not include digital representations of fiat currencies, securities or other financial assets dealt with by financial institutions other than VASPs;

"Virtual Asset Service Providers (VASPs)" means any person that conducts one or more of the following activities or operations for or on behalf of another person -

(a) exchange between virtual assets and fiat currencies;

(b) exchange between one or more forms of virtual assets;

(c) transfer of virtual assets;

(d) safekeeping and/or administration of virtual assets or instruments enabling control over virtual assets; or

(e) participation in and provision of financial services, related to an issuer's offer and/or sale of a virtual asset;

"wire transfers" means any transaction carried out on behalf of an originator through a financial institution (including an institution that originates the wire transfer and an intermediary institution that participates in completion of the

transfer) by electronic means with a view to making an amount of funds available to any person at another financial institution, irrespective of whether the originator and the beneficiary are the same person;

(2) A reference in this Act to the law of —

(a) Tonga; or

(b) any foreign State,

includes a written or unwritten law of, or in force in, any part of Tonga or the foreign State.

3 Meaning of conviction in relation to a serious offence

For the purposes of this Act, a person shall be taken to be convicted of a serious offence if —

(a) the person is convicted, whether summarily or on indictment, of the offence;

(b) the person is charged with, and found guilty of, the offence but is discharged without any conviction being recorded; or

(c) the court, with the consent of the convicted person, takes the offence of which the person has not been found guilty into account in passing sentence on the person for another serious offence.

4 Meaning of quashing of convictions

For the purposes of this Act, a person's conviction of a serious offence shall be taken to be quashed —

(a) where section 4(b) applies, if the finding of guilt is quashed or set aside;

(b) where section 4(c) applies, if either —

(i) the person's conviction of the other offence referred to in that section, is quashed or set aside; or

(ii) the decision of the Supreme Court to take the offence into account in passing sentence for that other offence is quashed or set aside; or

(c) where His Majesty grants the person a pardon in respect of the person's conviction of the offence.

5 Meaning of deriving a benefit

(1) A person derives a benefit if that person has knowingly, directly or indirectly benefitted from a serious offence or the proceeds of crime, whether or not that person undertook or was involved in that serious offence.

(2) A reference to a benefit derived or obtained by or otherwise accruing to a person includes a reference to a benefit derived or obtained by, or otherwise accruing to, another person at the request or direction of the first person.

PART II - TRANSACTION REPORTING, REPORTING OBLIGATIONS, MONEY LAUNDERING AND RELATED OFFENCES

DIVISION 1 – TRANSACTION REPORTING AUTHORITY

6 Establishment of the Transaction Reporting Authority

(1) The Transaction Reporting Authority is established as an autonomous, independent unit within the Reserve Bank.

(2) The Transaction Reporting Authority shall serve as the central, national agency of Tonga responsible for receiving, analysing and disseminating information concerning money laundering, terrorist financing and proliferation financing, as provided for by this Act.

(3) The Transaction Reporting Authority shall consist of -

(a) a Director appointed by the Governor on such terms as the Governor may determine and in accordance with this Act;

(b) such other persons as may be appointed by the Governor; and

(c) any official with relevant skills from a government agency seconded to the Transaction Reporting Authority on the approval of the Governor in consultation with the Director and relevant head of the government agency.

(4) The Director shall exercise all of the powers, duties and functions of the Transaction Reporting Authority under this Act.

(5) The Director may authorise any person employed in the Transaction Reporting Authority, subject to any terms and conditions that the Director may specify, to carry out any power, duty or function conferred on the Director under this Act.

(6) The Governor may direct the Transaction Reporting Authority on any matter that, in the Governor's opinion, materially affects public policy or the strategic direction of the Transaction Reporting Authority.

(7) The Reserve Bank shall provide sufficient resources to the Transaction Reporting Authority to enable it to undertake its functions and responsibilities under this Act.

7 Responsibility of Director

The Director shall –

(a) be responsible for the day-to-day operations and management of the Transaction Reporting Authority;

(b) ensure that the Transaction Reporting Authority carries out the functions and duties imposed upon it under this Act;

(c) provide periodic reports to the Governor in relation to –

(i) policy, strategic matters and information relating to any agreement or memorandum of understanding entered into by the Director with a domestic or foreign agency;

(ii) the performance of its functions under this Act; and

(iii) resources assigned to the Transaction Reporting Authority for the conduct of its operations; and

(d) ensure that rules and procedures are in place relating to –

(i) the security and confidentiality of information held by the Transaction Reporting Authority;

(ii) appropriate access to Transaction Reporting Authority premises, information and databases;

(iii) the appointment of appropriately qualified staff; and

(iv) the transmission of intelligence and other material to enforcement authorities using dedicated, secure and protected channels.

8 Dismissal of the Director

(1) The Director may only be dismissed from his position upon –

(a) proven misconduct; or

(b) incompetence in the exercise of his office by reason of physical, mental or other incapacity of a permanent nature.

(2) The Governor is authorised to make a decision to dismiss the Director under subsection (1).

9 Functions of the Transaction Reporting Authority

(1) The Transaction Reporting Authority shall have the following functions –

(a) receive and analyse information and reports provided under sections 17 and 18 and collect information that the Transaction Reporting Authority considers is relevant to any serious offence, whether or not it is publicly available, including information that may be available on commercial databases or information that is collected or maintained by government agencies and institutions or that is provided by any agency of another country;

(b) assessing information and reports for the purpose of identifying persons suspected of money laundering, terrorist financing, proliferation financing or the commission of serious offences and analysing their activities;

(c) identifying proceeds of crime;

(d) disseminate information obtained in accordance with this Act to the appropriate enforcement authority (either spontaneously or upon request) when it is reasonably suspected that the information may be relevant to an investigation or prosecution of a serious offence, including a money laundering offence, an offence of the financing of terrorism or a violation of this Act, or for a law enforcement purpose;

(e) disseminate information obtained in accordance with this Act to enable recovery of the proceeds of crime;

(f) disseminate information obtained in accordance with this Act to the appropriate supervisory authority when, on the basis of its analysis and assessment, it is reasonably suspected that the information may be relevant to the supervision of an accountable person or a class of accountable persons;

(g) compile statistics and records, and may disseminate information within the Kingdom or elsewhere and make recommendations arising out of any information received;

(h) issue directives, instructions and guidelines to accountable persons in relation to their reporting obligations, the identification of suspicious transactions, record keeping or any other obligation under this Part or any Regulations issued for the implementation of this Act;

(i) where appropriate, periodically provide feedback to accountable persons and relevant government departments, offices, agencies and institutions regarding outcomes relating to the reports or information provided pursuant to this Act;

(j) provide training programs for accountable persons in relation to any matter that the Transaction Reporting Authority deems necessary to ensure compliance with the provisions of this Act, or relevant Regulations, or guidelines, or directives and instructions issued under this Act;

(k) conduct research into trends and developments in the area of money laundering and the financing of terrorism and improved ways of detecting, preventing and deterring money laundering and the financing of terrorist activities;

(l) educate the public and create awareness on matters relating to money laundering and the financing of terrorism;

(m) produce risk assessments relating to money laundering offences, financing of terrorism, and proliferation financing to be used by the

Council, supervisors and enforcement authorities in undertaking their functions;

(n) in consultation with the Council established under section 31 of this Act, recommend the prescription of restrictions limiting the use of cash to specific transactions; and

(o) perform all such functions and exercise all such powers as are necessary for, or ancillary to, the compliance of this Act or Regulations, directives and instructions made pursuant to this Act.

(2) The Transaction Reporting Authority shall also undertake the supervisory functions conferred upon it in Part V.

10 Powers of the Transaction Reporting Authority

For the purpose of carrying out the functions set out in section 9, the Transaction Reporting Authority may –

(a) require an accountable person to produce to it, within a reasonable period, any documents or information that it requires for conducting an analysis pursuant to section 9(b);

(b) require an accountable person to make its premises and records available for an inspection by the Transaction Reporting Authority for:

(i) the purpose of obtaining information relevant to the conduct of an analysis pursuant to section 9(b); or

(ii) ensuring compliance with the requirements of this Part;

(c) issue instructions to accountable persons to take such steps as may be appropriate in relation to any information or report received by the Transaction Reporting Authority, to enforce compliance with this Part.

(d) require any government ministry or public enterprise to provide records in a timely manner to enable the analysis of information received to determine if the matter should be referred to an appropriate enforcement authority;

(e) require any government ministry or public enterprise to provide records relating to suspected proceeds of crime, for the purpose of confirming the property as the proceeds of crime;

(f) require any telecommunications corporation established within the Kingdom to provide the call records of a person who is suspected of having committed or attempting to commit a serious offence, a money laundering or a financing of terrorism offence;

(g) enter into Memoranda of Understanding, agreements or arrangements with government ministries, non-government agencies and authorities to ensure close liaison, cooperation and the secure and facilitative exchange of information for the purposes of this Act; and

(h) issue directives to accountable persons in relation to their obligations under this Part and any Regulations issued for the implementation of this Act.

11 Cooperation with Foreign Counterpart Agencies

(1) The Transaction Reporting Authority may, enter into an agreement or arrangement to facilitate the exchange of information with a foreign counterpart agency that performs similar functions and is subject to similar secrecy obligations.

(2) The Transaction Reporting Authority may, acting on its own initiative or upon request, seek from or share any information relevant to its functions with a foreign counterpart agency that performs similar functions and is subject to similar obligations of confidentiality, secrecy and disclosure with respect to the performance of its functions.

(3) Whenever the Transaction Reporting Authority provides information pursuant to subsection (1) to a foreign counterpart agency, it shall obtain from that agency a suitable declaration or undertaking that the information will be used only for the purpose for which it was sought, unless the foreign counterpart agency seeks and obtains the agreement of Transaction Reporting Authority for the information to be used for another purpose.

(4) The Transaction Reporting Authority may make enquiries on behalf of a foreign counterpart agency where the enquiry may be relevant to the foreign counterpart agency's functions.

(5) For the purposes of this section, the Transaction Reporting Authority may –

(a) utilise its own databases, including information related to reports of suspicious and currency transactions, and other databases to which the Transaction Reporting Authority has direct or indirect access, including law enforcement databases, public databases, administrative databases and commercially available databases;

(b) obtain from an accountable person information that is relevant in connection with such request;

(c) obtain from a competent authority information that is relevant in connection with such request to the extent Transaction Reporting Authority could obtain such information in a domestic matter; and

(d) take any other action in support of the request of the foreign counterpart that is consistent with the authority of Transaction Reporting Authority in a domestic matter.

12 Action regarding Reports and other Information received

(1) Subject to subsection (2), if the Director has a reasonable suspicion that a transaction or attempted transaction may involve a serious offence, money

laundering offence, terrorist financing offence, or proliferation financing offence, or on the request of a foreign counterpart, he may issue an instruction in writing that the accountable person concerned either proceed or refrain from proceeding with the transaction or attempted transaction.

(2) An instruction issued by the Director pursuant to subsection (1) shall –

(a) be for the purposes of conducting further analysis of the transaction, confirmation of the suspicion and dissemination the results of the analysis to the competent authorities; and

(b) apply for a period to be determined by the Transaction Reporting Authority,

provided that any instruction issued pursuant to this section shall not operate for a period exceeding 14 working days from the date of issuance of the instruction.

(3) Before the expiration of an instruction issued pursuant to subsection (1), the Transaction Reporting Authority may apply to the Court for an extension of the period of operation of the instruction.

(4) For the avoidance of any doubt, the Director may also issue an instruction under subsection (1) at the request of foreign counterpart agency in accordance with section 11(5)(d).

13 Extension of operations

Where an application is made to a Court pursuant to section 12(3), the Court may extend the operation of any direction issued pursuant to section 12 for a reasonable period if it is satisfied of the reasonableness of the suspicion held by the Director.

14 Immunity of Transaction Reporting Authority employees

Any employee of the Transaction Reporting Authority, or any officer, agent or person authorised to act on behalf of the Transaction Reporting Authority, shall not be liable for damages for any acts or omissions made in the discharge of his duties under this Act unless it is shown that the act or omission was made in bad faith.

15 Confidentiality

(1) Every person employed by or seconded to the Transaction Reporting Authority with responsibility for the collection, storage, analysis or dissemination of information collected pursuant to this Act is required to keep confidential any information obtained within the scope of his duties, even after the cessation of those duties, except as otherwise provided in this Act or Regulations and any other Act or Regulations or as ordered by a court.

(2) Any current or past employee of the Transaction Reporting Authority or other person who has or had duties for or within the Transaction Reporting Authority

who intentionally reveals information the confidentiality of which is required to be protected by subsection (1) commits an offence under this Act and shall be liable under conviction to a fine not exceeding $250,000 or imprisonment for a term not exceeding 15 years or to both.

16 Secrecy obligations overridden and protection of accountable persons

(1) No legislative, regulatory, administrative or contractual requirement relating to the confidentiality of information held by an accountable person may be relied upon by an accountable person as a ground for refusing or failing to provide information, documents or access to premises that may be required by the Transaction Reporting Authority pursuant to this Act.

(2) Accountable persons, and the directors, officers and employees of accountable persons shall not be subject to any criminal or civil liability for breach of any restriction on the disclosure of information imposed by contract or any legislative, regulatory or administrative provision in relation to any reports or other information submitted in good faith to the Transaction Reporting Authority in accordance with this Act regardless of whether they knew the nature of any illegal activity that may have been committed in relation to the subject matter of the report or information, or whether any illegal activity actually occurred.

DIVISON 2 – REPORTING OBLIGATIONS

17 Obligation to Report Suspicious Transactions

(1) Subject to the provisions of subsections (2), (3) and (4), accountable persons that suspect or who have reasonable grounds to suspect that any funds or property that are involved in a transaction to which they are a party –

(a) are the proceeds of crime or an instrumentality;

(b) may be relevant to the investigation or prosecution of money laundering or any serious offence;

(c) relate to suspicious activity related to a service or proposed service sought by a customer; or

(d) is related or linked to, or is to be used for, terrorism, terrorist acts or by terrorist organisations or those who finance terrorism,

shall as soon as practicable, but no later than 3 days (24 hours in the case of a suspicion formed under subsection (1)(d)) after forming its suspicion, submit a report setting forth the suspicions to the Transaction Reporting Authority.

(2) The obligation to report in subsection (1) shall also apply to attempted transactions, regardless of the amount of funds or value of property involved.

(3) Notwithstanding subsection (1), lawyers, notaries, other independent legal professionals and accountants are required to submit reports only when they

engage, on behalf of or for a client, in a financial transaction associated with the following activities –

(a) buying and selling of real estate;

(b) managing or receiving of client money, securities or other assets;

(c) management of bank, savings or securities accounts;

(d) organisation of contributions for the creation, operation or management of companies; or

(e) creation, operation or management of legal persons or arrangements, and buying and selling of business entities;

(4) Notwithstanding sub-section (1), the obligations imposed upon dealers in precious metals, dealers in precious stones and dealers in high value goods by that subsection only apply to cash transactions with a customer the value of which is equal to or greater than USD 15,000.

(5) The Transaction Reporting Authority may require an accountable person to provide additional information in relation to a report made pursuant to subsection (1) if it considers it necessary for the purpose of assessing and analysing the information contained in the report.

(6) Supervisory authorities shall inform the Transaction Reporting Authority if, in the course of their responsibilities, they discover information that could be related to money laundering or terrorism financing.

(7) A report under this section shall –

(a) be in the prescribed form; and

(b) contain the details prescribed by the Regulations.

18 Obligation to Report Financial Transactions

(1) An accountable person shall promptly report to Transaction Reporting Authority any currency transaction in an amount equal to or above $10,000, whether conducted as a single transaction or several transactions that appear to be linked.

(2) An accountable person that carries on the business or activity of wire transfers shall report to the Transaction Reporting Authority all international wire transfers the value of which is equivalent to $1,000 or more, whether conducted in one transaction or several transactions that appear to be linked.

(3) Other categories of transaction for which a report to the Transaction Reporting Authority is required may be prescribed in the Regulations.

(4) Reports made under this section shall be made in the form and manner prescribed in the Regulations made under this Act.

19 Privileged information

(1) Sections 17 and 18 shall not require the disclosure of any privileged information held by a law practitioner in relation to a client.

(2) For the purposes of this Act, information is privileged information if –

(a) it is made or brought into existence for the purpose of obtaining or giving legal advice or assistance, in ascertaining the client's legal position, or in performing the task of defending or representing the client in, or concerning judicial, administrative, arbitration or mediation proceedings; or

(b) the communication is not made or brought into existence for the purpose of committing or furthering the commission of a criminal offence.

(3) It is not privileged information if the information consists wholly or partly of, or relates wholly or partly to –

(a) receipts, payments, income, expenditure or financial transactions of a specified person whether a law practitioner, his client, or any other person; or

(b) if it is contained in, or comprises the whole or part of any book, account, statement or other record prepared or kept by the law practitioner in connection with any account held by the law practitioner.

DIVISION 3 – MONEY LAUNDERING OFFENCES

20 Intentional money laundering

(1) A person commits the offence of money laundering if he engages in a dealing with property knowing or believing it to be the proceeds of crime.

(2) A person shall be liable upon conviction to imprisonment for a period not exceeding 25 years or a fine up to 100 times the sum laundered, or both, and in the case of a legal person by a fine of 1000 times the sum laundered or $10,000,000, whichever is greater.

21 Reckless money laundering

(1) A person commits an offence if he engages in a dealing with property and is reckless to the possibility that it is the proceeds of crime.

(2) A person shall be liable upon conviction to imprisonment for a period not exceeding 10 years or a fine up to 50 times the sum laundered, or both, and in the case of a legal person by a fine of 500 times the sum laundered or $5,000,000, whichever is greater.

22 Money laundering – property reasonably suspected to be proceeds of crime

(1) A person commits an offence if he engages in a dealing with property that might reasonably be suspected of being the proceeds of crime.

(2) Absolute liability applies to subsection (1).

(3) Subsection (1) does not apply if the defendant proves that they had no reasonable grounds for suspecting that the money or property was derived or realised, directly or indirectly, from some form of unlawful activity.

(4) For the purposes of subsection (1), it is taken to be reasonable to suspect that the property is proceeds of crime if –

(a) the conduct involves a number of transactions that are structured or arranged to avoid the reporting requirements of this Act that would otherwise apply to the transactions;

(b) the conduct involves using one or more accounts held in a false name, in the name of a nominee or an account established or maintained for use by another person which avoids the identity of the beneficial owner being exposed when the property is being transacted;

(c) the conduct involves permitting another person to use their bank account to conduct transactions for a fee;

(d) the value of the money and property involved in the conduct is, in the opinion of the Court, grossly out of proportion to the defendant's income and expenditure over a reasonable period within which the conduct occurs;

(e) the conduct involves a reportable currency transaction (within the meaning of this Act) and the defendant –

(i) has contravened his obligations under that Act relating to reporting the transaction; or

(ii) has given false or misleading information in purported compliance with those obligations; or

(f) the defendant –

(i) has stated that the conduct was engaged in on behalf of or at the request of another person; and

(ii) has not provided information enabling the other person to be identified and located.

(5) A person shall be liable upon conviction to imprisonment for a period not exceeding 5 years or a fine up to 25 times the sum laundered, or both, and in the case of a legal person by a fine of 50 times the sum laundered or $1,000,000, whichever is greater.

23 Jurisdiction

Proceedings may be brought for an offence under this Division if the act or omission is committed by a subject of Tonga or a citizen of any other country, regardless of where any part of the act or omission constituting the offence was committed.

24 Defence of enforcement of enactment

A person cannot be charged under sections 20 to 22 of this Act, if the person who carried out the conduct that constitutes the offence did so for an authorised law enforcement purpose or enforcement of this Act.

25 Money laundering

For the purposes of sections 20 to 22 –

(a) it is not necessary for the prosecution to prove that the Defendant knew or believed the property was, the proceeds of a particular offence or particular class of offence;

(b) it is no defence that the Defendant believed any property to be the proceeds of any particular offence, when in fact it was the proceeds of another offence; or

(c) intent, knowledge, suspicion and belief, to the extent that they are required as elements of an offence may be inferred from objective factual circumstances.

DIVISION 4 – OTHER OFFENCES

26 Prohibition against Shell Banks

(1) No shell bank shall be established or permitted to operate in Tonga.

(2) Any person who –

(a) establishes or continues operating a shell bank in Tonga;

(b) enters into or continues business relations with a shell bank;

(c) is a financial institution that has a correspondent banking relationship with a shell bank; or

(d) is a financial institution that has a correspondent banking relationship with another financial institution that permits its accounts to be used by a shell bank,

commits an offence under this Act and shall be liable upon conviction to a fine not exceeding $500,000 or imprisonment for a period not exceeding 15 years or to both, or both, and in the case of a legal person to a fine not exceeding $5,000,000.

27 Related offences

(1) A person who opens or operates an account with an accountable person in a false name or an anonymous account commits an offence and shall be liable upon conviction to imprisonment for a period not exceeding 2 years or to a fine not exceeding $20,000 or both, and in the case of a legal person to a fine not exceeding $1,000,000.

(2) An accountable person who fails to comply with any requirement of this Part for which no penalty is specified commits an offence and shall be liable upon conviction to imprisonment for a period not exceeding 2 years or to a fine not exceeding $20,000 or both, and in the case of a legal person to a fine not exceeding $1,000,000.

(3) Any person who wilfully obstructs the Director or any other person authorised by the Director pursuant to section 6(5), from exercising powers under this Act, commits an offence and shall upon be liable upon conviction to imprisonment for a period not exceeding 20 years or to a fine not exceeding $1,000,000 or both, and in the case of a legal person to a fine not exceeding $10,000,000.

28 Offence of failing to report transactions

Any person who fails to comply with the requirements of sections 17 or 18 commits an offence and shall be liable upon conviction to imprisonment for a period not exceeding 10 years or to a fine not exceeding $500,000 or both, and in the case of a legal person a fine not exceeding $5,000,000.

29 Tipping off offence

(1) Any person who —

(a) knows or suspects that a report under section 17(1) is being prepared or has been sent to the Transaction Reporting Authority; and

(b) discloses to any other person the existence of, or information relating to that report or its preparation,

commits an offence and shall be liable upon conviction to imprisonment for a period not exceeding 20 years or to a fine not exceeding $1,000,000 or both, and in the case of a legal person to a fine not exceeding $10,000,000.

(2) The offence in subsection (1) does not apply to the sharing of information –

(a) within a financial group for the purposes of undertaking customer due diligence or AML/CFT risk management;

(b) with a legal practitioner for the purpose of obtaining legal advice; or

(c) to a competent authority, enforcement authority, or foreign equivalent for law enforcement purposes.

30 Prohibition of unlicensed or unregistered virtual asset service providers

(1) A legal person registered in Tonga pursuant to the Companies Act shall not establish or undertake the business of a virtual asset service provider in Tonga or elsewhere without first obtaining a licence from a supervisory authority that authorises it to undertake that business.

(2) A legal person registered in a foreign country shall not establish or undertake the business of a virtual asset service provider from a place of business within Tonga without first obtaining a licence from a supervisory authority that authorises it to undertake that business.

(3) A natural person shall not trade or sell virtual assets in Tonga without first obtaining a licence from a supervisory authority that authorises that person to undertake that business.

(4) A person who commits an offence against subsections (1) to (3) is guilty of an offence and is liable upon conviction –

(a) for a natural person, to a fine not exceeding $200,000 or to imprisonment for a period not exceeding five years or both; or

(b) for a legal person to a fine not exceeding $2,000,000.

PART III – ESTABLISHMENT OF THE NATIONAL ANTI-MONEY LAUNDERING AND COUNTER TERRORISM FINANCING COUNCIL

31 Establishment of the National Anti-Money Laundering and Counter Terrorism Financing Council

(1) This section establishes the National Anti-Money Laundering and Counter Terrorism Financing Council, consisting of –

(a) the Attorney General, as Chairperson;

(b) the Governor of the Reserve Bank;

(c) the Director of the Transaction Reporting Authority;

(d) the Director of Public Prosecutions;

(e) the Commissioner of Tonga Police;

(f) the Chief Executive Officer of the Ministry responsible for justice;

(g) the Chief Executive Officer of the Ministry responsible for revenue;

(h) the Chief Executive Officer of the Ministry responsible for customs;

(i) the Chief Executive Officer of the Ministry responsible for the business registry; and

(j) the Chief Executive Officer of the Ministry responsible for immigration.

(2) The Council may invite other persons to attend a meeting but such persons shall have no right to vote.

(3) The functions of the Council are –

(a) to advise the Transaction Reporting Authority and the Minister for Finance on any matters relating to the prevention of money laundering, financing of terrorism or proliferation financing;

(b) to make recommendations to the Transaction Reporting Authority and the Minister for Finance on any matter relating to the prevention of money laundering, financing of terrorism or proliferation financing;

(c) to assist the Transaction Reporting Authority and the Minister for Finance in the formulation of policies or strategies relating to the prevention of money laundering, financing of terrorism or proliferation financing; and

(d) to assist the Transaction Reporting Authority in coordination between various Government departments and with statutory corporations.

(4) Except for the purpose of the performance of his duties or the exercise of his functions under this Act or when lawfully required to do so by any Court, a member of the Council shall not disclose any information or matter which has been obtained by him in the performance of his duties or the exercise of his functions under this Act, except –

(a) for the detection, investigation or prosecution of a serious offence, a money laundering offence or an offence of the financing of terrorism; or

(b) for law enforcement purposes.

PART IV – PREVENTATIVE MEASURES

DIVISION 1 – RISK BASED APPROACH

32 Risk Assessment

(1) An accountable person shall identify, assess and monitor their money laundering, terrorism financing and proliferation financing risks.

(2) The assessment taken under subsection (1) shall be updated prior to the launch of a new product or business practice or the use of a new or developing technology and such assessment shall identify the money laundering or terrorism financing risks that may arise in relation to such new products or business practices, including new delivery mechanisms, or new or developing technologies for both new and pre-existing products, and take appropriate measures to manage and mitigate these risks.

(3) Such risk assessments shall take into account customer type, geographic area, product, service, transaction and means of delivery risk factors and shall be proportionate to the nature and size of the accountable person's business and take into account the outcome of any risk assessment carried out at a national or sectoral level, and any regulatory guidance issued.

(4) An accountable person shall document the risk assessment in writing, keep it up to date and make it available to relevant supervisory authorities upon request.

(5) The supervisory authorities may issue guidance to accountable persons to assist them to develop and implement risk-based policies and procedures to address money laundering, terrorism financing and proliferation financing.

33 Customer Due Diligence

(1) An accountable person shall not establish or maintain an anonymous account or an account in a fictitious name.

(2) An accountable person shall undertake customer due diligence in the following circumstances –

(a) when opening an account for or otherwise establishing a business relationship with a customer, or where there has been a material change in the nature or purpose of the business relationship or as set out in Regulations;

(b) where a customer who is neither an account holder nor in an established business relationship with the accountable person wishes to carry out –

(i) a transaction in an amount equal to or above the amount prescribed by Regulation, whether conducted as a single transaction or several transactions that appear to be linked; or

(ii) a wire transfer the value of which is equal to or above the amount prescribed by Regulation whether conducted as a single transaction or several transactions that appear to be linked;

(c) whenever doubts exist about the veracity or adequacy of previously obtained customer identification information; or

(d) whenever there is a suspicion of criminal activity involving the customer or the customer's account.

(3) When applying customer due diligence measures, an accountable person shall take into account the outcome of the risk assessment required to be carried out under section 32 and –

(a) where the risks are higher, an accountable person shall conduct enhanced due diligence measures consistent with the risks identified and any requirements set out in the Regulations; and

(b) where the risks are lower, an accountable person may, subject to any conditions or requirements set out in the Regulations, conduct simplified due diligence measures,

unless there is a suspicion of money laundering or terrorism financing or a higher risk may be apparent in which case enhanced customer due diligence shall be undertaken.

(4) An accountable person shall apply the following customer due diligence measures in all cases and –

(a) identify the customer and verify the customer's identity using reliable, independent source documents, data or information as prescribed in Regulations; or

(b) identify the beneficial owner and take reasonable measures to verify the beneficial owner's identity such that the accountable person is satisfied that it knows who the beneficial owner is, as prescribed by Regulations.

(5) The supervisory authorities may issue directives relating to the type and extent of measures an accountable person shall undertake with respect to each of the requirements in this section.

34 On-going Due Diligence

An accountable person shall exercise risk-based due diligence on an on-going basis throughout the course of each business relationship, as prescribed by Regulations.

35 Failure to implement Customer Due Diligence Requirements

(1) Where an accountable person is unable to verify the identity of the customer and beneficial owner(s) or comply with other customer due diligence measures set out in this Act, it shall refrain from opening the account or commencing or continuing the business relationship or carrying out the transaction, or it shall terminate the business relationship. In such cases, the accountable person shall file a suspicious transaction report to the Transaction Reporting Authority.

(2) Where an accountable person reasonably believes that performing the customer due diligence requirements of this Act will tip off the customer or potential customer, it may choose not to perform customer due diligence and shall file a suspicious transaction report to the Transaction Reporting Authority.

(3) An accountable person shall submit a suspicious transaction report to the Transaction Reporting Authority when the customer refuses to provide information required by this Act.

36 Politically Exposed Persons

(1) An accountable person shall have in place appropriate risk management systems to determine whether a customer or beneficial owner is a politically

exposed person (PEP) and to manage and mitigate the money laundering, terrorist financing, and proliferation financing risks of politically exposed person (PEP) as prescribed by Regulations.

(2) A risk management system established pursuant to subsection (1) shall be commensurate with the size of the accountable person's business and the level of money laundering and terrorism financing risk.

37 Cross Border Correspondent Banking Relationships

(1) A financial institution shall have in place appropriate risk management systems to manage the risks arising from its cross-border correspondent banking and similar relationships as prescribed by Regulations.

(2) The requirements in subsection (1) shall apply to cross border correspondent banking and similar relationships established prior to the enactment of this Act.

38 Reliance of Identification by Third Parties

An accountable person may rely on third parties to perform customer due diligence measures as required by section 33, and as prescribed by the Regulations.

39 New technologies

(1) An accountable person shall identify, assess and, take appropriate measures to manage and mitigate the money laundering, terrorism financing or proliferation financing risks that may arise in relation to –

(a) the development of new products and new business practices including new delivery mechanisms for products and services; and

(b) the use of new or developing technologies for both new and pre-existing products.

(2) An accountable person shall meet any requirements prescribed by Regulations in relation to any new technology or product.

40 Obligations regarding Wire Transfers

When a financial institution undertakes a wire transfer for a value equal to or above the prescribed amount it shall follow the requirements as prescribed by the Regulations.

41 Internal Controls

(1) An accountable person shall develop and implement internal programs for the prevention of money laundering, terrorism financing, proliferation financing and such programs shall be –

(a) regularly updated;

(b) approved by senior management and be monitored and enhanced, if and as necessary;

(c) appropriate to all the risks identified under section 32 and the national risk assessment on money laundering, terrorist financing, and proliferation financing risks; and

(d) proportionate to the nature and size of the accountable persons' business.

(2) An internal program under subsection (1) shall at a minimum include –

(a) internal policies, procedures and controls to fulfil the obligations of this Act and manage and mitigate the money laundering, terrorist financing and proliferation financing risks identified under section 32;

(b) independent audit arrangements to review and verify compliance with and effectiveness of the measures taken in accordance with this Act;

(c) adequate screening procedures to ensure appropriate and high standards when hiring employees; and

(d) ongoing training for all directors, officers and employees to maintain awareness of the requirements of this Act.

(3) An accountable person shall designate a compliance officer at a senior management level to be responsible for the implementation and ongoing compliance of the accountable persons internal programs, policies and procedures and the requirements of this Act.

(4) The type and extent of measures an accountable person shall undertake with respect of each of the requirements in this section, shall have regard to the risks of money laundering and terrorism financing, the size of the business or profession, and the standards set by relevant professional bodies.

42 Compliance with Obligations by Foreign subsidiaries and branches

(1) An accountable person shall require foreign branches and any majority owned subsidiaries to apply appropriate measures to manage their money laundering, terrorist financing and proliferation financing risks and to implement the requirements of this Act to the extent that the applicable laws and Regulations in the jurisdiction where the foreign branch or subsidiary is domiciled so permit.

(2) If such laws prevent compliance with these obligations for any reason, the accountable person shall advise its competent supervisory authority.

43 High Risk Jurisdictions

(1) An accountable person shall apply enhanced due diligence, proportionate to the risks, to business relationship and transactions with natural and legal persons, and financial institutions, from countries for which this is called for by the FATF.

(2) The Transaction Reporting Authority may require accountable persons to impose counter measures proportionate to the risks on transactions associated with countries or geographic regions that are identified as being a high money laundering, terrorist financing or proliferation financing risk by the FATF or the Transaction Reporting Authority.

(3) The Transaction Reporting Authority shall issue directives on counter measures to be implemented for the purposes of subsection (2).

44 Obligations of Trustees

(1) A trustee shall disclose its status to an accountable person, when as a trustee, before it establishes a business relationship or carries out an occasional transaction above the threshold prescribed by Regulations.

(2) A trustee shall provide an accountable person with information on the beneficial ownership and the assets of the trust to be held, managed or transacted under the terms of the business relationship.

45 Record keeping

(1) An accountable person shall maintain all records with respect to their customers and transactions in accordance with this section and any other applicable laws and Regulations.

(2) An accountable person shall ensure that all records are –

(a) maintained accurately and securely for at least 7 years –

(i) after the termination of business relationship; or

(ii) in the case of an attempt or execution of a transaction or of an occasional transaction, from the date of transaction; and

(b) made available on a timely basis to the Transaction Reporting Authority or as and when required to be disclosed.

(3) Such records referred to in subsection (1) shall include, as a minimum –

(a) all records obtained through customer due diligence measures, including account files, business correspondence and copies of all documents evidencing the identities of customers and beneficial owners, and records and the results of any analysis undertaken in accordance with the provisions of this Act, all of which shall be maintained for not less than 7 years after the business relationship has ended;

(b) records on transactions, both domestic and international, that are sufficient to permit reconstruction of each individual transaction for both account holders and non-account holders, which shall be maintained for not less than 7 years from the date of the transaction;

(c) the record of any findings pursuant to section 34 and related transaction information which shall be maintained for at least 7 years from the date of the transaction; and

(d) copies of all suspicious transaction reports made pursuant to section 17 or other reports made to the Transaction Reporting Authority in accordance with this Act, including any accompanying documentation.

46 Obligations for Designated Non-Financial Business and Professions

Accountable persons that are DNFBPs are required to comply with the requirements of sections 33, 34, 35, 36, 38, 39, 41, 42, 43 and 45 of this Act in the following circumstances –

(a) if the DNFBP is a casino or internet casino and it has engaged in a financial transaction with a customer equal to or in excess of $3,000 or is prepared to engage in such transactions;

(b) if the DNFBP is a real estate agent or real estate broker and it has been involved in transactions for a client concerning the buying and selling of real estate or is prepared to engage in such transactions;

(c) if the DNFBP is a dealer in precious metals or stones, or a dealer in other high value goods and it has engaged in any cash transaction with a customer equal to or in excess of $15,000 or is prepared to engage in such transactions; or

(d) if the DNFBP is a law practitioner, notary, independent legal professional or an accountant and in the previous 2 years engaged in a transaction for a client in relation to the following activities –

(i) buying and selling of real estate;

(ii) managing or receiving of client money, securities or other assets;

(iii) management of bank, savings or securities accounts;

(iv) organization or contributions for the creation operation or management of companies; or

(v) creation, operation or management of legal persons or arrangements, and buying or selling of business entities.

PART V – SUPERVISION

47 Authorities Responsible for Supervision

(1) Responsibility for supervision of compliance by accountable persons with the requirements of Part IV are as follows –

(a) in the case of financial institutions, the Reserve Bank; and

(b) in the case of Designated Non-Financial Businesses and Profession, the Transaction Reporting Authority.

(2) The Transaction Reporting Authority has responsibility for supervision of compliance by accountable persons with the requirements of Part II Division 2.

(3) Supervisors shall adopt a risk-based approach to the AML/CFT supervision of the accountable persons' subject to their supervision and shall –

(a) ensure that they understand the risks of the sector; and

(b) apply supervisory resources using a risk-based approach.

48 Functions and responsibilities of Supervisory Authorities

Supervisory authorities shall have the following functions and responsibilities –

(a) to undertake periodical risk assessments of the sectors and individual accountable persons subject to their supervision for the purpose of developing appropriate measures to manage and mitigate the money laundering and terrorist financing risks of the sectors that they supervise;

(b) to collect information and other data from accountable persons relevant to regulating and supervising accountable persons and monitoring compliance with this Act and Regulations by accountable persons and requiring that such information and data be submitted within a reasonable period of time;

(c) to conduct on-site examinations and offsite surveillance of accountable persons to ascertain the compliance with the provisions of this Act and Regulations and to ensure that accountable persons are effectively managing their money laundering, terrorist financing and proliferation financing risks, including on a group-wide basis;

(d) to issue directives, instructions, and guidelines to accountable persons in complying with their obligations and to ensure that accountable persons are effectively managing their money laundering, terrorist financing and proliferation financing risks;

(e) to cooperate and share information with other competent authorities or any foreign competent authority concerned with combating money laundering or terrorism financing or predicate offences;

(f) to verify that foreign branches and majority owned subsidiaries of accountable persons adopt and enforce measures consistent with this Act and to ensure that accountable persons are effectively managing their money laundering, terrorist financing and proliferation financing risks, to the extent permitted by the laws of the host country;

(g) to promptly notify the Transaction Reporting Authority of transactions or facts that could be related to money laundering, terrorism financing or predicate offences;

(h) to develop and implement appropriate financial and other fit and proper test requirements while registering, licensing or issuing permissions to accountable persons not otherwise licensed and regulated and while approving those owning, controlling, or participating, directly or indirectly, in the establishment, management or operation or business of such accountable person, including the beneficial owner or beneficiary of shares of the accountable person or cause to do so;

(i) to maintain statistics concerning measures adopted and sanctions imposed as directed by supervisory authorities;

(j) to determine the type and extent of customer due diligence, enhanced customer due diligence; and

(k) to provide prompt and effective cooperation to agencies performing similar functions and other competent authorities in other countries, including to exchange of information.

49 Powers of Supervisory Authorities

Supervisory authorities shall have the following powers –

(a) to require accountable persons to undertake a risk assessment to identify, evaluate, monitor risk faced by the entity periodically or as per necessity and adopt adequate measures to effectively manage and mitigate risks;

(b) to compel an accountable person to provide any necessary information and records;

(c) to apply measures and impose sanctions against accountable persons for non-compliance to the provisions of this Act, the Regulations and any directives or instructions issued pursuant to the Act and to report them to the Transaction Reporting Authority;

(d) enforce compliance where an accountable person fails to comply in whole or in part with reporting obligations through administrative sanctions as established pursuant to this Act or refer the matter to the Police for prosecution where an offense has been committed;

(e) to conduct onsite examinations;

(f) to issue directives, instructions and guidelines; and

(g) to issue financial and fit and proper requirements for accountable persons subject to their supervision.

50 Power of Supervisory Authorities to act on requests of overseas supervisors

(1) An overseas supervisor may request a Supervisory Authority to inquire into any matter related to the functions of that overseas supervisor.

(2) The Supervisory Authority may obtain information, documents, or evidence that, in the Supervisory Authority's opinion, is likely to assist the Supervisory Authority in complying with that request by exercising its powers under section 49.

(3) The Supervisory Authority may transmit the information, documents, or evidence obtained by it to the overseas supervisor in the manner the Supervisory Authority thinks fit.

51 Administrative Sanctions

(1) A supervisory authority which identifies a failure by an accountable person to comply with this Act, or with Regulations, directives or instructions issued pursuant to this Act, may impose one or more of the following sanctions –

(a) issue written warnings;

(b) require prompt corrective actions within specified timelines;

(c) impose administrative fines;

(d) impose full or partial restriction on the business or profession;

(e) suspend or revoke the licensing and registration of the accountable person; and

(f) order the accountable person to do all or any of the following –

(i) take corrective action to remedy any deficiencies under this Act or relevant Regulations, or guidelines, or directives and instructions issued in exercise of powers under this Act;

(ii) cease engaging in certain actions or practices;

(iii) remove or suspend specified persons who are on the board of directors, are office bearers or members of the management of the accountable person and take steps to ensure that they do not take part in the management or business operations of the accountable person; or

(iv) appoint a person or persons acceptable to the supervisory authority as administrator of the accountable person for such term as the order specifies.

(2) The supervisory authority may impose other appropriate sanctions under prevailing laws if the sanctions provided in subsection (1) are not sufficient for the violation of the provisions of this Act or Regulations or guidelines.

(3) Administrative fines imposed by supervisory authorities under subsection (1)(c) shall not exceed $100,000 for a violation and in the case of continuing contravention, with an additional penalty which may not exceed $10,000 for each day during which such contravention continues.

(4) The penalties and sanctions imposed under this section may be applied to directors, senior management and other relevant persons of the accountable person.

52 Sharing of information and documents for law enforcement purposes, or with Supervisory Authorities and overseas supervisors

(1) A Supervisory Authority may provide to another agency of the Tongan Government, including another Supervisory Authority, the Transaction Reporting Authority, and Tonga Police, or to an overseas supervisor, any information, record, or document, or copy thereof, that the Supervisory Authority —

(a) holds in relation to the performance or exercise of its functions, responsibilities or powers under this Act or any other enactment; and

(b) considers may assist, as the case may be —

(i) in the case of an agency of the Tongan Government, in the performance or exercise of its functions, responsibilities or powers under any enactment; or

(ii) the overseas supervisor in the performance or exercise of its functions, responsibilities and powers under foreign law.

(2) However, the Supervisory Authority may provide information, records, documents, or copies thereof, to an overseas supervisor under this section only if the Supervisory Authority is satisfied that appropriate protections are or will be in place for the purpose of maintaining the confidentiality of anything provided.

(3) The Supervisory Authority may use any information, record, document, or copy thereof, provided to it by an agency of the Tongan Government, or by an overseas supervisor, in the Supervisory Authority's performance or exercise of its functions, responsibilities, or powers under this Act or any other enactment.

(4) This section applies despite anything to the contrary in any contract, deed or document.

53 Confidentiality

(1) Every person who has duties for or within a supervisory authority is required to keep confidential any information obtained within the scope of his duties, even after the cessation of those duties, except as otherwise provided in this Act and any other Act or as ordered by a court.

(2) Any current or past employee of a supervisory authority or other person who has duties for or within a supervisory authority who intentionally reveals information the confidentiality of which is required to be protected by subsection (1) commits an offence under this Act and shall be liable upon

conviction to a fine not exceeding $250,000 or imprisonment for a period not exceeding 15 years or to both.

54 Immunity of Supervisors

Any employee of a supervisory authority, or any officer, agent or person authorised to act on behalf of the supervisory authority, shall not be liable for damages for any acts or omissions made in the discharge of his duties under this Act unless it is shown that the act or omission was made in bad faith.

PART VI – CROSS BORDER CASH DECLARATION, SEIZURE AND CONFISCATION

55 Cash declarations

(1) Any person who enters or leaves Tonga in possession of cash or arranges for the transportation of such items into or out of Tonga by cargo, courier, postal service or any other means shall declare cash of an amount equal to or above $10,000.

(2) A declaration under subsection (1) shall be made to an authorised officer in the prescribed form.

(3) Any person who intentionally or recklessly fails to declare cash in an amount equal to or above $10,000 when entering or leaving Tonga as required pursuant to subsection (1) or who makes a false or misleading declaration commits an offence and shall be liable upon conviction to a fine not exceeding $50,000 or imprisonment not exceeding 10 years or to both.

(4) Such declaration made under this section or any other relevant information obtained under this Part, shall be recorded and submitted by the authorised officer to the Transaction Reporting Authority.

(5) Declarations and other information obtained under this Part shall be retained for 7 years and may be made available for the purposes of international cooperation and assistance by either the ministry responsible for customs or the Transaction Reporting Authority.

56 Questioning

(1) Any authorised officer may question any person entering or leaving Tonga about the source, ownership, acquisition, use, or intended destination of any cash in that person's possession.

(2) Any person who, without reasonable excuse, on so being questioned by an authorised officer fails, provides false or misleading information or refuses to

answer any question put to that person commits an offence and shall be liable upon conviction to a fine not exceeding $20,000.

57 Searches

(1) Any authorised officer may search any person, premises, place, or craft, if he has reasonable grounds for suspecting that there is on the person, premises, place, or craft, cash —

(b) an amount of which is not less than the amount required to be declared under section 55(1); and

(b) that has not been declared in the prescribed form.

(2) An authorised officer may, so far as he thinks it necessary or expedient, require a person searched under this section —

(a) to submit to a search of any goods he has with him, and, where the authorised officer requires; and

(b) to submit to a search of his person.

(3) An authorised officer exercising powers by virtue of subsection (2)(b) may detain the person for so long as is necessary for their exercise of the powers of search.

(4) The powers conferred by this section are exercisable only so far as reasonably required for the purpose of finding cash.

(5) Any personal search of a person shall be carried out only by an authorised officer of the same gender of the person to be searched.

58 Seizure of non-declared or falsely declared cash

An authorised officer may seize the non-declared cash if it has not been declared or if a false or misleading declaration has been made in a declaration made pursuant to section 55(1).

59 Seizure of cash at the border

An authorised officer may seize the cash if there are reasonable grounds for suspecting that it is proceeds of crime or an instrumentality used or intended for use in the commission of an offence, or terrorist property.

60 Interest

If cash is seized under section 58 for more than 48 hours, it shall be as soon as practicable, be paid into an interest-bearing account, and the interest accruing on it is to be added to it on its forfeiture or release.

61 Detention of seized cash

(1) Cash seized under section 58 or 59 shall not be detained for more than 14 working days after seizure, unless –

(a) a Court orders its continued detention for a period not exceeding 3 months from the date of the initial seizure; or

(b) it is required as evidence of an offence against section 55(3) or any other offence.

(2) The Court may order such detention upon being satisfied that –

(a) there was a failure to make a declaration or a false or misleading declaration or disclosure or there are reasonable grounds for the suspicion referred to in section 59; and

(b) the continued detention of the cash is justified while –

(i) its origin or derivation is further investigated; or

(ii) consideration is given to the institution in Tonga or elsewhere of criminal proceedings against any person for an offence which the seized item is connected.

(3) The Court may subsequently order continued detention of the cash if satisfied of the matters set forth in subsection (2), or if subsection (1)(b) continues to apply but, subject to subsection (5) the total period of detention shall not exceed 2 years from the date of the order made under that subsection.

(4) Orders made pursuant to subsections (2) or (3) shall be served on the person from whom the cash was seized as soon as practicable.

(5) Subject to subsection (6), cash detained under this section may be released in whole or in part to the person on whose behalf it was transported –

(a) by order of the Court that its continued detention is no longer justified, upon application by or on behalf of that person and after considering any views of the Transaction Reporting Authority and Attorney General's Office; or

(b) by Customs or any other competent authority, if satisfied that the continued detention of the seized cash is no longer justified.

(6) Cash detained under this section shall not be subject to the 2 year requirements in subsection (3) if an application for a restraining order or forfeiture order has been made under this Act or any other Act, or if proceedings have been instituted in Tonga or elsewhere against any person for an offence with which the cash is connected, unless and until the proceedings on the application or the proceedings related to an offence have been concluded.

(7) If the application under subsection (6) relates to cash that is commingled with other cash, the commingled cash is subject to continued detention under this subsection.

62 Notification of detained cash

Upon the granting of an order to detain seized cash, or continue the detention of seized cash under section 61, the Court shall cause the order to be served on the person from whom the cash was seized, and any other interested parties, within a reasonable time.

63 Innocent third parties

(1) A person, other than a person from whom cash was seized under section 58 or section 59, and who has been notified of the detention of the cash under section 62, who claims to have a lawful interest in the cash may apply to a court for the cash, or a part of it, to be released to him.

(2) An application under subsection (1) shall be made within 28 days of the person receiving notice that the cash has been detained.

(3) A court to which an application has been made pursuant to subsection (1) may grant the application if it is satisfied that the applicant obtained the cash from lawful sources and had an interest in it on the day upon which it was seized by the authorised officer.

PART VII – CONFISCATION

64 Application of this Part

(1) No criminal proceeding shall be required for any application or order to be made under this Part.

(2) An application or order made under this Part may be based on criminal activity that occurred in Tonga or in a foreign jurisdiction.

(3) For the avoidance of doubt, civil rules of procedure and evidence apply to all proceedings under this Part.

DIVISION 1 - RESTRAINING ORDERS

65 Restraint not necessary before Forfeiture

Property may but need not be restrained property or foreign restrained property before it becomes forfeited property or the subject of a foreign forfeiture order registered in Tonga.

66 No Identified Owner Required

In proceedings for restraining and forfeiture orders relating to specific property, a specific owner need not be identified.

67 Different Grounds for Restraint or Forfeiture

In proceedings for restraining or forfeiture orders, the forfeiture orders may be sought on different grounds to which the restraining order was sought.

68 Division to apply both within and outside of Tonga

Orders under this Division can relate to property located in Tonga, or anywhere else.

69 Applying for a restraining order

(1) The Commissioner may apply to the Court for a restraining order against –

(a) any proceeds of crime;

(b) any proceeds of crime held by or under the effective control of a Respondent; or

(c) any property held or effectively controlled by a Respondent for the purposes of satisfaction of profit forfeiture order.

(2) The Attorney General may apply to the Court for a restraining order in relation to an instrumentality.

(3) The Court shall consider the application ex-parte if requested by the Applicant.

70 The application for a restraining order

An application for a restraining order shall identify –

(a) the proposed restrained property;

(b) the Respondent (if any); and

(c) any other persons, who to the knowledge of the applicant, has an interest in the proposed restrained property.

71 Making the Order

(1) A Court determining the application, shall make a restraining order, if satisfied of one or more of the following –

(a) that there are reasonable grounds to suspect that the property is proceeds of crime;

(b) that there are reasonable grounds to suspect that the Respondent has benefitted from a serious offence and their property is able to be used to satisfy a profit forfeiture order;

(c) the Respondent —

(i) has been previously convicted of an offence in a foreign jurisdiction that had it occurred in Tonga would have been a serious offence; or

(ii) has held or applied for a visa that has been refused or cancelled by a foreign government on the basis of character grounds,

and has property in Tonga, acquires property in Tonga, or has brought property into Tonga, that there are reasonable grounds to suspect is the proceeds of crime; or

(d) that there are reasonably grounds to suspect that property is an instrumentality.

(2) An absence of declared taxable income in Tonga or in a foreign jurisdiction, or an absence of identified legitimate income in Tonga or a foreign jurisdiction is prima facie reasonable grounds to suspect.

(3) The Court shall order that –

(a) any or all property shall not be dealt with by any person; or

(b) any or all property shall not be dealt with by any person except in the manner and circumstances, or subject to a condition, specified in the order.

(4) All property subject to a restraining order shall be placed in the custody and control of the Commissioner.

(5) The Court shall make a restraining order even if there is no risk of the property being disposed or otherwise dealt with.

(6) The reasonable grounds referred to in subsection 1(a), (b) and (c) need not be based on a finding as to the commission of a particular offence or class of offence.

72 Property that a restraining order may cover

The order shall specify as property subject to the order –

(a) specified property;

(b) all or specified property of the Respondent;

(c) all property of the respondent other than specified property;

(d) specified property other than property of the respondent (whether or not that person's identity is known) that is subject to the effective control of the respondent; or

(e) specified property other than property of the respondent (whether or not that person's identity is known) that, in any case, is reasonably suspected of being the proceeds of crime.

73 Conditions on a restraining order

(1) A Court may impose conditions on a restraining order that the Court considers fit.

(2) Notwithstanding subsection (1), a Court may not allow any legal expenses to be met out of property subject to a restraining order.

74 Notice of Restraint

(1) Upon the granting of the order, the Applicant shall serve the order on the Respondent and other interested parties, within a reasonable time.

(2) In the case of a restraining order for all property under the effective control of the Respondent, the Applicant shall also serve a list of the property subject to the Order that has been taken into the custody and control of the Commissioner.

75 Duration of Restraining Order

A restraining order remains in force from the time it is made until it is revoked by the Court or a forfeiture application in relation to the property has been determined.

76 Excluding property from Restraining Order

(1) A person (other than the Respondent) who has a severable interest in any restrained property, may make application to the Court to exclude that interest.

(2) The Court shall not exclude an interest unless the applicant proves on a balance of probabilities –

(a) that they have a bona fide legal or equitable interest in the property; or

(b) that the applicant has not benefitted from, or been involved in any serious offence.

(3) The Court may exclude property or interest in a property, if satisfied in relation to subsection (2).

77 Applying for further orders

An application for a further order may be made by –

(a) the Applicant;

(b) a person with an interest in the restrained property; and

(c) with leave of the Court.

78 Making further orders

Upon making an application under section 77, a Court may make further orders to –

(a) vary a restraining order;

(b) impose or vary a condition to a restraining order;

(c) order any person to be examined by the Court, regarding or concerning the nature and location of restrained property;

(d) enable the sale of restrained property prior to a forfeiture application to maintain or preserve interest in the property;

(e) direct the owner or previous owner of restrained property (including, if the owner or previous owner is a legal person, the beneficial owner of the legal person) to give a sworn statement to a specified person, within a specified period, setting out particulars of, or dealings with, the property; or

(f) if the Court is satisfied that there are reasonable grounds to suspect that a person (other than the owner or a previous owner) has information relevant to identifying, locating, or quantifying the property—an order directing the person to give a sworn statement to a specified person, within a specified period, setting out particulars of, or dealings with, the property.

79 Application to revoke a restraining order

(1) A person may apply to the Court to revoke a restraining order.

(2) An application under this section shall be made within 28 days of the restraining order being served on the Applicant.

(3) The Applicant for the purposes of this section, is the person applying to revoke the restraining order.

(4) The Applicant shall give written notice to the Commissioner of both the application and the grounds on which the revocation is sought.

(5) The Commissioner may adduce additional information to the Court in relation to the application.

(6) The Court may only revoke the restraining order if satisfied, on the balance of probabilities, that there are no grounds to make the order at the time the application was considered.

DIVISION 2 – FORFEITURE

80 Division to apply both within and outside of Tonga

Orders under this Division can relate to property located in Tonga, or anywhere else.

81 Applying for a forfeiture order

(1) The Commissioner may apply to the Court for a forfeiture order against –

(a) specified property (an '*asset forfeiture order*'); and

(b) property for the purposes of satisfaction of a profit forfeiture order (a *'profit forfeiture order'*).

(2) The Attorney General may apply to the Court in which the related criminal matter is filed for an instrument forfeiture order (an *'instrument forfeiture order'*).

82 Who can be heard at a hearing for a forfeiture order

The following persons are able to adduce evidence at a hearing for a forfeiture order –

(a) the Applicant;

(b) a person on whom the application is served, including without limitation the Respondent; or

(c) any person who claims an interest in property to which the application relates.

83 Amending application for a forfeiture order

(1) The Court may amend an application for a forfeiture order –

(a) on its own initiative; or

(b) at the request of the Commissioner.

(2) If the Court amends an application, the Court shall direct the Commissioner to serve notice of the amendment to –

(a) a person on whom the original application was served, including without limitation the Respondent;

(b) any person who claims an interest in property to which the application relates; and

(c) any person who the Commissioner has reason to believe has interest in any additional property (if any) included in the amended application.

84 Application for an asset forfeiture order

An application for an asset forfeiture order shall specify the following –

(a) the property to be subject to the order;

(b) the grounds for the Commissioner's belief that the property is proceeds of crime;

(c) the Respondent (if any); and

(d) any other persons, who to the knowledge of the Applicant, has an interest in the proposed restrained property.

85 Making an asset forfeiture order

(1) A Court determining the application, shall make an asset forfeiture order, if satisfied that on the balance of probabilities the specified property is proceeds of crime.

(2) A Court shall make an asset forfeiture order if satisfied on the balance of probabilities that the Respondent has failed to comply with a disclosure of source order or has provided information established to be untruthful in relation to a disclosure of source order.

86 Application for a profit forfeiture order

(1) An application for a profit forfeiture order shall specify the following –

(a) the Respondent;

(b) the criminal conduct from which the Respondent has benefitted;

(c) the value of the benefit; and

(d) the property to which the Respondent holds interest and the nature of that interest.

(2) For the purposes of subsection (1)(c), the relevant period for calculating the value of the benefit ends on the date of the application under this section and starts 7 years before the date of the application for the relevant restraining order (if any).

87 Value of benefit presumed to be the value stated in the application for a profit forfeiture order

(1) If the Commissioner proves on the balance of probabilities that the Respondent has benefited from criminal conduct, the value of that benefit is presumed to be the value stated in the application.

(2) The presumption in subsection (1) may be rebutted by the Respondent on the balance of probabilities.

88 Calculation of benefit to account for illicit property

(1) When calculating benefit, the Court shall include the value of any illicit property moved into or out of Tonga.

(2) Such illicit property cannot be used to satisfy a profit forfeiture order.

89 Making a profit forfeiture order

(1) A Court determining the application, shall make a profit forfeiture order to the value of the Commissioners application if satisfied that on the balance of probabilities the Respondent has —

(a) benefited from a serious offence;

(b) an interest in the property; and

(c) not rebutted the value of the benefit stated in the application.

(2) The order shall specify –

(a) the value of the order; and

(b) the property that is forfeited to satisfy the order.

(3) A profit forfeiture order is enforceable as an order made as a result of civil proceedings and the value specified in the order is recoverable from the Respondent as a debt due to the Crown.

(4) If an order is not fully satisfied, the order can be satisfied using property acquired by the Respondent after the order is made until property to the value of the orders has been forfeited.

(5) The order can be made even if the Respondent has absconded, is deceased, is unable to be found, or by reason of not being in Tonga is not amenable to justice.

(6) For the avoidance of doubt, it is not necessary for the purposes of subsection (1)(a) to prove that the Respondent has committed a particular serious offence or class of offence.

90 Making a profit forfeiture order – more than one person

(1) When,

(a) on the balance of probabilities, a serious offence has occurred involving more than one person; and

(b) the benefit value cannot be attributed to any individual person,

the Court shall presume that each individual person has benefited to the value of the application.

(2) If satisfied of subsection (1) the Court may order a profit forfeiture order to the value of the application against each person in subsection (1).

(3) The presumption in subsection (1) may be rebutted by a person in subsection (1)(a) on the balance of probabilities.

91 Application for an instrument forfeiture order

An application for an instrument forfeiture order shall specify the following –

(a) the property to be subject to the order;

(b) the grounds for the Commissioner's or the Attorney General's belief, as the case may be, that the property is or has been an instrumentality;

(c) the Respondent (if any); and

(d) any other persons, who to the knowledge of the applicant, has an interest in the property.

92 Making an instrument forfeiture order

(1) A Court determining the application, shall make an instrument forfeiture order if satisfied that on the balance of probabilities –

(a) a serious offence has occurred; and

(b) the specified property is an instrumentality.

(2) For the avoidance of doubt, it is not necessary for the purposes of subsection (1)(a) to prove that the Respondent has committed a particular serious offence or class of offence, or that a person has been convicted for the serious offence.

93 Notice of a forfeiture order

Upon the granting of a forfeiture order the Applicant shall serve the order on the Respondent and other interested parties, within a reasonable time.

94 A person (other than Respondent) may apply for relief

(1) If the Court makes a forfeiture order, a person other than the Respondent who has an interest in the property, may apply to the Court making the forfeiture order for relief.

(2) The application shall be made within 28 days of the person becoming aware of the forfeiture order being made.

(3) The application shall contain the following —

(a) the reason why the application should be granted; and

(b) the nature and extent of the person's interest in the property subject to the order.

(4) The Applicant shall give written notice to the Commissioner of both the application and the grounds on which the relief is sought.

95 Making an order for relief

Upon receiving an application for relief from a forfeiture order, the Court may, if it considers it appropriate to do so, grant relief if the Applicant proves on the balance of probabilities that —

(a) they have an interest in the property; and

(b) they have had no involvement, and have not benefited in any way from any serious offence.

96 A person may apply for relief on the grounds of undue hardship

(1) If the Court makes a forfeiture order, a person who has an interest in the property, may apply to the Court making the forfeiture order for relief on the grounds of undue hardship.

(2) The application shall be made within 28 days of the person becoming aware of the forfeiture order being made.

(3) The application shall contain the following —

(a) the circumstances in which undue hardship is likely to be caused; and

(b) the nature and extent of the person's interest in the property subject to the order.

(4) The Applicant shall give written notice to the Commissioner of both the application and the grounds on which the relief from undue hardship is sought.

97 Making an order for relief from undue hardship

Upon receiving an application for relief from undue hardship, the Court may, if it considers it appropriate to do so, grant relief if the hardship would be severe and excessive considering all circumstances available to the Court.

98 Forfeiture upon conviction for a serious offence

(1) Property is forfeited to the Crown if –

(a) a person is convicted of a serious offence; and

(b) the property is covered by a restraining order.

(2) It does not matter whether the restraining order was made before or after the person's conviction of the serious offence.

(3) The property forfeits to the Crown –

(a) in the case the property is subject to a restraining order served on the person no less than 28 days prior to the date of conviction, on the date of conviction;

(b) in the case the property is subject to a restraining order served on the person within 28 days prior to the date of conviction, 28 days following the date of conviction; or

(c) in the case the property is subject to a restraining order served on the person after the person's conviction, 28 days following the person being served with the restraining order.

(4) Property forfeited under this section vests absolutely in the Crown at the time of forfeiture.

DIVISION 3 – FOREIGN RESTRAINING ORDERS AND FOREIGN FORFEITURE ORDERS

99 Foreign requests for Tongan restraining orders

(1) At the request of a foreign jurisdiction, the Commissioner may apply to the Court upon the authorisation of the Attorney General to seek a restraining order against property believed to be located in Tonga when proceedings related to a restraining order, however described, have been commenced in the foreign jurisdiction.

(2) Where the Commissioner makes application to the Court under subsection (1), the application is to be treated as if it was made pursuant to Division 1 of this Part, and the Court may make a restraining order in respect of the property.

(3) If the Court makes an order under subsection (2), the order is to be treated as if it was an order made under section 69 of this Act.

(4) For the avoidance of doubt, orders available under Division 5 of this Part in respect of restraining orders are available for an order made under subsection (3).

100 Foreign requests for Tongan forfeiture orders

(1) At the request of a foreign jurisdiction, the Commissioner may apply to the Court upon the authorisation of the Attorney General to seek a forfeiture order against property believed to be located in Tonga when proceedings related to a forfeiture order, however described, have been commenced in the foreign jurisdiction.

(2) Where the Commissioner makes application to the Court under subsection (1), the application is to be treated as if it was made under Division 2 of this Part, and the Court may make a forfeiture order in respect of the property.

(3) If the Court makes an order under subsection (2), the order is to be treated as if it was an order made under –

(a) in the case of an order relating to proceeds of crime, section 85;

(b) in the case of an order relating to property that could satisfy a profit forfeiture order, or an equivalent benefit-based order in the foreign jurisdiction, sections 89 or 90;

(c) in the case of an order relating to an instrumentality, section 92 of this Act.

(4) For the avoidance of doubt, orders available under Division 5 of this Part in respect of forfeiture orders, are available for an order made under subsection (3).

101 Applications and orders under this Division may rely on findings of fact

In making an order under this Division, the Court may rely on the findings of fact in the foreign order.

102 Commissioner may independently commence investigations or proceedings

For the avoidance of doubt, the Commissioner may independently commence investigations or proceedings under this Part based on information received from a foreign jurisdiction, in the absence of a formal request from the foreign jurisdiction.

DIVISION 4 – REQUESTS FOR ENFORCEMENT OF TONGAN ORDERS BY FOREIGN JURISDICTIONS

103 Requests for enforcement of orders

The Kingdom may request an appropriate authority of a foreign country to make arrangements for the enforcement of –

(a) a Tongan restraining order against property subject to the order that is believed to be located in that country;

(b) a Tongan forfeiture order against property subject to the order that is believed to be located in that country; or

(c) in the case of a profit forfeiture order made for the purposes of section 89 or 90 of this Act, where some or all of the property available to satisfy the order is believed to be located in that country.

104 Requests for issue of orders in foreign countries

The Kingdom may request an appropriate authority of a foreign country to obtain, in respect of property reasonably suspected of being the proceeds of crime or an instrumentality, or property for the purposes of satisfying a forfeiture order, an order, warrant, or similar instrument in nature to any of the following orders and warrants available under this Act –

(a) a restraining order;

(b) a search warrant; or

(c) an order available under Division 5 of this Part.

DIVISION 5 – INVESTIGATORY POWERS

105 Rapid seizure

(1) Upon the approval of a police officer holding the rank of Inspector or above, any police officer can seize property suspected of being the proceeds of crime or an instrumentality, or property for the purposes of satisfying a forfeiture order.

(2) Having seized any property under subsection (1) a police officer shall make an application to a Magistrate within 7 days to obtain authority to retain custody of the seized property for a period of up to 3 months, subject to circumstances, this can be extended for further periods of 3 months, up to a total of 12 months.

(3) Prior to the expiry of the granted authority in subsection (2), the Commissioner or the Attorney General shall make an application to restrain the property –

(a) where an application for restraint is made, the property is to be retained until the determination of that application; and

(b) in the absence of an application for restraint being made, the property is returned to the person from whom it was seized.

106 Rapid freezing of accounts held with accountable persons

(1) Upon the approval of a police officer holding the rank of Inspector or above, any constable can, upon the provision of written notice to an accountable person, require the accountable person to freeze an account or funds, or suspend a transaction, as specified in the notice.

(2) Having frozen an account or funds, or suspended a transaction pursuant to the notice under subsection (1) a police officer shall make an application to a Magistrate within 7 days to obtain authority to maintain the freezing notice for a period of up to 3 months, subject to circumstances, this can be extended for further periods of 3 months, up to a total of 12 months.

(3) In any case, a Magistrate can order the funds to be returned or transferred to a specified party.

(4) Prior to the expiry of the granted authority in subsection (2), the Commissioner or the Attorney General may make application to restrain the funds –

(a) where an application for restraint is made, the funds are to be retained until the determination of that application; and

(b) in the absence of an application for restraint being made, the notice is revoked.

107 Powers to search for and seize proceeds of crime and instrumentalities, and evidence

(1) A police officer may search —

(a) a person or premises or conveyances; and

(b) seize any property found in the course of the search that the police officer suspects, on reasonable grounds to be –

(i) proceeds of crime;

(ii) property subject to a restraining order;

(iii) property that is an instrumentality; and

(iv) any evidence relevant to an investigation under this Act.

(2) Any search or seizure made under subsection (1) shall only be made —

(a) with the consent of the person, occupier of the premises or the owner or operator of the conveyance, as the case may be;

(b) under warrant issued under section 108; or

(c) under section 109.

108 Search warrants in relation to section 107

(1) Where a police officer has reasonable grounds for suspecting that there is, or will be at or upon a premises or conveyance within the next 30 days, proceeds of crime, property subject to a restraining order, or an instrumentality, the police officer may apply for a search warrant.

(2) The application shall be made in writing to a Magistrate.

(3) Where by reason of urgency a police officer considers it necessary to do so, they may make application by telephone or other means of communication.

(4) Where an application is made under subsection (1) for a warrant to search a person, premises or conveyance, the Magistrate may, issue a warrant authorising a police officer (whether or not named in the warrant) with such assistance and by such force as is necessary and reasonable to undertake the search and seizure.

(5) A warrant issued under this section shall state —

(a) the property sought to be seized; and

(b) any conditions sought and that are considered necessary by the Magistrate related to when or how often the search warrant can be executed.

(6) If during the course of searching under a warrant issued under this section, a police officer finds —

(a) property that the police officer suspects on reasonable grounds to be the proceeds of crime, property subject to a restraining order, or an instrumentality, other than that specified in the warrant; or

(b) anything the police officer suspects on reasonable grounds may be evidence of the commission of a serious offence,

the police officer may seize that property or thing.

109 Searches in emergencies

(1) Where a police officer suspects on reasonable grounds that —

(a) particular property is the proceeds of crime, property subject to a restraining order, or an instrumentality;

(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 police officer may search a person, enter upon land, or upon or into premises and search for and seize any property he suspects is proceeds of crime, property subject to a restraining order, or an instrumentality.

(2) If during the course of a search conducted under this section, a police officer finds anything he suspects on reasonable grounds may be evidence of the commission of a criminal offence, he may seize that property or thing.

110 Record of property seized

A police officer who seizes property under section 108 or 109 shall provide a list of the property seized to the person who appears to be in possession of such property at the time at which it is seized and shall take reasonable care to ensure that the property is preserved.

111 Return of seized property

(1) Where property has been seized under section 108 or 109 (otherwise than because it may be evidence of the commission of an offence), a person who claims an interest in the property may apply to the Court for an order that the property be returned to that person.

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

(a) the person is entitled to possession of the property;

(b) the person was not involved in the commission of the offence and where relevant is not a member of a terrorist organisation;

(c) the property is not tainted property; and

(d) the person in respect of whose conviction, charging or proposed charging, and the seizure of the property was made, has no interest in the property,

the Court shall order the return of the property to that person.

112 Search for and seizure of tainted property in relation to foreign offences

Where a foreign State requests assistance to locate or seize property suspected to be proceeds of crime, an instrumentality, or property that could satisfy a forfeiture order, in respect of an offence within its jurisdiction, and the Attorney General has granted the request for assistance from a foreign State under section 4 of the Mutual Assistance in Criminal Matters Act, the provisions of sections 107 to 111 apply *mutatis mutandis*.

113 Controlled delivery of property

(1) A police officer conducting an investigation pursuant to this Act may seek the authority of the Commissioner to allow property that the police officer reasonably suspects is proceeds of a serious offence, or is property that has been, is being, or may be used to commit a serious offence, to enter, leave or move through the Kingdom for the purpose of gathering evidence to identify a person or to facilitate an investigation pursuant to this Act.

(2) The Commissioner may authorise the movement of the proceeds of crime when he believes that such movement will advance an investigation into a serious offence and is in the interests of justice.

114 Use of surveillance devices

The provisions of Part 4, Division 5, Subdivision 3 of the Tonga Police Act apply in respect of every investigation under this Act.

115 Undercover Police officers

(1) Subject to the authorisation of the Commissioner, a police officer may deploy in an undercover capacity with an assumed name for the purpose of collecting evidence in relation to the crime of money laundering or any other serious offence.

(2) For the purpose of this section, an undercover police officer means a member of police whose identity was concealed for the purpose of any investigation relevant to the proceedings.

(3) In any related proceedings, or any proceedings under this Act where it is intended to call an undercover Police Officer as a witness using the assumed

name, the Commissioner may file in the court a certificate stating the following particulars –

(a) that during the period specified in the certificate the witness was a member of police and acted as an undercover police officer;

(b) that the witness has not been convicted of any offence or (as the case may require) that the witness has not been convicted of any offence other than the offence or offences stated in the certificate; and

(c) that the witness has not been found guilty of any conduct which contravenes the Tonga Police Code of Conduct issued by the Commissioner.

(4) If, to the knowledge of the Commissioner the credibility of the witness in giving evidence in any other proceeding has been the subject of adverse comment by a judge, the Commissioner shall include in the certificate a statement of the relevant particulars, without including the date, venue or details that might otherwise identify the true identity of the undercover officer.

116 Production notices

Where a police officer authorised by the Commissioner undertakes an investigation pursuant to this Act, they may issue and serve a notice to any accountable person to produce any document or record specified in the notice that may be relevant to that investigation.

117 Production Orders

(1) A police officer conducting an investigation pursuant to this Act may apply (*ex parte*) and in writing to a Magistrate for a production order under subsection (2) against any person suspected of having possession or control of a document or record relevant to the investigation. The application shall be supported by an affidavit.

(2) The Judge may, if he considers there are reasonable grounds for so doing, make an order that the person produce to a police officer, at a time and place specified in the order, any documents or records referred to in subsection (1).

(3) A police officer to whom documents are produced may —

(a) inspect the documents;

(b) make copies of the documents; or

(c) retain the documents as long as is reasonably necessary for the purposes of this Act.

(4) Where a police officer retains documents produced to him for more than 7 days, he shall supply a copy of the documents to the person who produced them, unless doing so would compromise the investigation.

(5) A person ordered to produce documents under this section shall not refuse 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 enactment or otherwise) of the person not to disclose the existence or contents of the document.

118 Evidential value of information

(1) Where a person produces a document or record pursuant to an order under this section, the production of the document or record, or any information, document or things obtained as a direct or indirect consequence of the production of the document, is not admissible against the person in any criminal proceedings except proceedings under section 119.

(2) For the purposes of subsection (1), proceedings on an application for a restraining order or forfeiture order are not criminal proceedings.

119 Failure to comply with a production notice or production order

Where a person is required by a production notice or production order to produce a document or record to a police officer, the person commits an offence if he —

(a) contravenes the order without reasonable cause; or

(b) produces or makes available a document known by the person to be false or misleading in a material particular and does not so indicate to the police officer or provide to the police officer any correct information of which the person is in possession,

and shall be liable upon conviction to imprisonment for up to 5 years or to a fine not exceeding $100,000 or both, and in the case of a body corporate to a fine not exceeding $1,000,000.

120 Production orders and search warrants in relation to foreign offences

Where a foreign State requests assistance to locate or seize property suspected to be tainted property in respect of an offence within its jurisdiction, the provisions of sections 92 and 94 apply *mutatis mutandis*, provided that the Attorney General has, under section 4(2) of the Mutual Assistance in Criminal Matters Act, granted the request.

121 Monitoring orders

(1) A police officer conducting an investigation under this Act may apply *ex parte* for a monitoring order. The application shall be in writing and supported by an affidavit.

(2) A monitoring order shall —

(a) direct an accountable person to disclose information obtained by the institution about transactions conducted through an account held by a particular person with the institution;

(b) not have retrospective effect; and

(c) only apply for the period specified not exceeding 3 months from the date the order is made.

(3) A Judge shall not make a monitoring order unless he is satisfied that there are reasonable grounds for suspecting that the information sought pursuant to the order is relevant to an investigation under this Act.

(4) A monitoring order shall specify —

(a) specifics of the account or accounts to be monitored; and

(b) the information to be provided and directions on how the accountable person is to provide the information.

(5) Where an accountable person knowingly —

(a) contravenes the monitoring order without reasonable cause; or

(b) provides false or misleading information under the order,

the person commits an offence and is liable upon conviction, in the case of a natural person to imprisonment for a period not exceeding 5 years, a fine not exceeding $100,000, or both, or in the case of a legal person, a fine not exceeding $1,000,000.

122 Monitoring orders not to be disclosed

(1) Where an accountable person is or has been subject to a monitoring order no person shall disclose the existence or operation of the order to any person except —

(a) an officer or agent of the accountable person for the purpose of complying with the order;

(b) a legal adviser for the purpose of obtaining legal advice or representation in respect of the order; or

(c) a police officer for a law enforcement purpose.

(2) If the accountable person fails to comply with this subsection, the accountable person or person commits an offence and is liable upon conviction, in the case of a natural person, to imprisonment for a period not exceeding 5 years or a fine

of up to $100,000 or both, and in the case of an institution, a fine of up to $1,000,000.

(3) A person described in subsections (1)(a), (b) or (c) shall not disclose the existence or operation of a monitoring order except to another such person, and may do so only for the purposes of the performance of the person's duties or functions. Any person who fails to comply with this subsection is liable upon conviction to imprisonment for a period not exceeding 7 years or a fine of up to $200,000 or both.

(4) 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 adviser to disclose to any Court the existence or operation of a monitoring order.

123 Application for Examination orders

(1) A police officer authorised by the Commissioner may apply to a Magistrate for an examination order when the police officer has reason to suspect that a person is able to –

(a) answer questions with respect to any matter that the police officer has reason to suspect may be relevant to the investigation or any proceeding under this Act;

(b) to supply any information with respect to any matter that the police officer has reason to suspect may be relevant to an investigation or any proceeding under this Act; or

(c) to produce for inspection any document that the police officer has reason to believe is in the person's possession or control, or may be relevant to an investigation or any proceeding under this Act.

(2) A Magistrate shall issue an examination order when satisfied that there are reasonable grounds for suspecting that the information sought pursuant to the order is relevant to an investigation, or any proceeding under this Act.

(3) An examination order should specify the following –

(a) the person or persons to be examined;

(b) the time and place of attendance; and

(c) documents or records required to be produced during the examination.

(4) Any person who is required to attend for an examination shall be given reasonable opportunity to engage a lawyer to accompany them.

124 Examination orders – compelling attendance

(1) If an order is made under section 123, a person shall do one or more of the following, at the time and place specified in the order –

(a) attend at the time and place specified in the order;

(b) produce documents or records as specified in the order; or

(c) answer all questions truthfully.

(2) Where any person knowingly —

(a) contravenes the examination order without reasonable cause; or

(b) provides false or misleading information under the order,

commits an offence and is liable upon conviction, in the case of a natural person, to imprisonment for a period not exceeding 5 years or a fine not exceeding $100,000, or both, or in the case of a legal person, a fine not exceeding $1,000,000.

(3) A person required to answer questions or produce documents under this section shall not refuse on the ground that —

(a) the answer or 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 enactment or otherwise) of the person not to disclose the existence or contents of the document.

125 Evidential value of information obtained under an examination order

(1) Any information provided pursuant to an examination order is not admissible against the person in any criminal proceedings except proceedings under section 124 or under section 63 of the Criminal Offences Act.

(2) For the purposes of subsection (1), proceedings on an application for a restraining order or forfeiture order are not criminal proceedings.

126 Disclosure of source order

(1) A police officer authorised by the Commissioner may apply to a Magistrate for a disclosure of source order.

(2) The Magistrate may issue a disclosure of source order only when satisfied that there are reasonable grounds to suspect that the respondent is –

(a) outside Tonga or absent from Tonga; or

(b) is a corporation that is incorporated outside Tonga.

(3) The source information is the following information relating to the Respondent's property to which a restraining order applies –

(a) the name of each person who the Respondent knows, holds or believes, may hold an interest in the property and the nature of that interest;

(b) the circumstances in which the Respondent acquired the property, including how they acquired it and evidence of the source of any funds or other property used for that acquisition;

(c) if the property is tangible and moveable, and the respondent acquired it outside of the Kingdom and brought it into the Kingdom, the country or place in which it was acquired and the countries or places through which the property transited before being moved into the Kingdom;

(d) any other information of a kind specified in the disclosure of source order; and

(e) any documents of a kind specified in the order to substantiate the information in paragraphs (a) to (d).

(4) A Magistrate shall issue a disclosure of source order when satisfied that there are reasonable grounds for suspecting that the information sought pursuant to the order is relevant to an investigation, or any proceeding under this Act.

(5) A disclosure of source order should specify the following –

(a) the person or persons who are subject of the order;

(b) the date and time when compliance is required by, this should not exceed 2 months after the order was made unless the court is satisfied that special circumstances exist that make a longer period appropriate;

(c) any conditions directed by the Court as to how the order may be served;

(d) the order shall inform that failure to comply with the order means the Court shall make an asset forfeiture order pursuant to section 85(2) of this Act.

(6) A person ordered to produce documents and information under this section shall not refuse on the ground that —

(a) the document or information 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 enactment or otherwise) of the person not to disclose the existence or contents of the document.

127 Evidential value of information obtained under a disclosure of source order

(1) Any information provided pursuant to a disclosure of source order is not admissible against the person in any criminal proceedings except proceedings under sections 119 and 121 of this Act or under section 63 of the Criminal Offences Act.

(2) For the purposes of subsection (1), proceedings on an application for a restraining order or forfeiture order are not criminal proceedings.

128 Offence of Disclosure of Notice or Order

(1) Any person that has been subject to a Production Notice, Production Order, Examination Order or Notice of Source shall not disclose the existence or operation of that order to any person except –

(a) a police officer authorised to receive the information;

(b) an officer or agent of the accountable person for the purpose of compliance with the order; or

(c) a lawyer for the purpose of obtaining legal advice.

(2) Nothing in subsection (1)(a) to (c) prevents the disclosure of the existence of such order in connection with or during proceedings before the Court. Any person who fails to comply with this subsection is liable upon conviction to imprisonment for a period not exceeding 3 years or a fine of up to $10,000 or both.

129 Tax information

For the purposes of this Act, no obligations as to secrecy or other restrictions imposed by any enactment or otherwise, on the disclosure of information, prevents any person or the Ministry responsible for revenue, from providing to a police officer any tax record or other information relevant to an investigation or any proceeding under this Act.

DIVISION 6 – DISCLOSURE OF INFORMATION

130 Disclosure

(1) This section applies if a person obtains information as a direct result of –

(a) the person providing a sworn statement under an order made under sections 78(e) or (f); or

(b) the exercise of a power (by the person or someone else), or the performance (by the person or someone else) of a function under Division 5 of this Part.

(2) The person may disclose the information to an authority and for the purposes as set out in this section if –

(a) the person believes on reasonable grounds that the disclosure will serve that purpose; and

(b) a Court has not made an order prohibiting the disclosure of the information to the authority for that purpose.

(3) The authorities and purposes for a disclosure shall be made to –

(a) an authority with one or more functions under this Act, for facilitating the authority's performance of its functions under this Act;

(b) an authority of the Tongan Government, for a law enforcement purpose;

(c) an authority of a foreign country, for a law enforcement purpose;

(d) the Mutual Assistance Department, for either or both of the following purposes –

(i) facilitating the Mutual Assistance Department's performance of its functions in relation to the Mutual Assistance in Criminal Matters Act, or the Extradition Act; or

(ii) a purpose that is ancillary or incidental to the performance by the Mutual Assistance Department of any of the functions covered by subparagraph (i);

(e) an authority of a foreign country with functions corresponding to the functions of the Mutual Assistance Department that are covered in subsection (3)(d), for either or both of the following purposes –

(i) assisting in the prevention, investigation or prosecution of an offence against a law of the country constituted by conduct that, if it occurred in Tonga, would constitute a serious offence; or

(ii) assisting in the identification, location, tracing, investigation or confiscation of proceeds of crime, instrumentalities, or property that could satisfy a profit forfeiture order;

(f) the International Criminal Court, for enabling or assisting the International Criminal Court to perform any of its functions;

(g) an International War Crimes Tribunal, for enabling or assisting the International War Crimes Tribunal to perform any of its functions; or

(h) a professional disciplinary body, for enabling or assisting the body to perform any of the body's functions.

(4) This section does not prevent the person from disclosing or using the information –

(a) for the purposes for which the information was obtained; or

(b) for purposes directly or indirectly connected with, or incidental to, the purpose for which the information was obtained.

(5) Any information disclosed pursuant to this section is not admissible against any person in criminal proceedings, except proceedings for giving false or misleading information under Division 5 of this Act, or proceedings under section 63 of the Criminal Offences Act.

DIVISION 7 – ADMINISTRATION

131 Supreme Court may approve settlement between the Commissioner and other parties

(1) The Commissioner may enter into a settlement with any person as to the property or any sum of money to be forfeited to the Crown.

(2) A settlement does not bind the parties unless approved by the Court.

(3) The Court shall approve a settlement if satisfied that it is consistent with the overall interests of justice.

132 Management of property

(1) Where —

(a) a restraining order is made;

(b) a forfeiture order is made; or

(c) property forfeits to the Crown on the basis of a conviction for a serious offence,

the Court may, on an application by the Attorney General, 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) When a receiver is appointed in respect of property, all realisable property shall be transferred by the police to the receiver within 7 days.

(5) The receiver may take or become party to any civil proceedings affecting the property.

(6) The receiver shall ensure the property is insured. If it not practical to insure the property, the receiver shall seek orders under section 77 to enable the immediate sale or disposal of the property.

(7) If the property consists, wholly or in part, of securities or investments, the receiver may realise or otherwise deal with the securities or investments.

(8) If the property consists, wholly or in part, of a business, the receiver may do anything that is necessary or convenient for carrying on that business.

133 Discharge of forfeiture orders

(1) Notwithstanding section 132(5), if the Court makes a forfeiture order, or property otherwise forfeits to the Crown, the receiver shall within a period no

sooner than 3 months discharge the order through the sale or disposal of property subject to the order.

(2) The receiver shall deal with any money resulting from the sale or disposal as follows –

(a) by paying the recoverable costs of any insurance that is necessary with respect to the property;

(b) by paying the Commissioners or the receiver's recoverable costs and any other recoverable costs necessary for the management of the property;

(c) by paying any payments to interested parties as directed by the forfeiture order;

(d) by paying any reparation or fines owed by the Respondent to the Court or any related victims of crime; and

(e) by paying the balance of any money into the Tonga Confiscated and Forfeited Assets Fund.

134 Forfeited property may be returned to prior legitimate owners or victims

(1) Notwithstanding section 133, if the court makes a forfeiture order, or property otherwise forfeits to the Crown, the Attorney General may direct that property be alternatively disposed of, or otherwise dealt with, as specified in the direction.

(2) Such a direction could provide that property is returned to a prior legitimate owner or victim where –

(a) a prior legitimate owner or victim can be identified;

(b) the person's interest in the property was lawfully derived; and

(c) the person has not engaged in any criminal conduct.

135 Confiscated and forfeited funds

(1) There is hereby established in the public accounts of the Kingdom the Tonga Confiscated and Forfeited Assets Fund.

(2) There shall be credited to the Tonga Confiscated and Forfeited Assets Fund —

(a) all moneys derived from the fulfilment of confiscation and forfeiture orders contemplated in this Act;

(b) any sums of money allocated to the Tonga Confiscated and Forfeited Assets Fund from time to time;

(c) any voluntary payment, grant or gift made by any person for the purposes of the Tonga Confiscated and Forfeited Assets Fund; and

(d) any income derived from the investment of any amount standing to the credit of the Tonga Confiscated and Forfeited Assets Fund.

(3) The Minister for Finance may authorise payments out of the Tonga Confiscated and Forfeited Assets Fund to —

(a) compensate victims who suffered losses as a result of serious offences, terrorism or unlawful activity;

(b) satisfy a compensation order under this Act;

(c) enable the appropriate law enforcement agencies to continue their fight against serious offences, terrorism and unlawful activities;

(d) share confiscated property with foreign States; rehabilitation of drug user;

(e) public education on the dangers of drug abuse; or any other matter the Minister of Finance deems appropriate to utilise the Fund for.

(4) The Minister for Finance shall table a report in Parliament, not later than the first sitting day after the expiry of 90 days from the end of the fiscal year detailing —

(a) the amounts credited to the Tonga Confiscated and Forfeited Assets Fund;

(b) the investments made with the amounts credited to the Tonga Confiscated and Forfeited Assets Fund; and

(c) the payments made from the Tonga Confiscated and Forfeited Assets Fund, including the specific purpose for which each payment was made and to whom it was made.

136 Equitable sharing

(1) The Attorney General may direct that any payments be made from the Tonga Confiscated and Forfeited Assets Fund, that the Attorney General considers are appropriate for the purposes of equitable sharing.

(2) A payment from the Tonga Confiscated and Forfeited Assets Fund is for the purposes of equitable sharing if the payment is made to a foreign country where the foreign country has made a significant contribution to the recovery of property or to the investigation or prosecution of the unlawful activity.

(3) The Attorney General may make an arrangement with a foreign country, where appropriate, to deduct or share substantial or extraordinary costs incurred when enforcing a restraining or forfeiture order with a nexus to the foreign country.

137 Voidable transfers

The Court may —

(a) before making a forfeiture order; and

(b) in the case of property in respect of which a restraining order was made,

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 sufficient consideration to a person acting in good faith and without notice.

138 Service of orders issued under this Act

A copy of any order issued under this Act shall be served on a person affected by the order in such manner as the Court directs or as may be prescribed by rules of Court.

139 Registration of restraining order

(1) A copy of a restraining order which affects land in Tonga shall be registered with the Registrar of Lands.

(2) A restraining order is of no effect with respect to registered land unless it is registered as a charge under the Land Act.

(3) Where particulars of a restraining order are registered under the Land Act, a person who subsequently deals with the property shall, for the purposes of section 81 be deemed to have notice of the order at the time of the dealing.

140 Contravention of restraining order

A person who knowingly contravenes or attempts to contravene a restraining order by disposing of or otherwise dealing with property that is subject to the restraining order commits an offence and is liable upon conviction to —

(a) in the case of a natural person, a fine of up to $100,000 or imprisonment for a period of up to 5 years or both; or

(b) in the case of a legal person, a fine of up to $1,000,000.

PART VIII – MISCELLANEOUS

141 Penalties

Unless otherwise specified under this Act, an accountable person who contravenes a provision of this Act, or relevant Regulations issued in exercise of powers under Parts I, III or IV of this Act, commits an offence and shall be liable upon conviction –

(a) in the case of an individual, to a fine not exceeding $100,000 (or, if the offence is a continuing one, to a fine not exceeding $10,000 for every day during which the offence continues) or to imprisonment for a period not exceeding 3 years or both; and

(b) in the case of a body corporate, to a fine not exceeding $200,000 or, if the offence is a continuing one, to a fine not exceeding $20,000 for every day during which the offence continues.

142 Regulations

The Attorney General may, with the consent of Cabinet make Regulations for the effective carrying out of the provisions of this Act.

143 Repeal, Transitional and Savings

(1) The Money Laundering and Proceeds of Crime Act [Cap 4.07] is hereby repealed.

(2) All appointments made under the Money Laundering and Proceeds of Crime Act [Cap 4.07] and subsisting on the date this Act comes into force shall be treated as appointments made under this Act for the term of the original appointment.

(3) Any appeal or prosecution commenced before this Act came into force shall be continued and disposed of as if this Act had not come into force.

(4) When the period for any application, appeal, or prosecution had expired before this Act came into force, nothing in this Act shall be construed as enabling the application, appeal or prosecution to be made under this Act by reason only of the fact that a longer period is specified in this Act.

Passed by the Legislative Assembly on this **6th** day of **August** 2025.