



LESOTHO

Government Gazette

Vol. 61

Friday – 23rd December, 2016

No. 73

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Published by the Authority of His Majesty the King
Price: M25.00

ACT NO. 7 OF 2016

Money Laundering and Proceeds of Crime (Amendment) Act, 2016

An Act to amend the Money Laundering and Proceeds of Crime Act, 2008¹

Enacted by the Parliament of Lesotho

Short title and commencement

1. This Act may be cited as the Money Laundering and Proceeds of Crime (Amendment) Act, 2016 and shall come into operation on a date to be fixed by the Minister by notice published in the Gazette and the Minister may fix different dates for the coming into operation of different sections of this Act.

General amendment

2. The Money Laundering and Proceeds of Crime Act, 2008, (to be called “the principal law”) is amended in sections 12(2) and (3), 29(1), 30, 36, 37(1), 39(1) and (3), 40(1), 43(6), 48(1), 50(1)(a) and (4), 52, 53(3) and (5), 59 (2), 62(1), (2), (3), (4) and (7), 67(1), 68(1), 69(2) and (3), 72(1) and (2), 73(1), 88(1), 97, 99(1), 101(1) and (2) and 108(1), by deleting the words “the Authority” and substituting the words “a competent authority”.

Interpretation

3. The principal law is amended in section 2(1) -

- (a) by deleting the definition of “authorized officer” and substituting the following:

“authorized officer”, for the purposes of this Act, means an officer of a competent authority or a person designated as such, in writing, by the Commissioner General, the Commissioner of Police or the Director-General, as the case may be;

- (b) by deleting the definition of “politically exposed person” and substituting the following:

“politically exposed person” means a person referred to in

Schedule 3;

- (c) in the definition of “serious offence” -
 - (i) by deleting the expression “24 months” and substituting the expression “12 months”;
 - (ii) by inserting the words “and terrorist financing” between the words “money laundering” and the semi colon “;” at the end of paragraph (a);
- (d) by inserting the following definitions in their alphabetical order:

“competent authorities” means, for the purposes of this Act -

- (a) the Directorate on Corruption and Economic Offences established by the Prevention of Corruption and Economic Offences Act, 1999²;
- (b) the Lesotho Mounted Police Service established by the Police Service Act 1998³; and
- (c) the Lesotho Revenue Authority established by the Lesotho Revenue Authority Act 2001⁴;

“instrumentality” means -

- (a) property;
- (b) object;
- (c) document; and
- (d) any means,

used or intended to be used in committing a crime under this Act;

“terrorist organisation” means a group of persons that commits terrorist acts”.

Amendment of heading

4. The principal law is amended by deleting the heading to Part II and substituting the following:

“PART II - COMPETENT AUTHORITIES AND THE FINANCIAL INTELLIGENCE UNIT”.

Amendment of section 11

5. The principal law is amended by deleting section 11 and substituting the following:

“Competent authorities

11. (1) A competent authority shall be responsible for the prevention, investigation and, with the consent of the Director of Public Prosecutions, save for the Police, prosecution of money laundering and related predicate offences, financing of terrorism offences and deal with any other matters relating to money laundering and proceeds of crime.

(2) A competent authority may -

- (a) conduct an investigation into a serious offence including money laundering and financing of terrorism;
- (b) instruct an accountable institution to take such steps as may be appropriate to facilitate an investigation anticipated by a competent authority;
- (c) consult with a relevant person, institution or organization in relation to its functions under this section;
- (d) extend legal assistance to a foreign jurisdiction with respect to property tracking, monitoring and confiscation orders; and

- (e) co-operate and exchange information with any other competent authority in the performance of its functions under this section.
- (3) An offence under this Act shall not be prosecuted except with the consent of the Director of Public Prosecutions.”.

Amendment of heading

6. The principal law is amended in section 12 -

- (a) by deleting the heading and substituting “Powers of a competent authority”; and
- (b) by -
 - (i) deleting full stop at the end of paragraph “(d)” and substituting a semi colon “;”;
 - (ii) adding the following paragraphs after paragraph (d) in subsection (1) -
 - “(e) locate, identify, evaluate, seize, freeze or confiscate tainted property, proceeds of crime or instrumentalities;
 - (f) use undercover operations, including, but not limited to, controlled delivery, for purposes of investigating serious offence under this Act;
 - (g) intercept, upon obtaining a court order, communication made pursuant to the commission of a serious offence under this Act;
 - (h) take witness statements;
 - (i) take such other lawful measures as may be appropriate in the course of

an investigation.”.

Compliance

7. The principal law is amended by deleting section 13.

The Financial Intelligence Unit

8. The principal law is amended by deleting section 14 and substituting the following:

“14. (1) There is established a Financial Intelligence Unit which shall be a body corporate having perpetual succession and capable of suing and being sued in its own name.

(2) The Unit shall be capable of acquiring, holding and disposing of movable and immovable property in its corporate name.

(3) The Unit shall be responsible to the Minister:

Provided that the Unit shall be independent in the exercise and execution of its functions.”.

9. The principal law is amended by adding the following sections after section 14:

“The Director

14A (1) There shall be a director of the Unit who shall be appointed by the Minister for a period of 5 years.

(2) The Director shall be the Chief Accounting Officer of the Unit and shall be responsible for -

- (a) the management and administration of the Unit;
- (b) the appointment, control, maintenance of discipline and dismissal of staff of the Unit; and
- (c) the performance of other functions which may

be relevant or incidental to the promotion of anti money laundering and combating of financing of terrorism measures.

(3) The terms and conditions of appointment of the Director shall be set out in the instrument of appointment.

Removal of the Director

14B. The Director may be removed from office by the Minister on the following grounds -

- (a) misconduct;
- (b) incapacity arising from the body or mind which disenables the Director to perform his or her duties; or
- (c) incompetency in the performance of his or her duties.”.

Functions of the Unit

10. The principal law is amended by deleting section 15 and substituting the following:

“Functions of the Unit

15. (1) The Unit shall be the central agency responsible for receiving, requesting, analyzing and disseminating to investigatory authorities disclosures of information -

- (a) concerning suspected proceeds of crime and alleged serious offences;
- (b) required by or under any law in order to fight and counter serious offences; or
- (c) concerning suspected serious offences.

- (2) The Unit -
- (a) shall receive, analyze and assess reports of suspicious transactions prepared by accountable institutions pursuant to section 18(1);
 - (b) shall collect, process, analyze and interpret information disclosed to and obtained by it under the Act and the relevant laws;
 - (c) shall inform, advise and co-operate with investigatory and supervisory authorities, following consideration of reports received, where the Unit has reasonable grounds to suspect that a transaction involves proceeds of crime, terrorist financing or money laundering;
 - (d) may, on such conditions as it deems fit, exchange spontaneously or upon request, information contained in the reports referred to in paragraph (c) or any relevant information with its foreign states counterparts, competent authorities and sector supervisory authorities; and
 - (e) shall compile statistics and records to undertake studies on trends and methods used to launder money, finance terrorism or commit serious crimes, make recommendations arising out of these studies and to that end shall, disseminate information within Lesotho or elsewhere and advise the Minister accordingly.

Powers of the Unit

15A. The Unit -

- (a) shall supervise and enforce compliance by accountable institutions with the anti-money laundering and counter terrorist financing

provisions of the Act and the relevant laws;

- (b) may issue to accountable institutions such guidelines as it considers appropriate to combat money laundering and financing of terrorism activities;
- (c) shall request and receive currency and bearer negotiable instruments declaration forms, foreign exchange and cross-border transaction reports from relevant competent authorities;
- (d) shall have access to and receive financial, administrative and law enforcement information that includes data from public and private bodies or individuals;
- (e) shall request and receive inspection reports from sector supervisory authorities; and
- (f) may demand and receive communication call data from relevant service providers as the Unit considers appropriate in analyzing reports received under the Act.

Funding of the Unit

15B. The Unit shall be funded from -

- (a) money appropriated by Parliament;
- (b) fines or charges imposed for non-compliance with obligations under the Act;
- (c) grants; and
- (d) money from the Criminal Assets Recovery Fund.

Financial statements of the Unit

15C. (1) The financial year of the Unit shall run concurrently with the financial year of the Government.

(2) The Unit shall prepare annual financial statement which shall be audited by the Auditor-General at the end of the financial year.

(3) The audited financial statements shall be tabled before Parliament by the Minister prior to the end of 6 months following the end of the financial year.

Reporting

15D. The Unit shall submit to the Minister a report of its activities within 2 months after the end of the financial year and the Minister shall table the report before the Parliament not later than 2 months after receipt.

Unauthorized disclosure

15E. A person who discloses information held by the Unit without authorization commits an offence and shall on conviction be liable to a term of imprisonment not exceeding 10 years or to a fine of M50,000.00 or both.

Dissemination of information

15F. The Unit shall refer any matter or information derived from a report or information it so receives to the appropriate competent authority if, on the basis of its analysis and assessment, it has reasonable grounds to suspect that the transaction would be relevant to the investigation or prosecution of a money laundering offence, a terrorist offence or serious offence.”.

Accountable institution to verify customer identity

11. The principal law is amended in section 16 -

(a) in subsection (1) -

- (i) by adding the following words “and when carrying out a transaction” after the words “when establishing a business relationship” in paragraph (a);
 - (ii) by adding the following at the end of paragraph (a) -
 - (aa) undertake customer due diligence when -
 - (i) entering into a business relationship;
 - (ii) carrying out an occasional wire transfer;
 - (iii) carrying out an occasional transaction above the designated threshold;”;
 - (iii) by adding the following paragraph after paragraph (b) -
 - “(ba) if the transaction is on behalf of a natural person to -
 - (i) verify that the person purporting to be acting on behalf of the natural person is so authorized;
 - (ii) identify and verify the identity of the person purporting to be acting on behalf of the customer or client by obtaining sufficient identification data to verify the identity of that other person;”;
- (b) in paragraph (c) -

-
- (i) by adding the words “by obtaining adequate and reliable documents” after the words “existence and structure”;
 - (ii) by adding the following subsection after paragraph (c):

“(1A) An accountable institution shall -

- (a) identify and verify the beneficial owners using reliable and relevant information or data obtained from reliable independent sources to its satisfaction;
- (b) conduct on-going customer due diligence on the business relationship which shall include the scrutiny of transactions undertaken throughout the course of the relationship to ensure that the transactions conducted are consistent with the accountable institution’s knowledge of the customer, the business and risk profile, and, where necessary, the customer’s source of funds.”;
- (c) by deleting subsection (3) and substituting the following -
 - (3) If the customer or beneficial owner is a foreign politically exposed person, an accountable institution shall, in addition to performing normal customer due diligence -
 - (a) put in place appropriate risk-management systems to determine whether the customer or beneficial owner is a

politically exposed person;

- (b) obtain senior management approval for establishing or continuing, for existing customers, a business relationship;
- (c) take reasonable measures to establish the person's source of wealth and funds; and
- (d) conduct enhanced ongoing monitoring of the business relationship;"

- (d) by adding the following subsections after subsection (3) -

"(3A) A financial institution shall take reasonable measures to determine whether a customer or beneficial owner is a domestic politically exposed person or a person who has been entrusted with a prominent function by an international organization.

(3B) In cases of a business relationship with a customer or beneficial owner who is a domestic politically exposed person or a person who has been entrusted with a prominent function by an international organization, a financial institution shall -

- (a) take reasonable measures to determine whether the customer or the beneficial owner is a politically exposed person; and

(b) in case where there is a higher risk business relationship with such a politically exposed person, a financial institution shall apply the provisions of section (3) (a), (b), (c) and (d).

(3C) An accountable institution shall adequately identify and verify the identity of all types of politically exposed persons.

(3D) An accountable institution shall apply provisions of this section on all types of politically exposed persons to family members and close associates of such politically exposed persons.

(3E) Where an existing customer or beneficial owner has subsequently become a politically exposed person, an accountable institution shall obtain senior management's approval to continue the business relationship.”;

(e) in subsection (6), by deleting paragraph (a) and substituting the following:

“(a) is satisfied that the respondent bank has conducted customer due diligence in respect of customers having direct access to accounts of the correspondent bank;”;

(f) in subsection (7), by adding the following paragraphs after paragraph (c):

“(d) take into account information available on whether a country, in which the third party or intermediary being relied upon,

undertakes customer due diligence measures and sufficiently applies customer's identification and verification processes to fight money laundering and counter the financing of terrorism;

(e) bear the ultimate responsibility for customer due diligence processes.”;

(g) by adding the following subsections after subsection (7):

“(7A) An accountable institution shall -

(a) not enter into a business relationship or conduct a transaction where a potential or prospective customer fails to provide the requisite identification information or data or where the provided identification information or data cannot be verified by appropriate source;

(b) fill and submit a suspicious transaction report where the requisite identification information or data cannot be verified by an appropriate source in accordance with this Act; and

(c) terminate the business relationship where, during enhanced customer due diligence, provided identification information or data cannot be verified by an appropriate source.”;

(h) in subsection (8), by deleting the word “Authority” and substituting the word “Unit”.

Accountable institution to establish and maintain customer records

12. The principal law is amended in section 17 -
- (a) in subsection (1)(a), by deleting the word “suspicious” and the phrase “in any currency as may be specified from time to time by the Central Bank”;
 - (b) by adding the following subsection after subsection (1):
 - “(1A) An accountable institution shall:
 - (a) ensure that documents, data, or information collected under the customer due diligence process is kept up-to-date and relevant by undertaking reviews of existing records, particularly of higher risk categories or business relationships;
 - (b) perform enhanced due diligence for high risk categories of customers, business relationships or transactions.”;
 - (c) in subsection (4), by inserting the words “or longer if requested by a competent authority in specific cases and upon appropriate request” between the words “5 years” and “from the date ”;
 - (d) by adding the following subsection after subsection (4):
 - “(5) An accountable institution shall -
 - (a) maintain records of account files and business correspondence for a period of 5 years following termination of a business relationship or transaction; and
 - (b) make available in a timely basis all customer and transaction records and infor-

mation to competent authorities upon appropriate request.”.

Accountable institution to report suspicious transactions

13. The principal law is amended in section 18 -

- (a) in subsection (1) , by inserting the words
“or attempted transaction” between the words
“transaction” and “is related to”;
- (b) in subsection (1), by deleting the words “money
laundering” and substituting the word “serious”;
- (c) in subsection (1)(c) by deleting the words “and
Authority”;
- (d) in subsection (2)(d) by deleting the word “shall”; and
- (e) in subsection (3), by deleting the words “or Authority”.

Addition of new sections

14. The principal law is amended by adding the following new sections after section 18:

“Regulation and supervision

18A (1) The Unit shall have power to regulate and supervise accountable institutions in relation to the application of this Act.

(2) Subject to subsection (1), a sector supervisory authority shall be responsible for supervising and enforcing compliance with this Act or any instruction, directive, guideline or rule made pursuant to, or in terms of, this Act by an accountable institution regulated or supervised by it and to whom this Act applies.

(3) In addition to the primary responsibilities set out in the laws establishing it, a sector supervisory authority is designated as an

Anti-Money Laundering and Counter the Financing of Terrorism Regulator and Supervisor for the purposes of ensuring that the institutions under its authority comply with this Act.

(4) For the purposes of this section, “a sector supervisory authority” includes an institution established by law.

Powers of supervisory authorities

18B. (1) The Unit and a sector supervisory authority may, in respect of an accountable institution:

- (a) conduct inspections;
- (b) compel production of any information relevant to monitoring compliance with obligations under this Act;
- (c) issue out directives, instructions, guidelines or rules for proper and appropriate implementation of obligations under this Act;
- (d) impose sanctions for failure to comply with obligations under this Act or regulations made under this Act; or
- (e) prescribe appropriate administrative sanctions to enforce compliance with obligations under this Act.

(2) The exercise of powers by a sector supervisory authority under subsection (1)(c) shall be done in consultation with the Unit.

Reports sharing

18C. A sector supervisory authority shall forward to the Unit inspection reports relevant to giving effect to compliance with obligations under this Act.

Administrative sanctions to enforce compliance

18D. (1) The Unit or a sector supervisory authority may, by written notice, impose such administrative sanctions as may be appropriate, against an accountable institution, its servants or agents for non-compliance with measures and obligations under this Act and the administrative sanctions may also be imposed for non-compliance with regulations, instructions, directives, or conditions imposed pursuant to this Act.

(2) Notwithstanding subsection (1), the Unit or a sector supervisory authority may impose a financial penalty not exceeding M100 000.00 in respect of a natural person and M1 000 000.00 in respect of a juristic person.

(3) A financial penalty imposed pursuant to this section shall be deposited into a fund to be established by the Minister.

Review

18E. An administrative sanction imposed by the Unit or a sector supervisory authority may be reviewed by a competent court.”.

Accounting institutions to establish and maintain internal reporting procedures

15. The principal law is amended in section 19(2) -

- (a) in paragraph (b), by deleting the words “as the Commissioner may, from time to time, require”;
- (b) in paragraph (d), by deleting the words “the Authority” and substituting the words “sector supervisory authority” and by deleting the words “money laundering” and substituting the words “a serious offence”;

(c) by adding the following subsection after subsection (2):

“(3) An accountable institution shall ensure that it registers with the Unit in a form to be prescribed by the Unit.”.

Further preventative measures by an accountable institution

16. The principal law is amended in section 20 -
- (a) by adding the figure “(1)” after the figure “20” and by deleting the word “reporting” and substituting the words “policy and”;
 - (b) by adding the following subsections:
 - “(2) An accountable institution shall -
 - (a) implement policies, procedures, or measures -
 - (i) as may be required to prevent the misuse of technological developments in money laundering or terrorist financing schemes;
 - (ii) to address any specific risks associated with non-face-to-face business relationships or transactions;
 - (b) on a risk based approach, establish and maintain internal control policies, procedures and controls for fighting money-laundering and combating the financing of terrorism;
 - (c) conduct ongoing training to ensure that employees are kept updated on new developments, techniques, trends and methods of money laundering and financing of terrorism; and
 - (d) establish screening procedures to ensure high employment standards.
 - (3) A financial institution shall maintain an adequately resourced and independent audit function to test compliance with anti-money laundering and counter the financing of terrorism policies, procedures and controls.

- (4) An accountable institution shall-
 - (a) pay special attention to business relationships and transactions of persons from or in countries which do not or insufficiently apply anti-money laundering and counter the financing of terrorism measures; and
 - (b) take appropriate measures to counter weaknesses of anti-money laundering and counter the financing of terrorism systems of other countries when entering into business relationships or transactions.”.

Addition of new section

17. The principal law is amended by adding the following section after section 21:

“Attention to complex, unusual or large transactions

21A. An accountable institution shall record the findings resulting from examination of the background and purpose of complex and unusual large transactions and make such findings available for use by the Unit, a competent authority or auditors for a period of at least 5 years after the business relationship is ended or after the date of the occasional transaction.”.

Amendment of heading

18. The principal law is amended in section 22:

- (a) by deleting the heading “Banks” and substituting “Wire transfers”;
- (b) in subsection (1) by deleting the words “which is a bank”; and
- (c) in subsection (3) by deleting the word “bank” and substituting the words “accountable institutions”.

Supervisors and auditors

19. The principal law is amended in section 23 -
- (a) by inserting the word “sector” before the words “supervisory authority” wherever they appear;
 - (b) by deleting the words “Authority and”;
 - (c) by adding a new subsection as follows:

“(2) A supervisor or an auditor who acts in good faith shall not be liable for making a suspicious transaction report.”.

Money - laundering offences

20. The principal law is amended by deleting section 25 and substituting the following -

- “25. (1) A person commits the offence of money-laundering if the person -
- (a) acquires, possesses or uses property; or
 - (b) converts or transfers property with the aim of concealing or disguising the illicit origin of that property or of aiding any person involved in the commission of an offence to evade the legal consequences thereof; or
 - (c) conceals or disguises the true nature, origin, location, disposition, movement or ownership of property,

knowing or having reason to suspect that such property is derived directly or indirectly from acts or omissions -

- (i) which constitute a serious offence against this Act, or another law of Lesotho;

- (ii) outside Lesotho which, had they occurred in Lesotho, would have constituted a serious offence under this Act or another law of Lesotho;
- (iii) committed on board of a vessel flying the flag of the Kingdom of Lesotho or an aircraft registered under the laws of Lesotho at the time the offence is committed.”.

(2) It shall also be an offence to participate in, associate with, conspire to commit, attempt to commit, aid and abet, or facilitate and counsel the commission of any of the acts described in subsections (a) to (c).

(3) A person who was a director of a body corporate at the time of the commission of a money laundering offence commits that offence unless the person can prove that he or she did not take part in the commission of the offence or that he could not have prevented it, and if convicted, subsection (2) shall apply.

(4) A person who contravenes this section commits an offence and shall on conviction be liable to imprisonment for a period not exceeding 25 years or a fine not exceeding M25, 000, 000.00 or both, and in the case of a legal person a fine not exceeding M100, 000,000.00.

(5) Notwithstanding subsection (4), civil or administrative actions may be instituted against, and sanctions may be imposed upon a person convicted of an offence under this section.”.

Related offences

21. The principal law is amended in section 26(5)(a) by deleting the words “the Authority and”.

Seizure and detention of suspicious imports or exports of currency

22. The principal law is amended in section 28 -

- (a) by inserting the words “or bearer negotiable instruments” after the word “currency” wherever it appears in that section; and
- (b) in subsection (5)(a) by deleting the words “the Director-General of the Authority” and substituting the words “a competent authority”.

Amendment of section 29

23. The principal law is amended in the heading of section 29 by placing the word “Competent” before the word “Authority”;

Orders to enforce compliance with obligations under this Part

24. The principal law is amended by deleting section 31.

Voidable transfers

25. The principal law is amended by deleting section 42 and substituting the following:

“42. The Court may, before making a confiscation order, set aside any conveyance or transfer of property that has occurred, unless the conveyance or the transfer of the property was made for value to a person acting in good faith and without notice.”.

Protection of third parties

26. The principal law is amended in section 43 by deleting subsection (5) and substituting the following:

“(5) A person who makes an application under subsection (1) or (3) shall give the relevant competent authority written notice of the making of the application to enable the competent authority an opportunity to make representations in relation to the application.”.

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

27. The principal law is amended in section 61 by -

- (a) inserting a comma and the words “freeze or restrain” after the word “locate”; and
- (b) deleting “57 and 58” and substituting “56, 57, 58, and 59”.

Terrorist funding

28. The principal law is amended in section 63 by adding the word “or” after the semi-colon (;) in paragraph (a) and by deleting the phrase after the second word “available” in paragraph (b) and substituting the following:

“for the purpose of financing terrorism, terrorist acts or terrorist organisations, commits an offence and shall on conviction be liable to imprisonment for a term not exceeding 25 years or to a fine not exceeding M25, 000, 000.00 or both, in the case of a legal person a fine of not exceeding M100, 000, 000.00.”.

Terrorist financing offence

29. The principal law is amended in section 65 -

- (a) by deleting subsection (1) and substituting the following:

“(1) A person commits the offence of terrorist financing if he or she, by any means, directly or indirectly, will fully provides or collects funds, or attempts to do so, with the intention, knowledge or suspicion that they are to be used in whole or in part by any person, individual terrorist, terrorist organization or group or to carry out a terrorist act.”;

- (b) in subsection (2) by inserting “or attempt” after “commit and by inserting the words “irrespective of whether the offence within the meaning of subsection (1) is or was intended to occur or occurred in or outside Lesotho” after the word “act”;
- (c) in subsection (3) by adding the following paragraph:

- “(c) to contribute to the commission of the offence within the meaning of subsection (1) by a group of persons acting with a common purpose.”;
- (d) by deleting subsection (4) and substituting the following:
- “(4) A person who contravenes this section commits an offence and shall be liable on conviction to a fine not exceeding M25,000,000.00 or imprisonment for a term not exceeding 25 years, and in a case of a legal person, a fine not exceeding M100,000,000.00”;
- (e) by adding the following subsection:
- “(5) Nothing in this section shall preclude the institution of civil or administrative proceedings and sanctions against a person convicted of financing of terrorism offence.”.

Directives

30. The principal law is amended in section 66 by deleting the words “the Commissioner” and substituting “a competent authority”.

SCHEDULE 3**(section 2)****Politically Exposed Persons**

The following persons are politically exposed persons for the purposes of section 2

- (a) a domestic politically exposed person means a person who is or has been entrusted domestically with prominent public function, among others: the head of Government, a minister or deputy minister in the Government, a holder of a statutory position, a Chief Accounting Officer in the Government, a holder of an executive post in a political party, senior officer of the disciplined forces, a judge and a senior official in the Judiciary, a Chief Executive of a state owned corporation, Accountant-General, Governor and Deputy Governor of the Central Bank and these shall include immediate family members or close associates;
- (b) a foreign politically exposed person means a person who is or has been entrusted with prominent public function by a foreign country, among others: a foreign head of government or state, a minister or deputy minister, a politician, a senior government official, judicial or military officials, a senior executive of a state owned corporation, an important political party official and these shall include immediate family members or close associates; and
- (c) a person who is or has been entrusted with a prominent function by an international organization and who serves as a member of senior management, amongst others: a director, deputy director, or a member of a board or equivalent function and these shall include immediate family members or close associates.

NOTE

- 1. Act No. 4 of 2008
- 2. Act No. 5 of 1999
- 3. Act No. 7 of 1998
- 4. Act No. 14 of 2001

GOVERNMENT NOTICE NO. 51 OF 2016

The Parliament of Lesotho

**Statement of Objects and Reasons of the Money Laundering and
Proceeds of Crime (Amendment) Act, 2016**

(Circulated by the Authority of the Minister of Finance)

The objective of the Bill is to effect amendments to Money Laundering and Proceeds of the Crime Act No. 4 of 2008 (the Parent Act) in order to address deficiencies established by Eastern and Southern Africa Anti-Money Laundering Group Mutual Evaluation Report of Lesotho of September, 2011 so that Legal and Institutional Framework to implement measures to fight money laundering and terrorist financing can to a large extent comply with mandatory international standards.

The Bill thus seeks to provide, Lesotho Revenue Authority, Directorate on Corruption and Economic Offences (DCEO), Lesotho Mounted Police Services, powers to investigate money laundering and terrorist financing offences. These powers were initially confined to the DCEO under the Parent Act. The three entities are collectively referred to as competent authorities under the Bill.

The Bill further seeks to designate such institutions as the Financial Intelligence Unit, the Central Bank of Lesotho, Law Society of Lesotho, Lesotho Institute of Accountants and other relevant institutions to supervise and monitor compliance of Institutions under their purview with obligations arising out of the Money Laundering and Proceeds of Crime Act, its regulations and guidelines and directive made pursuant to it.

The Bill seeks to address section 14 of the Parent Act, which section establishes the Finance Intelligence Unit, by incorporating enabling provisions that are requirements for an independent and operational financial intelligence unit per Financial Action Task Force Recommendations in particular, Recommendation 29.

The Bill further enhances criminalization of money laundering and terrorist financing offences by making it possible for the intent and knowledge as prerequisite of these crimes to be inferred from objective factual circumstance. The Bill also makes it possible to charge a person of the money laundering offence

or terrorist financing offence irrespective of whether he or she was in Lesotho or elsewhere at the time of the commission of the crime.

The Bill has further enhanced criminal sanctions so that they can be applied proportionately and dissuasively. It introduces civil and administrative sanctions which can be imposed on a person irrespective of whether criminal charges or criminal sanctions have been imposed upon such a person.

The Bill has also enhanced preventive measures that are supposed to be implemented by banks and other accountable institutions to address the risk posed by money laundering and terrorist financing.

