

Zambia

## Prohibition and Prevention of Money Laundering Act, 2001

### Act 14 of 2001

Legislation as at 29 November 2010

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## Zambia

# Prohibition and Prevention of Money Laundering Act, 2001

## Act 14 of 2001

Published in Government Gazette

**Assented to on 8 November 2001**

**Commenced on 9 November 2001**

*[This is the version of this document from 29 November 2010.]*

*[Amended by Prohibition and Prevention of Money Laundering (Amendment) Act, 2010 (Act 44 of 2010) on 29 November 2010]*

**An Act to provide for the prohibition and prevention of money laundering; the constitution of the Anti-money Laundering Authority and the Anti-Money Laundering Investigations Unit; to provide for the forfeiture of property of persons convicted of money laundering; to provide for international cooperation in investigations, prosecution and other legal processes of prohibiting and preventing money laundering; and to provide for matters connected with or incidental to the foregoing.**

*[long title amended by section 2 of Act 44 of 2010]*

ENACTED by the Parliament of Zambia

### Part I – Preliminary

#### 1. Short title and commencement

This Act may be cited as the Prohibition and Prevention of Money Laundering Act, 2001 and shall come into operation on such date as the minister may, by statutory instrument, appoint.

#### 2. Interpretation

In this Act, unless the context otherwise requires—

"**authorised officer**" means an officer authorised by the Commissioner to perform functions under this Act;

"**Authority**" means the Anti-Money Laundering Authority constituted under section three;

"**business transaction**" means any arrangement, including opening of a bank account, between two or more persons where the purpose of the arrangement is to facilitate a transaction between the two or more persons;

"**business transaction record**" in relation to a business transaction, includes—

- (a) the identification record of all the persons party to that transaction;
- (b) a description of that transaction sufficient to identify its purpose and method of execution;
- (c) the details of any bank account used for that transaction, including bank, branch and sort code; and
- (d) the total value of that transaction;

**“Centre”** means the Financial Intelligence Centre established under the Financial Intelligence Centre Act, 2010;

*[Act No. 46 of 2010]*

*[definition of “Centre” inserted by section 3(e) of Act 44 of 2010]*

**“Commissioner”** means the person appointed as Commissioner under the Narcotic Drugs and Psychotropic Substances Act;

*[Cap. 96]*

**“Court”** means the Subordinate Court and the High Court;

**“crime”** means an act or omission which constitutes an offence under any written law in Zambia or any other country;

*[definition of “crime” inserted by section 3(e) of Act 44 of 2010]*

**“financial institution”** shall have the meaning assigned to it under the Banking and Financial Services Act;

*[Cap. 387]*

**“identification record”** means—

- (a) where the person is a corporate body, the details of—
  - (i) the certificate of incorporation;
  - (ii) the most recent annual return to the Supervisory Authority; or
- (b) in any other case, sufficient documentary evidence to prove to the satisfaction of a financial institution that the person is who that person claims to be; and for these purposes “person” shall include any person who is a nominee, agent, beneficiary or principal in relation to a business transaction;

**“illegal activity”** means any activity, whenever or wherever carried out which under any written law in the Republic amounts to a crime;

**“money laundering”** means where a reasonable inference may be drawn, having regard to the objective factual circumstances, any activity by a person —

- (a) who knows or has reason to believe that the property is the proceeds of a crime; or
  - (b) without reasonable excuse, fails to take reasonable steps to ascertain whether or not the property is proceeds of a crime;
- where the person—
- (i) engages, directly or indirectly, in a transaction that involves proceeds of a crime;
  - (ii) acquires, receives, possesses, disguises, transfers, converts, exchanges, carries, disposes, uses, removes from or brings into Zambia proceeds of a crime; or
  - (iii) conceals, disguises or impedes the establishment, of the true nature, origin, location, movement, disposition, title of, rights with respect to, or ownership of, proceeds of crime;

*[definition of “money laundering” substituted by section 3(b) of Act 44 of 2010]*

**“proceeds of crime”** means property or benefit that is—

- (a) wholly or partly derived or realised directly or indirectly, by any person from the commission of a crime;
- (b) wholly or partly derived or realised from a disposal or other dealing with proceeds of a crime;

- (c) wholly or partly acquired proceeds of a crime;

and includes, on a proportional basis, property into which any property derived or realised directly from the illegal activity is later converted, transformed or intermingled, and any income, capital or other economic gains derived or realised from the property at any time after the crime; or

- (d) any property that is derived or realised, directly or indirectly, by any person from any act or omission that occurred outside Zambia and would, if the act or omission had occurred in Zambia, have constituted a crime;

*[definition of "proceeds of crime" substituted by section 3(c) of [Act 44 of 2010](#)]*

"**property**" includes any real or personal property, money, things in action or other intangible or incorporeal property, whether located in Zambia or elsewhere, and includes property of corresponding value in the absence of the original illegally acquired property whose value has been determined;

*[definition of "property" substituted by section 3(d) of [Act 44 of 2010](#)]*

"**regulated institution**" *[definition of "regulated institution" deleted by section 3(a) of [Act 44 of 2010](#)]*

"**reporting entity**" has the meaning assigned to it in the Financial Intelligence Centre Act, 2010;

*[Act [No. 46 of 2010](#)]*

*[definition of "reporting entity" inserted by section 3(e) of [Act 44 of 2010](#)]*

"**Supervisory Authority**" *[definition of "Supervisory Authority" deleted by section 3(a) of [Act 44 of 2010](#)]*

"**Unit**" means the Anti-Money Laundering Investigations unit Constituted under section five.

## Part II – Anti-Money Laundering Authority

### 3. Constitution of Anti-Money Laundering Authority

There is hereby constituted the Anti-Money Laundering Authority which Authority shall be composed of the following members appointed by the Minister—

- (a) the Attorney-General, who shall be the chairman;
- (b) the Inspector-General of the Zambia Police Force;
- (c) the Commissioner;
- (d) the Director-General of the Anti-Corruption Commission;
- (e) the Governor, Bank of Zambia;
- (f) the Commissioner-General, Zambia Revenue Authority; and
- (g) two other persons.

### 4. Functions of Authority

The functions of the Anti-money Laundering Authority shall be—

- (a) to provide general or specific policy directives to the Commissioner and the Commissioner shall give effect to such directives; and
- (b) to advise the Minister on measures required to prevent and detect money laundering in the Republic.

## Part III – Anti-Money Laundering Investigations Unit

### 5. Anti-Money Laundering Investigations Unit

There shall be the Anti-Money Laundering Investigations Unit which shall comprise the Commissioner and such other officers as the Commissioner shall appoint.

### 6. Functions of Unit

- (1) The functions of the Anti-Money Laundering Investigations Unit shall be—
  - (a) to investigate financial and other business transactions suspected to be part of money laundering offences;  
*[paragraph (a) substituted by section 4(a) of [Act 44 of 2010](#)]*
  - (b) to conduct investigations and prosecutions of money laundering offences;
  - (c) to liaise with other law enforcement agencies in the conduct of investigations and prosecutions of money laundering offences; and  
*[paragraph (c) amended by section 4(b) of [Act 44 of 2010](#)]*
  - (d) to cooperate with law enforcement agencies and institutions in other jurisdictions responsible for investigations and prosecution of money laundering offences.  
*[paragraph (d), previously paragraph (f), renumbered by section 4(d) of [Act 44 of 2010](#)]*
- (2) The Commissioner shall make periodic reports to the Authority concerning the activities of the Unit as the Authority may determine.

## Part IV – Money laundering offences

### 7. Prohibition of money laundering

A person who, after the commencement of this Act, engages in money laundering, shall be guilty of an offence and shall be liable, upon conviction to a fine not exceeding one hundred and seventy thousand penalty units or to imprisonment for a term not exceeding ten years or to both.

### 8. Offences committed by body of persons

Where an offence under the provisions of this Act is committed by a body of person, whether corporate or unincorporated—

- (a) the body of persons shall be guilty of an offence and liable upon conviction to a fine not exceeding four hundred thousand penalty units; and
- (b) every person who, at the time of the offence, acted in an official capacity for or on behalf of such a body of persons, whether as a Director, Manager, Secretary or other similar capacity, or was purporting to act in such capacity and who was involved in the commission of that offence, shall be guilty of that offence;

and shall be liable, upon conviction to a fine not exceeding one hundred and seventy thousand penalty units or to imprisonment for a term not exceeding ten years, or to both.

### 9. Attempts, aiding and abetting or conspiring to commit offence

- (1) Any person who attempts, aids, abets, counsels or procures the commission of the offence of money laundering shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding



one hundred and thirty-nine thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

- (2) Any person who conspires with another to commit the offence of money laundering shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding one hundred and thirty-nine thousand penalty units or to imprisonment for a term not exceeding five years or to both.

## 10. Falsification of documents

Any person who knows or suspects that an investigation into money laundering has been, is being or is about to be conducted, falsifies, conceals, destroys or otherwise disposes of, causes or permits the falsification of material which is or is likely to be relevant to the investigation of the offence, shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding one hundred and thirty-nine thousand penalty units or to imprisonment for a term not exceeding five years or to both.

## 11. Divulging information to unauthorised person

Any person who knows or suspects that an investigation into money laundering has been, is being or is about to be conducted, without lawful authority, divulges that fact or information to another person, shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding one hundred and thirty-nine thousand penalty units or to imprisonment for a term not exceeding five years or to both.

## Part V – Prevention of money laundering

*[Part V substituted by section 5 of [Act 44 of 2010](#)]*

## 12. Prohibition of tipping off

- (1) A person who knows or has reason to suspect that—
- (a) an authorised officer has commenced, or is about to commence, an investigation under this Act and unlawfully or recklessly discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation; or
  - (b) a disclosure has been made to an authorised officer under this Act, and unlawfully discloses to any other person information or any other matter which is likely to prejudice an investigation or proposed investigation following the disclosure;
- commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.
- (2) Notwithstanding subsection (1), a legal practitioner may make a disclosure in the course of the legal practitioner's professional duty—
- (a) to the legal practitioner's client or the client's representative in connection with the giving of advice to the client; or
  - (b) to any person in contemplation of, or connection with and for the purpose of, any legal proceedings.
- (3) Subsection (2) does not apply in relation to any information or other matter which is disclosed with a view to furthering any illegal purpose.

*[section 12 substituted by section 5 of [Act 44 of 2010](#)]*

### 13. Investigation of suspicious transaction reports from Centre

The Unit shall, where it receives a suspicious transaction report from the Centre in accordance with the Financial Intelligence Centre Act, 2010, cause an investigation to be conducted where it has reason to suspect that a person has committed or is about to commit an offence under Part IV.

*[Act No. of 2010]*

*[section 13 substituted by section 5 of [Act 44 of 2010](#)]*

### 14. Protected disclosures

A disclosure made by a person in compliance with this Act shall be a protected disclosure for the purposes of the Public Interest Disclosure (Protection of Whistleblowers) Act, 2010.

*[Act No. 4 of 2010]*

*[section 14 substituted by section 5 of [Act 44 of 2010](#)]*

## Part VI – Seizure and forfeiture of property in relation to money laundering

### 15. Seizure of property

An authorised officer shall seize property which that officer has reasonable grounds to believe that the property is derived or acquired from money laundering.

### 16. Release of seized property

- (1) Where property is seized under this Act, the authorised officer who effected the seizure may, at any time before it is forfeited under this Act, order the release of the property to the person from whom the property was seized if the officer is satisfied that the property is not liable to forfeiture under this Act and is not otherwise required for the purpose of any investigations or proceedings under this Act or for the purpose of any prosecution under any other written law.
- (2) Where property is released under subsection (1)—
  - (a) the officer effecting the seizure, or the State or any person acting on behalf of the State, shall not be liable to any civil proceedings by any person unless it is proved that the seizure and the release had not been effected in good faith; and
  - (b) a record in writing shall be made by the officer effecting the release, specifying in detail the circumstances of, and the reasons for, the release.

### 17. Forfeiture of property

- (1) Any property—
  - (a) Which has been seized under subsection (1) of section fifteen; and
  - (b) which is in the possession or under the control of a person convicted of a money laundering offence and which property is derived or acquired from proceeds of the crime shall be liable to forfeiture by the court.
- (2) Where the person whose property has been forfeited dies before or after the order under the subsection (1) is made, the order shall have effect against the estate of the deceased.

## 18. Forfeiture of property where no proceedings or claim

- (1) Where any property has been seized under this Act and—
  - (a) no prosecution for any offence under any written law is instituted with regard to the property;
  - (b) no claim in writing is made by any person; and
  - (c) no proceedings are commenced within six months from the date of seizure, for the forfeiture of property;the Commissioner shall apply to the Court upon the expiration of the period of six months for an order of forfeiture of that property.
- (2) The Court shall not make an order of forfeiture under subsection (1) unless—
  - (a) the Commissioner has given notice by publication in the *Gazette* and in one national newspaper to the effect that property which has been seized under this Act shall be liable to vest in the State if it is not claimed within three months; and
  - (b) three months after the giving of the notice under paragraph (a) the property remains unclaimed.
- (3) Where a claim in writing is made by any person that is lawfully entitled to the property seized under this Act that the property is not liable to forfeiture under this Act the Commissioner may order release of the property to the claimant if satisfied that there is no dispute as to ownership of the property and that it is not liable for forfeiture.
- (4) Where a claim is made against property seized under this Act and the Commissioner finds that—
  - (a) there is a dispute as to the ownership of the property;
  - (b) there is insufficient evidence to determine the ownership of property;
  - (c) the Commissioner is unable to ascertain whether the property is liable to forfeiture or not;the Commissioner shall refer the claim to High Court.

## 19. Property tracking and monitoring

- (1) For the purpose of determining whether any property belongs to, or is in the possession or under the control of any person, the High Court may upon application by the Commissioner—
  - (a) order that any document relevant to:
    - (i) identifying, locating or quantifying property of that person; or
    - (ii) identifying or locating any document necessary for the transfer of property of that person; be delivered to the Commissioner; and
  - (b) order a regulated institution to produce to the Commissioner all information obtained by that institution about any business transaction conducted by or for that person with the institution before or after the date of the order as the court directs.
- (2) Where the Commissioner is satisfied that the person is failing to comply with, is delaying or is otherwise obstructing an order made in accordance with subsection (1), an authorised officer may enter any premises of that person, search the premises and remove any material document or other thing therein for the purposes of executing such order.

## 20. Property to be forfeited to State

Where any property is forfeited under this Act, the property shall vest in the State.

## 21. Tampering with forfeited property

Any person who tampers with property seized or forfeited under this Act shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding one hundred and forty thousand penalty units or to imprisonment for a term not exceeding five years or to both.

## Part VII – Investigation, arrest and search

### 22. Power of arrest

- (1) Every offence under this Act shall be a cognisable offence for the purposes of the Criminal Procedure Code.
- (2) Where a person arrested under this Act is serving a sentence of imprisonment, or is in lawful custody, that person shall, upon an order by magistrate, be produced before that magistrate at such place as may be specified in the order for the purpose of investigations into the matter in respect of which the person is liable to be arrested under this Act.

*[Cap. 88]*

### 23. Power of entry, search and seizure

Whenever an authorised officer has reasons to believe that there is reasonable cause to suspect that in or on any premises there is concealed or deposited any property liable to seizure or forfeiture under this Act; or to which an offence under this Act is reasonably suspected to have been committed, or any book or document directly or indirectly relating to, or connected with, any dealing or intended dealing, whether within or outside Zambia, in respect of any property liable to seizure or forfeiture under this Act, or which would, if carried out, be an offence under this Act, the authorised officer may with a warrant issued by a court of competent jurisdiction—

- (a) enter the premises and search for, seize and detain any such property, book or document;
- (b) search any person who is suspected or connected with the offence, in or on the premises, and take that person into custody in order to facilitate the investigations;
- (c) arrest any person who is in or on the premises in whose possession any property liable seizure or forfeiture under this Act is found, or whom the officer reasonably believes to have concealed or deposited the property;
- (d) break, open, examine and search any premises, article, container or receptacle suspected or connected with the offence; or
- (e) stop, search and detain any conveyance.

## Part VII – General

*[Please note: Part numbering as in original.]*

### 24. Sentence for previous offenders

Any person convicted on a second or subsequent offence under this Act shall be liable to imprisonment for a term of not less than five years or to two times the amount of the fine specified for the first offence or to both.

## 25. Extradition

An offence under this Act shall be deemed to be an extraditable offence under the provisions of the Extradition Act.

*[Cap. 94]*

## 26. Obstruction of authorised officer

Any person who—

- (a) obstructs, assaults, hinders or delays any authorised officer in the lawful exercise of any powers conferred on the officer by or under this Act;
- (b) refuses to furnish to any authorised officer on request, any particulars or information to which the authorised officer is entitled to by or under this Act;
- (c) fails to comply with any lawful demand of an authorised officer under this Act;
- (d) willfully or recklessly gives to any authorised officer any false or misleading particulars or information with respect to any fact or particulars to which the authorised officer is entitled to by or under this Act;
- (e) fails to produce, conceals or attempts to conceal any property, document or book in relating to which there is reasonable ground to suspect that an offence has been or is being committed under this Act, or which is liable to seizure under this Act, or
- (f) before or after any seizure, destroys anything to prevent the seizure or securing of that property or article;

shall be guilty of an offence and shall be liable, upon conviction, to imprisonment for a term not exceeding five years without the option of a fine.

## 27. Failure or refusal to disclose information or produce anything

Any person who willfully fails or refuses to disclose any information or produce any accounts, documents or articles to an authorised officer during an investigation into an offence under this Act, shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding two hundred penalty units or imprisonment for a term not exceeding five years or to both.

## 28. Application of [Cap. 98](#)

The Mutual Legal Assistance in Criminal Matters Act, applies to offences under this Act except where the provisions of that Act are inconsistent with this Act.

## 29. Jurisdiction

- (1) This Act shall have effect within as well as outside Zambia and notwithstanding where any offence is committed by any person, that person may be dealt with in respect of such offence as if it has been committed within Zambia.
- (2) Any proceedings against any person under this section which would be a bar to subsequent proceedings against such person for the same offence, if such offence had been committed in Zambia, shall be a bar to further proceedings against that person under any written law for the time being in force relating to the extradition of persons, in respect of the same offence outside Zambia.

*[section 29 substituted by section 6 of [Act 44 of 2010](#)]*

**30. General penalty**

A person who commits an offence under this Act, for which no penalty is provided shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding one hundred and forty thousand penalty units or to imprisonment for a term not exceeding four years or to both.

**31. Repeal of section 22 of [Cap. 96](#)**

Section twenty-two of the Narcotic drugs and Psychotropic Substances Act is hereby repealed.

**32. Regulations**

The Minister may, by statutory instrument, make regulations prescribing matters necessary or convenient for the better carrying out or giving effect to, this Act.