PARLIAMENT OF THE DEMOCRATIC

SOCIALIST REPUBLIC OF

SRI LANKA

PREVENTION OF MONEY LAUNDERING

(AMENDMENT) ACT, NO. 40 OF 2011

[Certified on 06th October, 2011]

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Prevention of Money Laundering (Amendment) 1

Act, No. 40 of 2011

[Certified on 06th October, 2011]

L.D.—O. 9/2010.

ANACT TO AMEND THE PREVENTION OF MONEY LAUNDERING

ACT, NO. 5 OF 2006

Be it enacted by the Parliament of the Democratic Socialist

Republic of Sri Lanka as follows:-

1. This Act may be cited as the Prevention of Money Short tile.

Laundering (Amendment) Act, No. 40 of 2011.

2. Section 2 of the Prevention of Money Laundering Amendment of

Act, No.5 of 2006 (hereinafter referred to as the “principal section 2 of the

Prevention of

enactment”) is hereby amended in paragraph (a) of that

Money

section by the substitution for the words “being resident in Laundering Act,

Sri Lanka;” of the words “in Sri Lanka;”. No. 5 of 2006.

3. Section 3 of the principal enactment is hereby Amendment of

amended as follows:— section 3 of the

principal

enactment.

(1) in subsection (1) thereof by the repeal of all the

words from “knowing or having reason” to the end

of that subsection and the substitution therefor of

the following:—

“knowing or having reason to believe that such

property is derived or realized, directly or

indirectly from any unlawful activity, or from

the proceeds of any unlawful activity shall be

guilty of the offence of money laundering and

shall on conviction after trial before the High

Court be liable to a fine which shall be not less

than the value of the property in respect of which

the offence is committed and not more than

three times the value of such property, or to

rigorous imprisonment for a period of not less

than five years and not exceeding twenty years,

or to both such fine and imprisonment.”;

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(2) by the insertion immediately after subsection (1)

thereof of the following new subsection:—

“(1A) The assets of any person found guilty

of the offence of money laundering under this

section shall be liable to forfeiture in terms of

Part II of this Act.”;

(3) in subsection (3) thereof by the substitution for the

words “for the commission by the accused of the

unlawful activity” of the words “for the commission

of the unlawful activity”.

Amendment of 4. Section 6 of the principal enactment is hereby

section 6 of the amended by the substitution for the words “be liable to a

principal

enactment. fine not exceeding fifty thousand rupees or to imprisonment

of either description for a period not exceeding six months,”

of the words “be liable to a fine not exceeding one hundred

thousand rupees or to imprisonment of either description for

a period not exceeding twelve months,”.

Amendment of 5. Section 7 of the principal enactment is hereby

section 7 of the amended in subsection (1) thereof by the substitution for

principal

enactment. the words “not below the rank of Superintendent of Police

or in the absence of such an officer an Assistant

Superintendent of Police may,” of the words “not below the

rank of an Assistant Superintendent of Police may,”.

Amendment of 6. Section 8 of the principal enactment is hereby

section 8 of the amended as follows:—

principal

enactment.

(1) in subsection (1) of that section, by the substitution

for the words “provisions of section 6 shall, within

the seven days during which such order shall be in

force, make an application” of the words “provisions

of section 7 shall within the seven days during

which such order shall be in force, make an exparte

application”;

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

(i) by the repeal of paragraph (b) thereof and the

substitution therefor of the following:—

“(b) to the requirement that the maximum

period of any extension so granted

shall not exceed three months at any

given time and in any event shall not

in the aggregate exceed a period of two

years from the date of the issuing of

the Freezing Order by such police

officer:”;

(ii) by the substitution in the proviso thereof for

the words “ indictment is filed for the offence

of money laundering in respect of” and for

the words “Freezing Order” wherever such

words appear in such proviso, of the words

“indictment is filed for an offence under

section 3 of this Act in respect of” and

“Freezing Order” respectively;

(3) in subsection (3) thereof by the substitution for the

words “Freezing Order” and “Order of Freezing” of

the words “Freezing Order”.

7. Section 9 of the principal enactment is hereby Amendment of

amended by the substitution for the words “No transaction section 9 of the

principal

shall be effected” of the words and figures “No transaction

enactment.

shall, except with the sanction of Court as provided for in

section 10, be effected”.

8. Section 10 of the principal enactment is hereby Amendment of

amended as follows:- section 10 of

the principal

enactment.

(1) by the substitution for the words “make order

permitting” of the words “make order sanctioning” ;

and

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(2) by the repeal of the marginal note to that section

and the substitution therefor of the following:—

“High Court to sanction

essential and legitimate

transactions”.

Amendment of 9. Section 11 of the principal enactment is hereby

section 11 of amended by the substitution for the words “not below the

the principal

rank of a Superintendent of Police or in the absence of such

enactment.

an officer an Assistant Superintendent of Police,” of the

words “not below the rank of an Assistant Superintendent

of Police,”.

Amendment of 10. Section 12 of the principal enactment is hereby

section 12 of

amended as follows:—

the principal

enactment.

(1) by the repeal of all the words from “Any Police

Officer” to the end of paragraph (a) of subsection

(1) of that section and the substitution therefor of

the following:—

“Any police officer not below the rank of

an Assistant Superintendent of Police shall

take possession of, and otherwise deal with,

any account, property or investment, which is

subject to a Freezing Order, and the Court may

on application made by the said police officer

and for the purpose of determining who owns,

possesses or is in control of such account,

property or investment to which the Freezing

Order relates, order—

(a) that any document relevant to—

(i) identifying, locating or

quantifying such account,

property or investment;

(ii) establishing the ownership,

possession or control of such

account, property or investment;

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(iii) obtaining any other information

pertaining to such account,

property or investment,

be delivered forthwith to such police officer; and ”;

(2) in subsection (3) of that section, by the substitution

for the words “Upon determining in whom the

ownership, possession or control of any property to

which the Freezing Order relates,” of the words

“Upon determining who owns, possesses or is in

control of any account, property or investment to

which the Freezing Order relates,”.

11. Section 13 of the principal enactment is hereby Amendment of

amended as follows:— section 13 of the

principal

enactment.

(1) by the repeal of subsection (1) therof and the

substitution therefor of the following:—

“(1) Subject to the provisions of subsection

(2), where a person is convicted of an offence

under section 3 of this Act, the Court convicting

such person shall, make order that any account,

property or investment, owned, possessed or

under the control of such person which has been

derived or realized directly or indirectly from

any unlawful activity, any income or profit

earned on such account, property or investment

and any instrumentalities used in the commission

of such unlawful activity, be forfeited to the State

free from all encumbrances.”;

(2) by the insertion immediately after subsection (1)

thereof of the following new subsections:—

“(1A) Where such account, property,

investment, income, profit or instrumentalities

cannot be found or traced the Court convicting

such person shall order him to pay to the State

the equivalent value of such account, property,

investment, income, profit or instrumentalities.

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(1B) Where such person fails to pay such

equivalent value, the Court shall, in accordance

with the provisions of the Code of Criminal

Procedure Act, No. 15 of 1979, order him to pay

such value as a fine within such period as may

be specified by Court.”;

(3) in subsection (2) thereof by the substitutions for

the words “a bona fide interest in such property.”

of the words “a bona fide interest in such property,

or investment or any income or profit earned on

such property or investment.”;and

(4) in subsection (4) thereof by the substitution for the

words “any movable or immovable property

belonging to the person” of the words “any property

belonging to the person”.

Replacement of 12. Section 14 of the principal enactment is hereby

section 14 of the repealed and the following section is substituted therefor:—

principal

enactment.

“Restoring 14. (1) Any person, being a person to whom

the rights of the provisions of paragraph (a) of section 2 do

bona fide

not apply, who owns, possesses or is in control

claimants.

of, any account, property or investment to

which the Freezing Order made under section

7 relates, may within thirty days of the making

of such Order apply to the Court making the

same, seeking the intervention of Court to

exclude from such Order any account, property

or investment he owns, possesses or is in

control of.

(2) Where an application is made under

subsection (1), the Court shall upon being

satisfied on the information before Court

that—

(a) the account, property or investment

which the applicant owns, possesses

or is in control of, is not derived or

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realized directly or indirectly, from any

unlawful activity or from the proceeds

of any unlawful activity or the account,

property or investment is not an

instrumentality used in the commission

of such unlawful activity;

(b) the applicant was not in any way

involved in the commission of the

offence of money laundering in relation

to which the Freezing Order was made;

(c) the applicant had acquired an

interest in the account, property or

investment at any time prior to the

commission of the offence of money

laundering and the applicant was

unaware of the fact that the defendant

had used or had intended to use such

account, property or investment in or

in connection with the commission of

such offence; or

(d) the applicant had acquired an interest

in the account, property or investment

at the time of or after the commission

or alleged commission of the offence,

that such interest was acquired in

circumstances which would not give

rise to a reasonable suspicion that such

account, property or investment was

proceeds or instrumentalities of such

offence,

make Order for the release of the account,

property or investment which is the subject of

the application before it, from the Freezing

Order made under section 7, and restore the

right of the applicant in respect of the same.”.

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Replacement of 13. Section 15 of the principal enactment is hereby

section 15 of the

repealed and the following section is substituted therefor:—

principal

enactment.

“Appointment 15. Where any account, property or

of a Receiver investment or any income or profit earned on

upon such account, property or investment has been

Forfeiture. forfeited to the State under section 13 of this

Act, the Court making the Order of Forfeiture

may, appoint a Receiver in accordance with

the provisions of the Civil Procedure Code

(Chapter 101) to be in charge of such account,

property, investment, income or profit so

forfeited.”.

Amendment of 14. Section 20 of the principal enactment is hereby

section 20 of amended as follows:—

the principal

enactment.

(1) by the addition, immediately after subsection (2)

of that section, of the following new subsections:—

“(3) No person shall—

(a) falsify, conceal, destroy or otherwise

dispose of, or cause or permit the

falsification, concealment, destruction

or disposal of, any document or

material or thing which is or is likely to

be relevant to the execution of any

Order made in accordance with the

provisions of this Act; or

(b) divulge, the fact that an investigation

into an offence of money laundering or

an offence under the law of any foreign

State corresponding to the offence of

money laundering, is being, or is about

to be made, or divulge to another

person any other information which is

likely to prejudice such investigation.

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(4) Any person who contravenes the provisions

of subsection (3) shall be guilty of an offence under

this Act and shall on conviction after trial before

the High Court be liable to a fine not exceeding

one hundred thousand rupees or to imprisonment

of either description for a period not exceeding

twelve months or to both such fine and

imprisonment.”;

(2) by the repeal of the marginal note to that section

and the substitution therefor of the following new

marginal note:—

“Offences”.

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

repealed. section 21 of the

principal

enactment.

16. Section 23 of the principal enactment is hereby Amendment of

amended by the substitution for the words “by means of any section 23 of the

principal

illegal activity,” of the words “by means of any unlawful

enactment.

activity,”.

17. Section 27 of the principal enactment is hereby Amendment of

amended as follows:— section 27 of the

principal

enactment.

(1) in subsection (1) thereof by the substitution for the

words and figure “under section 2 of this Act,” of

the words and figure “under section 3 of this Act,”;

(2) in subsection (2) of that section, by the

substitution for the words “No –Commonwealth

country” of the words “Non-Commonwealth

country”;

(3) by the repeal of subsection (3) of that section and

the substitution therefor of the following:—

“(3) The grant of assistance to any country

referred to in subsection (2) may be made subject to

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such terms and conditions as the Minister may deem

appropriate in the circumstances.”.

Amendment of 18. Section 33 of the principal enactment is hereby

section 33 of the amended as follows:—

principal

enactment.

(1) by the insertion immediately after subsection (1)

thereof of the following new subsection: —

“(2) In particular and without prejudice to the

generality of the powers conferred by subsection

(1), the Minister may make regulations in respect

of the following matters:—

(a) prescribing any business as a “designated non

finance business” taking into consideration

the interests of the national economy;

(b) prescribing any business as a “finance

business” taking into consideration the

interest of the national economy.”.

(2) by the renumbering of subsections (2) and (3) of

that section, as subsections (3) and (4) thereof,

respectively.

Amendment of 19. Section 35 of the principal enactment is hereby

section 35 of the amended as follows:—

principal

enactment.

(1) by the insertion immediately before the definition

of the expression “designated non-finance

business” of the following new definition—

“account” means any facility or arrangement by

which an Institution does any of the

following:—

(a) accepts deposits of currency;

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(b) allows withdrawals of currency; or

(c) pays cheques or payment orders drawn on the

Institution or collects cheques or payment

orders on behalf of a person other than the

Financial Institution,

and includes any facility or arrangement for a safety

deposit box or any other form of safe deposit;”;

(2) in the definition of the expression “designated non-

finance business”—

(a) by the repeal of paragraph (e) thereof;

(b) by the relettering of all paragraphs from (f) to

(l) as paragraphs (e) to (k) thereof, respectively;

(c) by the repeal of paragraph (m) thereof and the

substitution therefor of the following new

paragraphs:—

“(l) pawn brokering under Pawn Brokers

Ordinance (Chapter 90);

(m) non profit organizations or non

governmental organizations registered

under any written law;”;

(3) in the definition of the expression “finance

business”—

(a) by the repeal of paragraph (b) thereof and the

substitution therefor of the following

paragraph:—

“(b) finance business as defined in Finance

Companies Act, No. 78 of 1988 or any

Act enacted in place thereof ;”;

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(b) by the repeal of paragraph (k) thereof and the

substitution therefor of the following

paragraphs:—

“(k) any company, to whom a licence to

carry on banking business under the

Banking Act, No. 30 of 1988, is issued;

(l) any finance business carried on by any

society registered under the Co-

operative Societies Law, No. 5 of 1972

or any Act enacted in place thereof;

(m) any finance business carried on by the

Samurdhi Authority of Sri Lanka,

established by the Samurdhi Authority

of Sri Lanka Act, No. 30 of 1995; and

(n) underwriting and placement of

insurance as well as insurance

intermediation by agents and brokers.”;

and

(4) in the definition of the expression “unlawful

activity”—

(a) by the repeal of paragraph (e) thereof and the

substitution therefor of the following:—

“(e) the Exchange Control Act (Chapter

423) and any Rule, Order or Regulation

made thereunder;”;

(b) by the repeal of paragraphs (j) and (k) thereof

and the substitution therefor of the following

paragraphs:—

“(j) any written law for the time being in

force relating to offences connected

with the trafficking or smuggling of

persons;

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(k) the Customs Ordinance (Chapter 235)

and any Regulation, Rule or Order made

thereunder;

(l) the Excise Ordinance (Chapter 52) and

any Regulation, Rule or Order made

thereunder;

(m) the Payment Devices Frauds Act, No.

30 of 2006 and any Regulation, Rule

or Order made thereunder;

(n) the National Environmental Act, No.

47 of 1980 and any Regulation, Rule

or Order made thereunder;

(o) an offence under any other written law

for the time being in force which is

punishable by death or with

imprisonment for a term five years or

more:

Provided however that,

notwithstanding anything to the

contrary in the preceding provision,

any offence under sections 386, 388,

399 and 401 of the Penal Code (Chapter

19) shall be deemed to be an unlawful

activity for the purposes of this Act;

and

(p) an act committed within any

jurisdiction outside Sri Lanka, which

would either constitute an offence in

that jurisdiction or which would if

committed in Sri Lanka amount to an

unlawful activity within the meaning

of this Act.”.

20. In the event of any inconsistency between the Sinhala text to

Sinhala and Tamil texts of this Act, the Sinhala text shall prevail in case

of inconsistency.

prevail.

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