



Tonga

MONEY LAUNDERING AND PROCEEDS OF CRIME (AMENDMENT) ACT 2010

Act No. 32 of 2010



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MONEY LAUNDERING AND PROCEEDS OF CRIME (AMENDMENT) ACT 2010

Act No. 32 of 2010

AN ACT TO AMEND THE MONEY LAUNDERING AND PROCEEDS OF CRIME ACT

I assent,
GEORGE TUPOU V,
20th September 2010.

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

1 Short Title

- (1) This Act may be cited as the Money Laundering and Proceeds of Crime (Amendment) Act 2010.
- (2) The Money Laundering and Proceeds of Crime Act 2000, as amended, is in this Act referred to as the Principal Act.

2 Amendment to Tongan version only

The Principal Act is amended, in the Tongan version only, by deleting the words “pa’anga hiamatea” wherever it appears and replacing them with “ngaahi koloa ‘oku ma’u mei ha hia”.

3 Section 2 amended

Section 2 of the Principal Act is amended by-

- (a) deleting the definition of “**authorised officer**” and replacing it with the following-

““**authorised officer**” means a police officer or a customs officer;”;

- (b) deleting the definition of “**cash**” and replacing it with the following-

““**cash**” means-

- (a) the coin and paper money of the Kingdom or of a foreign country that is designated as legal tender and which is customarily used and accepted as a medium of exchange in the country of issue;
- (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);
- (c) jewellery, precious metals and precious stones, or pearls; or
- (d) where the context permits, cash includes cash in electronic form;”;
- (c) in the definition of “**cash dealer**”, adding the following new paragraphs after paragraph (d)-

- “(e) casinos, including internet casinos, gambling houses or lotteries;
- (f) real estate agents or real estate brokers;
- (g) dealers in precious metals and dealers in precious stones, and other dealers in high value goods;
- (h) law practitioners, notaries, and other independent legal professionals when they prepare for, engage in or carry out transactions for their client concerning the following activities-
- (i) buying and selling of real estate;
- (ii) managing of client money, securities or other assets;
- (iii) management of bank, savings or securities accounts;
- (iv) organisation of contributions for the creation, operation or management of companies; or
- (v) creation, operation or management of legal persons or arrangements, and buying and selling of business entities;
- (i) accountants, auditors and tax advisors; or

- (j) 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.”

- (d) inserting a new definition for the term “**Court**” immediately after the definition of “**cash**” as follows–

““**Court**” means the Supreme Court;”

- (e) the definition of “**defendant**” is deleted and replaced with the following-

““**defendant**” means a person that is under investigation for a serious offence or has been charged with a serious offence, whether or not he has been convicted of the offence, and includes in the case of proceedings for a restraining order under section 58, a person who is being investigated for a serious offence or is about to be charged with a serious offence;”

- (f) inserting a definition of “**premises**” after the definition of “**person**” as follows-

“**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;”

- (g) deleting the definition of “**proceeds of crime**” and replacing with-

““**proceeds of crime**” means –

- (a) any property derived or realised directly or indirectly from a serious offence and includes, on a proportional basis, property into which any property derived or realised directly from the offence was later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived or realised from such property at any time since the offence; and
- (b) includes any property used or intended to be used in the commission of any serious offence;”;

- (h) deleting the definition of “**property**” and replacing it with-

““**property**” means cash and all other real or personal property of every description, whether situated in Tonga or elsewhere and whether tangible or intangible, and includes an interest in any such property including any legal document or instrument, including electronic or digital, evidencing title to, or interest in, such assets;”;

- (i) deleting the definition of “**serious offence**” and replacing it with -

““**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;”;

- (j) inserting a definition of “**tainted property**” after the definition of “serious offence” as follows–

““**tainted property**” in relation to a serious offence, means-

- (a) property used in or in connection with or intended for use or in connection with the commission of the offence, if it was in the person's possession at the time of, or immediately after, the commission of the offence;

- (b) property derived, obtained or realised as a result of or in connection with the commission of an offence if it was acquired by the person before, during or within a reasonable time after the period of the commission of the offence of which the person is about to be charged, charged or convicted; or
 - (c) that the income of that person from sources unrelated to criminal activity of that person cannot reasonably account for the acquisition of that property; and
 - (d) tainted property includes property of a corresponding value to property defined in (a), (b) and (c) above;”;
- (k) inserting the following new definitions where appropriate:

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

“**specified entity**” means a person or entity:

- (a) that is a United Nations listed entity as described in section 4 of the Transnational Crimes Act 2005; or
- (b) for which a declaration has been made under section 5 of the said Act;

“**terrorist act**” has the same meaning as the Transnational Crimes Act 2005;

“**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 group;

“**terrorist group**” means:

- (a) an entity that has as one of its activities or purposes committing, or facilitating the commission of, a terrorist act; or
- (b) a specified entity.

“**terrorist property**” means:

- (a) property that has been, is being, or is likely to be used to commit a terrorist act; or
- (b) property that has been, is being, or is likely to be used by a terrorist group; or
- (c) property owned or controlled, or derived or generated from property owned or controlled, by or on behalf of a specified entity.”.

4 Section 11(2) repealed

Section 11(2) of the Principal Act is repealed.

5 New section 11A – Functions and Powers of Transaction Reporting Authority

The Principal Act is amended by inserting the following new section immediately after section 11 –

“11A Functions and Powers of Transaction Reporting Authority

The Transaction Reporting Authority shall have the following functions and powers–

- (a) receive information and reports provided under section 14(1) and information –
 - (i) provided to it by any agency of another country;
 - (ii) provided to it by any law enforcement agency in the Kingdom or otherwise or any government agency or institution in the Kingdom or otherwise; and
 - (iii) voluntarily provided to it about a serious offence, a money laundering offence, the offence of the financing of terrorism, or a violation of this Act;
- (b) analyze and assess all reports and information;
- (c) request information or reports from financial institutions and cash dealers under section 14;
- (d) for transactions or transfers that occurred prior to the coming into force of the Money Laundering and Proceeds of Crime (Amendment) Act 2010, require a financial institution to disclose records in the financial institution’s possession, custody or control that pertain to transactions or transfers for a particular account or person, and for a particular time period;
- (e) enter the premises of any financial institution and cash dealers during ordinary business hours to inspect any records, ask any questions of any employee of the financial institution and cash dealers relating to such records, and make notes and take copies of the records;
- (f) collect any information that the Transaction Reporting Authority considers relevant to serious offences, money laundering activities, the financing of terrorism or violations of this Act whether or not publicly available, including commercially available databases, or information that is collected or

- maintained, including information that is stored in databases maintained by government agencies and institutions;
- (g) obtain from any government department any records of a person under investigation for committing, or attempting to commit, a serious offence, a money laundering offence, an offence of the financing of terrorism or a violation of this Act;
 - (h) obtain from any telecommunications corporation established in the Kingdom telephone call records of a person under investigation for committing, or attempting to commit, a serious offence, a money laundering offence, an offence of the financing of terrorism or a violation of this Act;
 - (i) seek information from any foreign government agency, foreign law enforcement agency, foreign supervisory authority and foreign auditing authority for purposes of this Act;
 - (j) refer any report, and information pertaining to that report, to the appropriate law enforcement agency in the Kingdom if, on the basis of its analysis and assessment, the Transaction Reporting Authority has reasonable grounds to suspect that a transaction or any other activity would be relevant to the investigation or prosecution of a serious offence, money laundering offence, or terrorist financing offence, and in connection therewith, the Transaction Reporting Authority may send a copy of such referral or information to the relevant supervisory authority;
 - (k) destroy a suspicious transaction report received or collected on the expiry of seven years after the date of receipt of the report if there has been no further activity or information relating to the report or the person named in the report, or seven years from the date of the last activity relating to the person or report;
 - (l) instruct any financial institution and cash dealers 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 Act or to facilitate any investigation anticipated by the Transaction Reporting Authority or a law enforcement agency;
 - (m) on reasonable grounds to suspect that a transaction or attempted transaction may involve a serious offence, money laundering offence, or terrorist financing offence, direct in writing that the reporting institution concerned either proceed or refrain from proceeding with the transaction or attempted transaction, for a period to be determined by the Transaction Reporting Authority, provided that –
 - (i) any direction must not exceed five working days if the direction is in writing;

- (ii) any direction given orally must not exceed 24 hours and must be confirmed in writing within 24 hours of the oral direction; or
- (iii) before the expiration of five days direction the Transaction Reporting Authority may apply to the Court for an extension of the period of the direction;
- (n) compile statistics and records, and may disseminate information within the Kingdom or elsewhere and make recommendations arising out of any information received;
- (o) in consultation with the relevant supervisory authority, shall issue guidelines to financial institutions and cash dealers in relation to customer identification, record keeping and reporting obligations, and the identification of suspicious transactions;
- (p) where appropriate, periodically provide feedback to financial institutions, cash dealers and relevant government departments, offices, agencies and institutions regarding outcomes relating to the reports or information provided pursuant to this Act;
- (q) obtain further information on persons or transactions referred to in a report made to it pursuant to this Act;
- (r) provide training programs for financial institutions and cash dealers in relation to customer identification, record keeping and reporting obligations, and the identification of suspicious transactions;
- (s) 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;
- (t) educate the public and create awareness on matters relating to money laundering and the financing of terrorism;
- (u) disclose any report, or information derived from such report, to any government department, office or agency subject to the confidentiality requirements of this Act;
- (v) disclose any report, or information derived from such report, to a foreign or government institution or agency, or any international organization, in accordance with this Act;
- (w) liaise with, and enter into any agreement or arrangement with, any foreign government institution or agency, or any international organization, regarding the exchange of information pursuant to this Act; and
- (x) report in writing to the Attorney General prior to the end of each fiscal year on the activities of the previous year and the expected activities of the Transaction Reporting Authority during the

subsequent year, without disclosing confidential information or information that may jeopardize an ongoing investigation or prosecution.

11B Information sharing arrangements with foreign State governments

- (1) The Transaction Reporting Authority may disclose any report or information to a foreign State government agency or institution, or an international organization, that has powers and duties similar to those of the Transaction Reporting Authority –
 - (a) on such terms and conditions as are set out in an agreement between the Transaction Reporting Authority and the foreign government institution or agency, or international organization, regarding the exchange of such information under subsection (2) of this section; or
 - (b) where such an agreement has not been entered into, on such terms and conditions as may be agreed upon by the Transaction Reporting Authority and the institution, agency or organization at the time of disclosure.
- (2) The Transaction Reporting Authority, with the approval of the Attorney General, may enter into an agreement, in writing, with a foreign government institution or agency, or international organization, with powers and duties similar to the Transaction Reporting Authority regarding the exchange of information between the Transaction Reporting Authority and that institution, agency or organization.
- (3) The information exchanged under subsection (1) or (2) of this section shall be limited to information that the Transaction Reporting Authority, the foreign government institution or agency, or the international organization has reasonable grounds to suspect would be relevant to the investigation or prosecution of a serious offence, a money laundering offence or a financing of terrorism offence, or an offence that is substantially similar to these offences.
- (4) Agreements entered into under subsection (1) or (2) of this section shall include the following terms -
 - (a) a restriction on the use of the report or information to purposes relevant to investigating or prosecuting a serious offence, a money laundering offence, financing of terrorism offence, or an offence that is substantially similar to these offences; and
 - (b) a stipulation that the report or information be treated in a confidential manner and not be further disclosed without the express consent of the Transaction Reporting Authority.

11C Protection against liability

Any employee of the Transaction Reporting Authority, or any officer, agent or person authorized 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 beyond reasonable doubt that the act or omission was made in bad faith.”.

6 Section 13 amended

Section 13(1)(a) of the Principal Act is amended by deleting the existing paragraph and inserting the following -

“(a) records of all transactions carried out by it, in accordance with the requirements of subsection (3);”

7 Section 14 amended

Section 14(1) of the Principal Act is amended by –

- (a) inserting after the first appearance of the word “transaction” the words “or an attempted transaction”; and
- (b) inserting after the word “serious offence” the words “or terrorist financing”.

8 New sections 14A and 14B

The Principal Act is amended by inserting the following new section 14A immediately after section 14-

“14A Offence of failing to report suspicious transactions

Any person who fails to comply with the requirements of section 14 commits an offence and upon conviction shall be liable to a fine not exceeding \$150,000.

14B Privileged communication

- (1) The provisions of section 14 shall not apply to disclosure of any privileged communication between a law practitioner and his client.
- (2) For the purposes of this Act a communication is a privileged communication only if -

- (a) it is a confidential communication, whether oral or in writing, between-
 - (i) a law practitioner in his professional capacity and another law practitioner in such capacity; or
 - (ii) a law practitioner in his professional capacity and his client, whether made directly or indirectly through an agent of either;
 - (b) 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;
 - (c) the communication is not made or brought into existence for the purpose of committing or furthering the commission of a criminal offence.
- (3) If the information consists wholly or partly of, or relates wholly or partly to, receipts, payments, income, expenditure or financial transactions of a specified person whether a law practitioner, his client, or any other person, it is not a privileged communication 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.”.

9 Section 15 amended

Section 15(a) of the Principal Act is amended by inserting after the words “money laundering” the following words “or terrorist financing”.

10 Section 16 amended

Section 16(a) of the Principal Act is amended by inserting after the words “money laundering” the following words “and terrorist financing”.

11 New section 16A

The Principal Act is amended by inserting the following new section 16A immediately after section 16 -

“16A Measures and Sanctions

Any supervisory or regulatory authority or competent disciplinary authority that discovers a breach of the obligations established under this Act by a cash

dealer, over the counter cash dealer, financial institution or other regulated business it supervises may impose one or more of the following measures and sanctions-

- (a) written warnings;
- (b) order to comply with specific instructions;
- (c) order reports on a regular basis from the cash dealer, over the counter cash dealer, financial institution or other regulated business on the measures it is taking;
- (d) barring individuals from employment within the sector;
- (e) replacing or restricting the powers of managers, directors, principals, partners or controlling owners, including the appointing of ad hoc administrator;
- (f) a temporary administration of the cash dealer or financial institution; or
- (g) suspending, restricting or withdrawing the license of the cash dealer or financial institution.”.

12 Section 17 amended

Section 17 of the Principal Act is amended-

- (a) by numbering the first paragraph as (1);
- (b) in sub-section (1)(a) by deleting the words “reason to believe” and replacing them with the words “reasonable grounds to believe or suspect”;
- (c) in sub-section (1)(b) by deleting the words “renders assistance to another for” and replacing them with the word “by”; and
- (d) by deleting -
 - (i) “12 months” and replacing it with “10 years”;
 - (ii) “\$10,000” and replacing it with “\$500,000”; and
 - (iii) “\$50,000” and replacing it with “\$1,000,000”; and
- (e) inserting the following after sub-section (1)(b)(ii) -

“(2) For the purposes of proving a money laundering offence under sub-paragraph (1), it is not necessary to prove which serious crime has been committed.

- (3) Knowledge, intent or purpose required as an element of an offence in sub-section (1) may be inferred from objective factual circumstances.
- (4) Nothing in this Act prevents a person that committed an offence that generated proceeds of crime from being convicted of a money laundering offence in respect of those proceeds of crime under sub-section (1).”.

13 Section 18 amended

Section 18 of the Principal Act is amended by inserting “or an anonymous account” after the words “in a false name”.

14 Section 19 amended

Section 19 of the Principal Act is deleted and replaced with the following new sections –

“19 Cash Declarations

- (1) Any person who enters or leaves the Kingdom with cash amounting to more than the prescribed sum or its equivalent in any other cash shall make a declaration to an authorised officer in the prescribed form in the Foreign Exchange Control Regulations.
- (2) Any person sending out of or receiving in to the Kingdom currency amounting to more than the prescribed sum by any means, including but not limited to postal services, courier services or trans-shipment by any craft must make a declaration to Customs in the prescribed Form under the Foreign Exchange Control Regulations.
- (3) Any person failing to declare cash in the prescribed sum to an authorised officer commits an offence under this Act and shall be liable on conviction to a fine not exceeding \$50,000.

19A Questioning

- (1) Any authorised officer may question any person arriving in or departing from the Kingdom 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 or refuses to answer any question put to that person commits an offence and shall be liable on conviction to a fine not exceeding \$20,000.

19B Searches

- (1) Any authorised officer may search any premises, place, or craft, if he has reasonable grounds for suspecting that there is on the premises, place, or craft, cash-
 - (a) which is recoverable cash or is intended by any person for use in unlawful conduct, and
 - (b) the amount of which is not less than the minimum amount.

- (2) An authorised officer may search any person if he has reasonable grounds for suspecting that a person is carrying cash-
 - (a) which is recoverable cash or is intended by any person for use in unlawful conduct, and the amount of which is not less than the minimum amount; or
 - (b) has failed to declare cash, the amount of which is not less than the minimum amount in the prescribed form.
- (3) 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.
- (4) An authorized officer exercising powers by virtue of subsection (3)(b) may detain the person for so long as is necessary for their exercise of the powers of search.
- (5) The powers conferred by this section are exercisable only so far as reasonably required for the purpose of finding cash.
- (6) 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.

19C Seizure of Cash

- (1) An authorised officer may seize any cash, if he has reasonable grounds for suspecting that -
 - (a) it is recoverable cash;
 - (b) intended by any person for use in unlawful conduct; or
 - (c) it is undeclared cash intended for use in unlawful conduct.
- (2) Any authorised officer may also seize cash part of which he has reasonable grounds for suspecting that it is -
 - (a) recoverable cash;
 - (b) intended by any person for use in unlawful conduct; or
 - (c) it is undeclared cash intended for use in unlawful conduct.

19D Detention of seized cash

- (1) While the authorised officer continues to have reasonable grounds for his suspicion, or for the purposes of investigation, cash seized under section 19C may be detained for a period of 72 hours.
- (2) The period for which the cash or any part of it may be detained may be extended by an order made by the Court, but the order may not authorise the detention of any of the cash-

- (a) beyond the end of the period of three months beginning with the date of the order; or
 - (b) in the case of any further order under this section, beyond the end of the period of two years beginning with the date of the first order.
- (3) An application for an order under subsection (2) may be made by the authorised officer, and the Court may make the order if satisfied, in relation to any cash to be further detained, that either of the following conditions is met-
- (a) there are reasonable grounds for suspecting that the cash is recoverable cash and that either-
 - (i) its continued detention is justified while its source, ownership, use or destination is further investigated or consideration is given to bringing proceedings against any person for an offence with which the cash is connected; or
 - (ii) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded;
 - (b) there are reasonable grounds for suspecting that the cash is intended to be used in unlawful conduct and that either—
 - (i) its continued detention is justified while its intended use is further investigated or consideration is given to bringing proceedings against any person for an offence with which the cash is connected, or
 - (ii) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.
- (4) An application for an order under subsection (2) may also be made in respect of any cash seized under section 19(D), and the Court may make the order if satisfied that—
- (a) the condition under subsection (3) is met in respect of part of the cash; and
 - (b) it is not reasonably practicable to detain only that part.
- (5) An order under subsection (2) shall provide for notice to be given to any persons affected by it.

19E Interest

If cash is seized under section 19D 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.

19F Release of seized cash

- (1) This section shall apply while any cash is seized under section 19D.
- (2) The Court may direct the release of the whole or any part of the cash if the following condition is met -
 - (a) the Court is satisfied, on an application by the person from whom the cash was seized, that the conditions in section 19D for the detention of the cash are no longer met in relation to the cash to be released;
 - (b) after notifying the Court under whose order cash is being seized, an authorized officer may, release the whole or any part of it if satisfied that the seizure of the cash to be released is no longer justified.

19G Forfeiture

- (1) While cash is detained under section 19D, an application for the forfeiture of the whole or any part of it may be made to the Court by an authorised Customs or Police officer.
- (2) The Court may order the forfeiture of the cash or any part of it if satisfied that the cash or part is –
 - (a) recoverable cash; or
 - (b) intended by any person for use in unlawful conduct.
- (3) In the case of recoverable cash which belongs to joint tenants, one of whom is an exempted joint owner, the order may not apply to so much of it as the court thinks is attributable to the exempted joint owner's share.
- (4) Where an application for the forfeiture of any cash is made under this section, the cash is to be seized (and may not be released under any power conferred by this Act) until any proceedings in pursuance of the application (including any proceedings on appeal) are concluded.
- (5) Where cash has been seized under sections 19C and 19D and no notice of appeal has been received by either the seizing authority or the Court within the period of 30 days from the time of seizure, then the cash will be automatically forfeited to the Crown.

19H Application of forfeited cash

- (1) Cash forfeited under this Act, and any accrued interest on it shall be paid into the Seized Assets Fund.

- (2) Any forfeited cash under sub-section (1) shall not be paid in -
 - (a) before the end of the period within which an appeal is made; or
 - (b) before the appeal is determined or otherwise disposed of.

19I Victims and other owners

- (1) A person who claims that any cash or any part of it, seized under this Act belongs to him may apply to a Court for the cash or part to be released to him.
- (2) The application may be made in the course of detention or forfeiture proceedings or at any other time.
- (3) If it appears to the court concerned that-
 - (a) the applicant was deprived of the cash to which the application relates, or of cash which it represents, by unlawful conduct;
 - (b) the cash he was deprived of was not, immediately before he was deprived of it, recoverable cash; and
 - (c) that cash belongs to him,the Court may order the cash to which the application relates to be released to the applicant.
- (4) The Court may order the cash to which the application relates to be released to the applicant or to the person from whom it was seized, if -
 - (a) the applicant is not the person from whom the cash to which the application relates was seized;
 - (b) it appears to the court that that cash belongs to the applicant;
 - (c) the Court is satisfied that the conditions in section 19D for the seizure of that cash are no longer met or, if an application has been made under section 19G, the court decides not to make an order under that section in relation to that cash; and
 - (d) no objection to the making of an order under this subsection has been made by the person from whom that cash was seized.

19J Compensation

- (1) If no forfeiture order is made in respect of any cash seized under this Act, the person to whom the cash belongs or from whom it

was seized may make an application to the Court for compensation.

- (2) If, for any period beginning with the first opportunity to place the cash in an interest-bearing account after the initial seizure of the cash for 48 hours, the cash was not held in an interest-bearing account while seized, the Court may order an amount of compensation to be paid to the applicant.
- (3) The amount of compensation to be paid under subsection (2) shall be the amount the Court thinks would have been earned in interest in the period in question if the cash had been held in an interest-bearing account.
- (4) If the Court is satisfied that, taking account of any interest to be paid under section 19E or any amount to be paid under subsection (2), the applicant has suffered loss as a result of the seizure of the cash and that the circumstances are exceptional, the Court may order compensation or additional compensation to be paid to him.
- (5) The amount of compensation to be paid under subsection (4) shall be the amount the court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.
- (6) Compensation shall be paid in the first instance from the general fund held by the Court.
- (7) A forfeiture order shall be made in respect only of a part of any cash seized under this Act and this section has effect in relation to the other part.”.

15 New section 24A - penalty for disclosure

Section 24 of the Principal Act is amended by inserting the following new section immediately after section 24-

“24A Penalty for disclosure

- (1) Any person who knows or suspects that a report under this section is being prepared or has been sent to the Transaction Reporting Authority or any additional information requested by the Transaction Reporting Authority has been prepared or sent, shall not disclose to another person, other than a Court, the National Reserve Bank of Tonga or other person authorized by law, any information or other matter in relation the report.
- (2) A person who contravenes this section commits an offence and shall on conviction be liable to a fine up to \$250,000 and or imprisonment for a

period not exceeding 15 years, and in the case of a body corporate a fine of up to than a fine of \$500,000.”

16 Section 26 amended

Section 26(a) of the Principal Act is amended, in the English version only, by deleting the word “no” and replacing with “not”.

17 Section 34 amended

Section 34 of the Principal Act is amended by-

- (a) repealing section (2); and
- (b) in subsection (4)(c), inserting before the word “hardship” the word “undue”.

18 Section 28(1) amended

Section 28(1) of the Principal Act is amended by deleting the words “six months” and inserting the words “two years”.

19 New section 35A and 35B

The Principal Act is amended by inserting the following new sections immediately after section 35:

“35A Application for Forfeiture Order for terrorist property

The Attorney General may apply to the Court for an order forfeiting to the Crown all or any property that is terrorist property.

35B Notice of Application

- (1) Where the Attorney General applies under section 35C for a forfeiture order the Attorney General must give no less than 30 days written notice of the application to any person who is known to have an interest in the terrorist property in respect of which the application is being made;
- (2) Any person who claims an interest in the property may appear and produce evidence at the hearing of the application; and
- (3) The Court may, at any time before the final determination of the application, direct the Attorney General to –
 - (a) give notice of the application to any person who, in the opinion of the Court, appears to have an interest in the property; and

- (b) publish in the Gazette or a newspaper published and circulating in Tonga, a notice of the application.

35C Forfeiture Order for terrorist property

- (1) Subject to subsection (2), where, upon application by the Attorney General, the Court is satisfied, on the balance of probabilities, that property to which the application relates is terrorist property, the Court shall order that the property or such of the property as is specified by the Court in the order, be forfeited.
- (2) Where a person claiming an interest in property to which an application relates satisfies the Court that the person –
 - (a) has an interest in the property;
 - (b) has, in the circumstances, exercised reasonable care to ensure that the property is not terrorist property; and
 - (c) is not a member of a terrorist group,the Court shall order that the interest shall not be affected by the forfeiture order, and the Court shall declare the nature and extent of the interest in question.
- (3) If a person obtains an interest in property after it becomes terrorist property, no order shall be made under subsection (2) in respect of that interest unless the person is a bona fide purchaser for value, without reason to suspect that the property is terrorist property.
- (4) The provisions of this Act shall apply, with the appropriate modifications as are necessary, to an application for a forfeiture order under this section.”.

20 New section 48A

The Principal Act is amended by inserting a new section immediately after section 48 –

“48A 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;
 - (e) rehabilitation of drug user;
 - (f) public education on the dangers of drug abuse; or
 - (g) 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.”.

21 Section 51 amended

Section 51 of the Principal Act is amended by repealing section 51(4).

22 Section 57 amended

Section 57 of the Principal Act is amended by:

-
- (a) deleting the words “realizable property” where they appear and inserting the words “tainted property”.
- (b) repealing subsection (2) and substituting the following subsection –
- “(2) An application for a restraining order may be made ex parte and shall be in writing and be accompanied by a sworn statement stating –
- (a) where the defendant has been convicted of a serious offence –
- (i) the serious offence for which he was convicted;
 - (ii) the date of the conviction;
 - (iii) the court before which the conviction was obtained and whether an appeal has been lodged against the conviction;
 - (iv) a description of the property in respect of which the restraining order is sought;
 - (v) the name and address of the person who is believed to be in possession of the property;
 - (vi) the grounds for the suspicion that the property is tainted property, is the proceeds of crime or property that may be used to satisfy a confiscation order or pecuniary penalty order in relation to the offence;
 - (vii) the grounds for the suspicion that the defendant derived a benefit directly or indirectly from the commission of the offence; and
 - (viii) where the application seeks a restraining order against property of a person other than the defendant, the grounds for the suspicion that the property is the proceeds of crime, tainted property in relation to the offence or a gift caught by this Act, or is subject to the effective control of the defendant; or
- (b) where the defendant is charged or is about to be charged with a serious offence –
- (i) the serious offence for which he is charged or about to be charged;
 - (ii) the grounds for suspecting that the defendant committed the offence;
 - (iii) a description of the property in respect of which the restraining order is sought;
 - (iv) the name and address of the person who is believed to be in possession of the property;
 - (v) the grounds for the suspicion that the property is the proceeds of crime, tainted property in relation to the offence or property derived from a serious offence, or

- property that may be used to satisfy a confiscation order or pecuniary penalty order; and
- (vi) the grounds for the suspicion that the defendant derived a benefit directly or indirectly from the commission of the offence; or
 - (c) where the application seeks a restraining order against property of a person other than the defendant, the grounds for the suspicion that the property is proceeds of crime, tainted property in relation to the offence and is subject to the effective control of the defendant or a gift caught by this Act; or
 - (d) the grounds for the suspicion that a confiscation order or a pecuniary penalty order may be or is likely to be made under this Part in respect of the property.”.

23 New section 57A and 57B – Restraining orders for terrorist property

The Principal Act is amended by inserting the following new sections immediately after section 57:

“57A Application for Restraining Order in respect of terrorist property

- (1) Where there are reasonable grounds to suspect that any property is property in respect of which a forfeiture order may be made under section 35C, the Attorney General may apply to the Court for a restraining order under subsection (2) against that property.
- (2) An application for a restraining order may be made ex parte and shall be in writing and accompanied by an affidavit stating-
 - (a) A description of the property in respect of which the restraining order is sought;
 - (b) The location of the property; and
 - (c) The grounds for the belief that the property is terrorist property for which an order may be made under section 35C.

57B Restraining Orders in respect of terrorist property

- (1) Subject to this section, where the Attorney General applies to the court for a restraining order against property and the Court is satisfied that there are reasonable grounds for suspecting that the property is terrorist property for which a forfeiture order may be made under section 35A, the Court may make an order –

- (a) prohibiting any person from disposing of, or dealing with, the property or such part thereof or interest except in the manner specified in the order; and
 - (b) at the request of the Attorney General, where the Court is satisfied that the circumstances so require, that the Attorney General take custody of the property or such part thereof and manage or otherwise deal with all or any part of the property in accordance with the directions of the Court.
- (2) For the avoidance of doubt, the Court may make an order under subsection (1) in respect of money or other property located in Tonga or elsewhere.
 - (3) Where the Attorney General is given a direction under subsection (1) (b), the Attorney General may do anything that is reasonably necessary for preserving the property and for this purpose may exercise any power that the owner of the property could exercise and do so to the exclusion of the owner.
 - (4) Where the Attorney General applies to the Court for an order under subsection (1), a witness shall not be required to answer any question or to produce any document if the Court is satisfied that answering the question or producing the document may prejudice the investigation of, or prosecution of a person for, an offence.”.

24 Section 58 amended

Section 58(1)(d) of the Principal Act is amended by deleting the words “and that the property is subject to the effective control of the defendant”.

25 Section 59 repealed

The Principal Act is amended by repealing section 59.

26 Section 72 amended

Section 72(1) of the Principal Act is amended by inserting after the first appearance of the word “person” the words “is being investigated for or”.

Passed by the Legislative Assembly this 2nd day of September 2010.