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PUBLISHED BY AUTHORITY

PART B

THE ANTI – MONEY LAUNDERING, COUNTER FINANCING OF TERRORISM AND PROLIFERATION FINANCING (MISCELLANEOUS (AMENDMENTS) ACT, 2024

(Act No. 4 of 2024)

I ASSENT

MSWATI III
KING OF THE KINGDOM
OF ESWATINI

Date: .....

AN ACT
Entitled

AN ACT to amend various enactments on anti-money laundering with a view to reinforcing the existing anti-money laundering legal framework and to provide for incidental matters.

ENACTED by the King and the Parliament of the Kingdom of Eswatini

PART I
PRELIMINARY PROVISIONS

Short title and Commencement

1. (1) This Act may be cited as the Anti – Money Laundering, Counter Financing of Terrorism and Proliferation Financing (Miscellaneous Amendments) Act, 2024.

(2) This Act shall come into force on the date of publication in the Gazette.

PART II
AMENDMENT OF THE MONEY LAUNDERING & FINANCING OF TERRORISM (PREVENTION) ACT, NO. 6 OF 2011

2. In this Part, Principal Act means the Money Laundering and Financing of Terrorism (Prevention) Act, No. 06 of 2011.

Amendment of section 2

3. Section 2 of the Principal Act is amended by –

(a) substituting the phrase "designated country" wherever it appears in this Part, with the phrase "foreign country".

(b) substituting the abbreviation "EFIU" wherever it appears in this Part with the abbreviation "EFIC" and the phrase "Eswatini Financial Intelligence Unit" with the phrase "Eswatini Financial Intelligence Centre"

(c) substituting the definition of "beneficial owner" with the following new definition –

"beneficial owner" – means

(a) in the case of a legal person; a natural person or persons who, independently or together with another person or persons, ultimately owns or controls a customer, directly or indirectly, including through a chain of ownership or by means of control other than direct control;

(b) in the case of a transaction; a natural person or persons on whose behalf a transaction is being conducted, and includes a natural person(s) who exercise ultimate effective control over a legal person or arrangement;

(c) in the case of a legal arrangement including a trust, includes the settlor(s), the trustee(s),the protector(s) (if any), each beneficiary, or where applicable, the class of beneficiaries and objects of a power, and any other natural person(s) exercising ultimate effective control over the arrangement;

(d) in the case of a life or other investment linked insurance policy, the natural person or persons who ultimately benefit from the life or other investment linked insurance policy.

(d) substituting the definition of "competent authority" with the following new definition –

"competent authority means a public authority with designated responsibilities for combating money laundering, terrorist financing and proliferation financing including –

(a) investigating and prosecuting the offences of: money laundering; terrorist financing; proliferation financing and associated predicate offences;

(b) seizing, freezing and confiscating criminal assets;

(c) receiving reports on cross border transportation of currency and bearer negotiable instruments;

(d) supervisory and monitoring responsibilities for ensuring compliance by accountable institutions with AML/CFT requirements, for purposes of this Act shall be -

(i) the office of the Attorney General:

(ii) the office of the Director of Public Prosecutions:

(iii) the Central Bank of Eswatini;

(iv) the Eswatini Financial Intelligence Centre;

(v) the Financial Services Regulatory Authority;

(vi) the Eswatini Revenue Service;

(vii) any law enforcement agency;

(viii) any person exercising such powers on behalf of the authorities referred to in sub-
paragraphs (i) to (vii); or

(ix) such other person as the Minister may, by Notice published in the *Gazette*, designate"

(e) substituting the definition of "customer" with the following new definition -

"customer", in relation to a business relationship, a transaction or an account, includes-

(a) the person in whose name a transaction or account is arranged, opened or undertaken;

(b) a signatory to a transaction or account;

(c) a person to whom a transaction has been assigned or transferred;

(d) a person who is authorised to conduct a transaction;

(e) a person who occassionally conducts a transaction or permanently holds an account; or

(f) such other person as the Minister may, by Notice published in the *Gazette*, prescribe"

(f) substituting the definition of "Director" with the following new definition -

"Director means the Director General of the Eswatini Financial Intelligence Centre appointed by the Minister in terms of section 21"

(g) substituting the definition of "funds" with the following new definition -

"funds" means assets of every kind, whether corporeal or incorporeal, tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form including electronic, digital or virtual, evidencing title to, or interest in, such assets.

(h) substituting the definition of "law enforcement agency" with the following new definition-

"law enforcement agency" means -

(a) the Police Service;

(b) the Eswatini Revenue Service;

(c) the Anti Corruption Commission; or,

(d) such other person or institution as the Minister may, by Notice published in the *Gazette*, prescribe;

(i) substituting the definition of "property" with the following new definition –

"property" means currency or any asset of any kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible, and includes legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit, and any interest, dividends or other income on or value accruing from or generated by such funds and any other assets which potentially may be used to obtain funds, goods or services whether situated in Eswatini or elsewhere and includes any legal or equitable interest in any such property;

(j) substituting the definition of "politically exposed person" with the following new definition –

"politically exposed person" means a person who holds or who has held a prominent public position other than as a middle ranking or more junior official, whether in Eswatini or in a foreign country including, but not limited to –

(i) a Head of State or Government;

(ii) politician on the national level;

(iii) a senior Government, judicial, military or party official on the national level;

(iv) a senior executive of a state-owned enterprise; or

(v) an individual or undertaking identified as having close family ties or personal or business connections to any of the aforementioned persons;

(vi) an International Organization, a person who is a member of senior management at such international organization, including but not limited to directors, deputy directors and members of the board or equivalent positions or an individual or undertaking identified as having family or personal or business connections close to such International Organization's senior official."

(k) in the definition of "tainted property", by inserting the words "or instrumentalities used in or intended to be used in" between the words "and the proceeds of" and "crime", the definition to read as follows –

"tainted property" means the property intended for use in, or used in or in connection with the commission of an unlawful activity; and the proceeds of or instrumentalities used in or intended to be used in crime"

(l) inserting in alphabetical order, the following new definitions –

"foreign entity" means a company or a subsidiary that is incorporated outside the country;

"funds and other assets" means any assets including but not limited to -

(a) financial assets,

(b) economic resources, including oil and other natural resources,

(c) property of every kind,

whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic, digital or virtual, evidencing title to or interest in such assets, including but not limited to cash, bank credits, travelers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit, and any interest, dividends or other income on or value accruing from or generated by such funds and any other assets which potentially may be used to obtain funds, goods or services"

"legal arrangement" means trusts, foundations or other similar legal arrangements;

"proliferation" means the manufacture, acquisition development, export, trans-shipment, brokering, transport, transfer, stockpiling, possession or use of nuclear, chemical, or biological weapons and their means of delivery and related materials (including both technologies and dual use goods used for non-legitimate purposes), in contravention of national laws or, where applicable, international obligations;

"proliferation financing" means the act of providing funds or financial services which are used, in whole or in part, for proliferation;

"promptly" means taking urgent action to perform a specific act as soon as possible but not later than five (5) days;

"transaction" means an event associated with financial business dealings by a customer, whether complete, incomplete, occasional or attempted, between two or more parties, that involves the formation and performance of an obligation or contract;

"wire transfer" means both domestic and cross border transfers;

"virtual asset" means a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes and excludes digital representations of fiat currencies, securities and other financial assets;

"virtual asset service provider (VASP)" means any natural or legal person who conducts one or more of the following activities or operations for or on behalf of another natural or legal person as a business –

(a) exchange between virtual assets and fiat currencies;

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

(c) moves virtual assets from one virtual assets address or account to another;

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

(e) participation in and provision of financial services related to an offer and sale of a virtual asset by an issuer; and

(f) rendering of advice on investing in virtual assets.

"without delay" means within 24 hours.

Section 2 of the Principal Act is amended by deleting the definition of "occasional transaction" in its entirety.

Amendment of section 4

4. Section 4 of the Principal Act is amended by –

(a) substituting the heading of Part II with the following new heading –

"OFFENCES RELATING TO MONEY LAUNDERING, TERRORIST FINANCING AND PROLIFERATION FINANCING"

(b) renumbering section 4(2) (d) as (e); and

(c) inserting a new section 4(2) (d) as follows –

"4(2) (d) counsels others to participate in committing an offence of money laundering;"

Amendment of section 5

5. Section 5 of the Principal Act is amended –

(a) in section 5 (1), by deleting it and replacing it with a new section 5(1) as follows –

"5. (1) A person who, by any means whatsoever, directly or indirectly provides, whether by giving, lending or otherwise making available, or collects funds with the intention that they should be used, or having reasonable grounds to believe that they are to be used in full or in part by a terrorist group or by an individual terrorist, to carry out an act of terrorism, commits an offence.

(b) in section 5 (3) by adding new sub sections (e) and (f) immediately after sub section (d) as follows –

"(e) finances the travel of an individual, individual terrorist or a terrorist group, to a state other than their state of residence or nationality, for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or providing or receiving of terrorist training;

(f) contributes to the commission of one or more offences or attempted offences under subsection (1) , by a group of persons acting with a common purpose"

(c) by inserting a new section 5 *bis* immediately after 5 (6) (c) as follows –

"Offence of Proliferation Financing

5bis. (1) A person who provides funds or finances proliferation in contravention of national laws or, where applicable, international obligations commits an offence.

(2) Knowledge, intent or purpose required as an element of the activities mentioned in subsection (1) may be inferred from objective factual circumstances.

(3) Where it is necessary, for the purpose of an offence of proliferation financing committed by a body corporate, to establish the state of mind of the body corporate, it shall be sufficient to show that a director, officer, employee or agent of the body corporate, acting in the course of employment or agency as the case maybe, had that state of mind.

(4) The offence under subsection (1) shall be deemed to have occurred whether or not the funds are from a legitimate source."

Amendment of section 6

6. Section 6 of the Principal Act is amended –

(a) in subsection (1) by deleting it and replacing it with a new subsection (1) as follows –

(a) "(1) An accountable institution shall identify, assess, monitor, manage, understand and mitigate money laundering and financing of terrorism risks including, but not limited to risks that may arise in relation to the development of pre-existing and new products and new technologies, business practices and delivery channels or risks that may arise prior to the use of new or developing technologies."

(b) in subsection (6), by deleting it and replacing it with a new subsection (6) as follows –

"(6) Where an accountable institution relies on an intermediary or third party, or a third party that is part of the same financial group to undertake its obligations under subsections (1) and (2) or to introduce business to it, such accountable institution shall-

(a) immediately obtain the information and documents required by subsections (1) and (2);

(b) ensure that copies of identification data and other relevant documentation relating to the requirements in subsections (1), (2) and (3) will be made available to it from the intermediary or the third party upon request without delay;

(c) satisfy itself that the third party or intermediary is regulated and supervised for, and has measures in place to comply with, the requirements set out in sections 7, 8 and 9 of this Act."

Amendment of section 6 bis

7. Section 6 *bis*. of the Principal Act is amended –

(a) by substituting subsection (1) with a new subsection (1) as follows –

"Accountable institutions to verify customers' identity and monitor transactions

6bis. (1) An accountable institution shall, before entering into a business relationship with any person, identify a customer, beneficial owner and a person acting on behalf of the customer on the basis of any official identifying document and shall verify the identity of the customer, beneficial owner and a person acting on their behalf on the basis of reliable and independent source documents, data or information or other evidence as is reasonably capable of verifying the identity of the customer, beneficial owner and the identity of the person acting on behalf of the customer and that they are authorised to do so when -

(a) an accountable institution -

(i) enters or continues a business relationship; or,

(ii) in the absence of such a business relationship, conducts any transaction;

(b) carrying out an electronic funds transfer;

(c) there is a suspicion of a money laundering offence or the financing of terrorism; or,

(d) the accountable institution has doubts about the veracity or adequacy of the customer identification and verification documentation or information it had previously obtained,

and where no beneficial owner is identified, the accountable institution shall identify and verify the identity of senior management or use other means."

(b) in subsection (2) paragraph (c), by substituting it with the following new paragraph (c) –

"(c) if the transaction is conducted by a legal person or legal arrangement adequately understand, identify and verify its legal existence and structure,

including information relating to -

(i) the customer's name, legal form, nature of business, address and directors;

(ii) the principal owners and beneficiaries and control structure;

(iii) provisions regulating the power to bind the entity;

(iv) registered address if different from the principal place of business;

and identify and verify the person acting on behalf of the customer and that they are authorised to do so."

(c) in subsection (2) paragraph (c), by inserting new subparagraphs (iv) and (v) immediately after subparagraph (iii) as follows –

"(iv) establish source of wealth and source of funds of the legal person conducting the transaction;"

(v) take reasonable measures to determine whether the customer or beneficial owner is a politically exposed person."

(d) in subsection (2) paragraph (d), by substituting it with a new paragraph (d) as follows –

"(*d*) in relation to politically exposed persons, including existing customers who subsequently become politically exposed persons where the accountable institution will continue to maintain a relationship with such customers or where there is a higher risk business relationship with such person, in addition to the requirements in paragraph (*b*) and (c) shall -

(i) have appropriate risk management systems to determine whether the customer is a politically exposed person;

(ii) obtain the approval of senior management before establishing a business relationship with the customer;

(iii) establish the source of wealth and source of funds of customers' beneficial owners identified as politically exposed persons; and

(iv) conduct enhanced ongoing monitoring of the business relationship."

(e) adding a new paragraph immediately after paragraph (d) as follows -

"(e) when relying on a third party accountable institution, ensure that the third party accouuntable institution complies with the provisions of paragraph (d) even if the third party is part of the same financial group."

(f) adding sub sections(2)*bis*, (2)*ter*, (2)*quat* and (2)*quin* immediately after the new paragraph (e) as follows –

"(2) *bis* . Where an accountable institution is unable to comply with the customer due diligence requirements under this section, the accountable institution shall not open or maintain the account, commence business relations or perform the transaction, and the accountable institution shall terminate the business relationship and shall make a suspicious transaction report to the EFIC in relation to the customer.

(2) *ter.* An accountable institution shall conduct enhanced due diligence to all identified higher risk areas.

(2) *quat.* An accountable institution shall conduct ongoing enhanced due diligence to all identified higher risk areas.

(2) *quin.* An accountable institution shall, with regard to legal arrangements and express trusts , require the name, legal form, proof of existence, the address of the registered office or the principal place of business. the powers that regulate and bind the arrangement, the identity and take measures to verify the identity of the settlor, the trustee, the protector, where applicable, the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust, including through a chain of control or ownership, and any other parties with authority to manage, vary or otherwise control the arrangement"

(g) in subsection (6) by adding new paragraphs (d), (e), (f), (g) immediately after paragraph (c) as follows –

"(d) for cross-border wire transfers, require an intermediary financial institution to ensure that all originator and beneficiary information that accompanies a wire transfer is retained with the accountable institution;

(e) when relying on a third party or intermediary, have regard to any information available on the level of country risk in which the third party or intermediary is based;

(f) when relying on a third party or intermediary ensure that customer due diligence documents have been obtained and are made available upon request even if the third party or intermediary is part of the same financial group;

(g) retain the ultimate responsibility to –

(i) obtain immediately the necessary information concerning elements in sub section (1) and (2) ;

(ii) take steps to satisfy itself that copies of identification data and other relevant documentation is available from the intermediary or third party upon request, without delay;

(iii) satisfy itself that the intermediary or third party is regulated, supervised or monitored and has measures in place for compliance with sections 6 *bis* and 8"

(h) in subsection (7), by deleting it and replacing it with the following new subsection (7)

"(7) An accountable institution shall apply simplified due diligence measures to those areas identified in its risk assessment as lower risk where these are in line with the findings of the national risk assessment".

(i) by inserting a new subsection immediately after subsection (9) as follows –

"(10) An accountable institution shall be required to conduct the following customer due diligence measures on the beneficiaries of life insurance and other investment related insurance policies, as soon as the beneficiary is identified or designated –

(a) for a beneficiary that is identified as a specifically named natural or legal person or legal arrangement, take the name of the person;

(b) for a beneficiary that is designated by characteristics or by class or by other means, obtain information sufficient enough to satisfy the accountable institution that identity of the beneficiary at the time of the payout has been established;

(c) for both the above mentioned instances, the verification of the identity of the beneficiary should occur at the time of the claim.

(d) in relation to life insurance policies, financial institutions shall take reasonable measures to determine whether the beneficiaries or where required the beneficial owners of the beneficiary if any, are politically exposed persons , the latest being at the time of the payout, and where higher risks are identified financial institutions shall –

(i) inform senior management before the payout of the policy proceeds;

(ii) conduct enhanced scrutiny of the whole business relationship with the policy holder; and

(iii) determine if there is any suspicion for the purpose of making a suspicious transaction report."

Insertion of 6 ter, quat, quin, sext,septies,

8. The Principal Act is amended by inserting sections *6ter,6quat,6quin*, *6sext*,*6septies*,between sections *6bis* and 7 as follows –

"*6.ter* (1) An accountable institution shall be required to apply enhanced due diligence to higher-risk areas identified in the national risk assessment and shall incorporate such information in their internal risk assessment documents.

(2) An accountable institution shall apply simplified due diligence to those areas identified in the national risk assessment as low risk provided that where accountable institutions identify higher risk activities, they shall apply enhanced or specific measures as required.

6. quat An accountable Institution shall take into consideration all relevant money laundering, financing of terrorism or proliferation financing risk factors in determining the appropriate level of their risk exposure and the required mitigation measures.

6.quin The Task Force shall ensure that the national risk assessment is disseminated to all relevant stakeholders in the public and private sector."

6.sext An accountable institution shall conduct customer due diligence for legal arrangements and identify beneficial ownership for such legal arrangement and verify such information from reliable sources of information and data and identify key members of senior management of such legal arrangements.

6. septies (1) An accountable institution which is part of a financial group shall implement group-wide AML/CFT programs which are applicable to all branches and majority owned subsidiaries, including foreign subsidiaries and branches.

(2) An accountable institution which relies on a third party which is part of the same financial group shall implement group wide AML/CFT programs to ensure that any higher country risk is adequately mitigated.

9. The Principal Act is amended by adding Section *6octies* immediately after the new *6septies*

as follows –

"Higher Risk Countries

6. *octies* (1) Accountable Institutions shall exercise enhanced due diligence, proportionate to the risk, towards accounts, business relationships and transactions with natural and legal persons, including financial institutions, from countries for which this is called for by the Financial Action Task Force, as advised by a directive or circular issued by Supervisory Authorities including the EFIC from time to time.

(2) Accountable Institutions shall apply countermeasures proportionate to the risk, to business relationships and transactions with natural and legal persons, including financial institutions, from such countries as shall be communicated from time to time through a circular or directive issued by the Supervisory Authorities, on their own initiative or pursuant to a call to do so by the Financial Action Task Force.

(3) Supervisory Authorities shall issue circulars, updated from time to time as necessary, advising financial institutions and designated non-financial businesses or professions, of countries that do not adequately implement measures to combat money laundering and terrorist financing, and requiring the financial institutions and designated non-financial businesses or professions, to exercise enhanced due diligence, commensurate with the risks, towards business relationships with legal and natural persons from such jurisdictions."

Amendment of section 7

10. Section 7 is amended by deleting it and replacing it with a new section 7 as follows –

"Wire transfers

7. (1) A financial institution undertaking a wire transfer equal to, or above, a prescribed threshold shall -

(a) identify and verify the identity of the originator;

(b) obtain and maintain information on the identity of the beneficiary;

(c) obtain and maintain the account number of the originator and beneficiary, or in the absence of an account number, a unique reference number;

(d) obtain and maintain the originator's address or, in the absence of address, the national identity number, or date and place of birth; and

(e) include information from paragraphs (a) to (c) in the message or payment form accompanying the transfer.

(2) Where a financial institution acts as an intermediary in a chain of payments, it shall retransmit all of the information it received with the wire transfer and any other information that may be necessary to identify the originator and beneficiary.

(3) Where several individual cross border wire transfers from a single originator are bundled in a batch file for transmission to beneficiaries, the batch file should contain required and accurate originator information, and full beneficiary information, that is fully traceable within the beneficiary country, and the financial institution shall include the originator's account number or unique transaction reference number.

(4) Where the information accompanying the domestic wire transfer can be made available to the beneficiary financial institution and appropriate authorities by other means the -

(a) ordering financial institution shall include the account number or a unique transaction reference number, except that this number or unique transaction reference number will permit the transaction to be traced back to the originator or the beneficiary;

(b) ordering financial institution shall make the information available within three business days of receiving the request either from the beneficiary financial service provider or from the EFIC or supervisory authority; and

(c) law enforcement agencies shall compel immediate production of that information where required.

(5) Where the required originator or beneficiary information accompanying a cross border wire transfer does not remain with a related domestic wire transfer, the intermediary financial service provider shall keep a record, of all the information received from the ordering financial service provider or another intermediary financial service provider in line with section 8.

(6) Where technical limitations prevent the required originator or beneficiary information accompanying a cross-border wire transfer from remaining with a related domestic wire transfer, the intermediary financial institution shall keep a record of all the information received from the ordering financial institution or another intermediary financial institution in line with section 8.

(7) An intermediary financial institution shall take reasonable measures, which are consistent with straight-through processing, to identify cross-border wire transfers that lack required originator information or required beneficiary information.

(8) An intermediary and beneficiary financial institution shall develop and implement risk based policies and procedures for determining -

(a) when to execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information; and

(b) the appropriate follow up action.

(9) A beneficiary financial institution shall take reasonable measures, including, where feasible, post event monitoring or real time monitoring to identify cross border wire transfers that lack required originator information or required beneficiary information.

(10) A beneficiary financial institution shall develop and implement risk based policies and procedures for determining -

(a) when to execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information; and

(b) the appropriate follow up action.

(11) A money or value transfer service provider shall, in the case of a money or value transfer service provider that controls both the ordering and the beneficiary side of a wire transfer -

(a) consider all the information from both the ordering and beneficiary sides in order to determine whether the wire transfer has to be reported for suspicion of an offence under this Act;

(b) file a suspicious transaction report to the EFIC; and

(c) verify the information pertaining to a customer where there is a suspicion of an offence under this Act.

(12) The Minister may, on the recommendation of the EFIC, by statutory instrument, modify the requirements set out in subsection (1) -

(a) with respect to domestic wire transfers, as long as the regulations provide for full originator information to be made available to the beneficiary financial institution and appropriate authorities by other means; and

(b) with respect to cross border transfers where individual transfers from a single originator are bundled in a batch file, as long as the regulations provide for the originator's account number or unique reference number to be included, and

that the batch file contains full originator information that is fully traceable in the recipient country.

(13) Subsections (1) and (2) shall not apply to transfers executed as a result of credit card or debit card transactions or to transfers between financial institution acting for their own account, except that the credit card or debit card number accompanies the transfer resulting from the transaction.

(14) Where a financial institution under subsection (1) receives wire transfers that do not contain the complete originator information required under that subsection, that financial institution shall take measures to obtain and verify the missing information from the ordering institution or the beneficiary.

(15) A financial institution shall, where it fails to obtain any missing information, refuse acceptance of the transfer and report the transfer to the EFIC.

(16) The Central Bank of Eswatini shall provide wire transfer records to the EFIC.

(17) Accountable institutions shall, in the course of processing of wire transfers, take freezing action and comply with prohibitions from conducting transactions with designated persons and entities as per the obligations set out in the relevant United Nations Security Council Resolutions relating to the prevention and suppression of terrorism and terrorist financing.

(18) For virtual asset transfers, a virtual asset service provider shall ensure that –

(a) originating VASPs, in accordance with section 7(1), with the necessary modifications -

(i) obtain and hold required and accurate originator information;

(ii) obtain and hold required beneficiary information on virtual asset transfers, and

(iii) submit the above information to the beneficiary VASP or financial institution (if any) immediately and securely, and make it available on request to appropriate competent authorities;

(b) beneficiary VASPs shall obtain and hold required originator information and required and accurate beneficiary information on virtual asset transfers, and make it available on request to appropriate competent authorities;

(c) monitoring the availability of information in accordance with section 7(9), taking freezing action and prohibiting transactions with designated persons and entities

apply on the same basis as set out in section 7 (17); and

(d) obligations set out in (a) to (c) shall apply to financial institutions when sending or receiving virtual asset transfers on behalf of a customer.

(19) For the purposes of this section, all virtual asset transfers shall be treated as cross-border wire transfers.

Amendment of Section 8

11. The Principal Act is amended in section (8) subsection (1) by adding paragraph (e) immediately after paragraph (d) as follows –

"(e) an accountable institution shall keep all records obtained through customer due diligence measures, accounts files and business correspondence and results of analysis undertaken, including but not limited to flagged and submitted suspicious transaction reports."

Amendment of section 10

12. Section 10 of the Principal Act is amended by deleting subsection (1) and replacing it with a new subsection (1) as follows –

"10. (1) Financial Institutions licensed under the Financial Institutions Act, 2005, or money transmission service provider shall be required to include originator's name, account number, identification number or passport number or date and place of birth and beneficiary's name, address, identification number, account number or unique transaction reference number and must also verify such information from reliable data sources."

Amendment of section 11

13. Section 11 is amended by deleting it in its entirety and replacing it with the following new section –

"Accountable Institutions to monitor transactions

11. (1) An accountable institution shall exercise ongoing due diligence with respect to the business relationship and closely examine the transactions carried out in order to ensure that they are consistent with their knowledge of the customer, the customer's commercial activities and risk profile and, where required, the source of the customer's funds.

(2) An accountable institution shall monitor its business relationships and the transactions undertaken throughout the course of the relationship to ensure that its obligations under section 6 are met and that the transactions conducted are consistent with the information that the accountable institution has of its customer and the profile of the business of the customer.

(3) An accountable institution shall set forth in writing the specific information regarding transactions as referred to in paragraphs (1) and the identity of all parties involved. The report shall be maintained as specified and shall be made available if requested by the financial intelligence unit, a supervisory authority and other competent authorities."

Amendment of section 12

14. Section 12 of the Principal Act is amended in subsection (1) (b) (ii) by deleting the words "but not later than two (2) working days" and replacing them with the word "promptly".

Amendment of section 13

15. Section 13 of the Principal Act is amended by inserting section 13*bis* between sections 13 and 14 as follows -

"13 *bis*. Where an accountable institution forms a suspicion of money laundering, proliferation financing or terrorist financing, and they reasonably believe that performing the customer due diligence process will tip-off the customer, they may not pursue the customer due diligence process, and instead shall be required to promptly file a Suspicious Transaction Report."

Amendment of section 16

16. Section 16 of the Principal Act is amended at subsection (1) paragraph (b) by inserting the word "Director" between the words "officer" and "employee."

Amendment of section 18

17. Section 18 is amended by adding the following new subsections immediately after subsection (2) as follows –

"(2) *bis* An Accountable institution that is part of a financial group shall implement group-wide programmes against money laundering and terrorist financing, which shall be applicable, and appropriate to, all branches and majority-owned subsidiaries of the group. In addition to the measures set out in subsection (1), group-wide programmes shall include -

(a) policies and procedures for sharing information required for the purposes of customer

due diligence and money laundering and terrorist financing risk management;

(b) the provision, at group-level compliance, audit, and/or AML/CFT functions, of customer, account, and transaction information from branches and subsidiaries when necessary for AML/CFT purposes. This should include information and analysis of transactions or activities which appear unusual (if such analysis was done). Similarly branches and subsidiaries should receive such information from these group-level functions when relevant and appropriate to risk management; and

(c) adequate safeguards on the confidentiality and use of information exchanged, including safeguards to prevent tipping-off.

(2) *ter* An Accountable institution shall ensure that their foreign branches and majority-owned subsidiaries apply AML/CFT measures consistent with the laws and regulations of Eswatini, where the minimum AML/CFT requirements of the host country as less strict than those of Eswatini, to the extent permitted under the host country laws and regulations. If the host country does not permit the proper implementation of AML/CFT measures consistent with Eswatini requirements, groups shall apply appropriate additional measures to manage money laundering and terrorist financing risks, and inform their supervisors in Eswatini."

Amendment of section 18 bis

18. Section 18. *bis* is amended by adding new paragraphs immediately after paragraph (b) as follows –

"(c) have the responsibility to advise accountable institutions of weaknesses in the anti -money laundering counter proliferation financing and combating financing terrorism systems of other countries;

(d) establish a framework to regulate virtual asset service providers, to prevent criminals from holding significant interest from such service providers or from being beneficial owners of such entities or hold a management function in in such virtual asset service provider."

Insertion of 18 ter and quat

19. The Principal Act is amended by inserting new sections18 *ter* and 18 *quat* immediately after 18 *bis* as follows –

"18 *ter*. Competent authorities shall be required to conduct inspections and investigations to identify natural or legal persons carrying out VASP activities without the requisite license or registration and apply the appropriate sanctions to them. "

18 *quat*. Law enforcement agencies shall exchange domestically available information

with foreign counterparts for intelligence or investigative purposes relating to money laundering, associated predicate offences or terrorist financing, including the identification and tracing of the proceeds and instrumentalities of crime."

Amendment of section 27

20. Section 27 of the Principal Act is amended –

(a) in subsection (2) paragraph (a) ,by deleting the word 'operational';

(b) by inserting a new subsection (3) immediately after subsection (2) as follows –

"(3) The Board shall not have power to consider, discuss or deliberate on any matter relating to the lodging, analysis, reporting, requesting or disseminating of information in respect of any suspicious transaction report."

Amendment of section 28

21. Section 28 of the Principal Act is amended in subsection (1) paragraph (b) by deleting it in its entirety and replacing it with the following new paragraph (b) –

"(b) two (2) members of high repute of whom one shall be a person with substantial experience in the legal profession and the other with substantial experience in the financial services industry."

Amendment of section 29

22. Section 29 of the Principal Act is amended in subsection (3) by deleting the phrase "3 months" and replacing it with the phrase '6 months'

Amendment of section 30

23. Section 30 is amended –

(a) in subsection (2), by substituting it with the following new subsection (2);

"(2). Notwithstanding any other law, a person referred to in subsection (1) shall not disclose any information or matter which has been obtained by him or her in the performance of his or her duties or the exercise of his or her functions under this Act or which she or he has knowledge except for the purpose of -

(a) detection, investigation or prosecution of an unlawful activity, a money laundering offence or an offence of financing of terrorism; or

(b) enforcement of this Act.

(b) by adding a new subsection immediately after subsection(3) as follows -

" (4) Notwithstanding any other law, the EFIC shall not disclose any information obtained under this Act, except in the performance of the functions conferred under this Act."

Amendment of section 31

24. Section 31 of the Principal Act is amended –

(a) in paragraph (b), by adding the words "including for purposes of international cooperation" between the words 'terrorism' and 'and';

(b) in paragraph (c), by adding the words, "including for purposes of international cooperation" immediately after the word 'Act';

(c) in paragraph (n), by deleting the whole subsection and replacing it with a new sub section as follows –

"(n) may disclose and share, spontaneously or upon request, any report, any information or intelligence derived from such report or any other information it receives to an institution or agency of a foreign state or of an international organisation established by the governments of foreign states that has powers and duties performs similar functions to those of the EFIC, regardless of the nature of the agency, subject to reciprocity and confidentiality, as set out in section 32, if on the basis of its analysis and assessment, EFIC has reasonable grounds to suspect that report or information would be relevant to investigating or prosecuting a money laundering offence, a predicate offence, or a terrorist financing offence;

(d) inserting the following new paragraphs immediately after paragraph (s) as follows –

"(t) may disseminate intelligence information upon request from Law Enforcement Agencies and Competent authorities to initiate investigation or prosecution.

(u) may enter into agreements or arrangements with any foreign counterpart agency that performs similar functions and is subject to similar confidentiality obligations for the purpose of sharing information under subsection (n) to be used only for combating money laundering, predicate offences and financing of terrorism.

(v) may, upon request and whenever possible, provide feedback to foreign counterparts on the use of information received, as well as on the outcome of the analysis conducted, based on the information received.

(w) may in addition to the information that entities report to the EFIC, be able to obtain and use additional information from reporting entities, as needed to perform its analysis properly.

(x) may exchange all information required to be accessible or obtainable directly or indirectly by the EFIC.

(y) may exchange other information which the EFIC has power to obtain or access, directly or indirectly, at the domestic level, subject to the principle of reciprocity."

Amendment of Section 34

25. Section 34 of the Principal Act is amended by inserting a new sub section immediately after subsection (2) as follows; -

"(3). Notwithstanding (1), Supervisory Authorities and EFIC may request accountable institutions to furnish them with information relating to their AML/CFT obligations."

Amendment of Section 35

26. Section 35 of the Principal Act is amended by substituting it with the following new section 35 as follows –

"35. (1) The enforcement of compliance with and implementation of the provisions of this Act by accountable institutions shall be conducted using a risk based approach or on a risk sensitive basis and shall be the responsibility of a supervisory authority with respect to the accountable institutions under their supervision and the EFIC with respect to all other accountable institutions.

(2) A supervisory authority shall subject an accountable institution which is part of a group to consolidated group supervision for anti-money laundering and combating financing terrorism purposes.

(3) The frequency and intensity of on-site and off-site AML/CFT supervision of accountable institutions or groups shall be determined on the basis of –

(a) the money laundering and terrorist financing risks, policies, internal controls and procedures associated with the institution or group, as identified by the supervisor's assessment of the risk profile of the institution or group;

(b) the money laundering and terrorist financing risks present in the country; and

(c) the characteristics of the financial institutions or groups, in particular the –

(i) diversity;

(ii) number; and

(iii) degree of discretion,

allowed to them under the risk-based approach.

(4) A supervisor shall review the assessment of the money laundering terrorist financing risk profile of a financial institution or group, including the risks of non-compliance, periodically, and when there are major events or developments in the management and operations of the financial institution or group.

(5) A financial supervisor shall conduct inquiries on behalf of foreign counterparts as appropriate, to authorise or facilitate the ability of foreign counterparts to conduct inquiries themselves in the country, in order to facilitate effective group supervision.

(6) A financial supervisor shall ensure that they have the prior authorisation of the requested financial supervisor for any dissemination of information exchanged, or use of that information for supervisory and non-supervisory purposes, unless the requesting financial supervisor is under a legal obligation to disclose or report the information and in such case, the requesting financial supervisor shall promptly inform the requested authority of this obligation.

(7) A financial supervisor shall be able to exchange the following types of information when relevant for AML/CFT purposes, in particular with other supervisors that have a shared responsibility for financial institutions operating in the same group: regulatory information, such as –

(a) information on the domestic regulatory system, and general information on the financial sectors;

(b) prudential information, in particular for Core Principles supervisors, such as information on the financial institution's business activities, beneficial ownership, management, and fit and properness; and

(c) AML/CFT information, such as internal AML/CFT procedures and policies of financial institutions, customer due diligence information, customer files, samples of accounts and transaction information.

(8) Law enforcement agencies shall be able to form joint investigative teams to conduct cooperative investigations with foreign counterparts, and, when necessary, establish bilateral or multilateral arrangements to enable such joint investigations.

(9) All officers and employees of an accountable institution shall take all reasonable steps to ensure the compliance by that accountable institution with its obligations under this Act.

(10) Notwithstanding the provisions of Section 35*bis*, where an accountable institution fails to comply with a directive issued under Section 35*bis*(3), the EFIC or the supervisory authority, may, upon application to a Court and satisfying the Court that an accountable institution has failed, without reasonable excuse to comply in whole or in part with any obligations under this Act, obtain an interdict against any or all of the officers or employees of that accountable institution in such terms as the Court deems necessary to enforce compliance."

Amendment of section 39

27. Section 39 subsection (3) of the Principal Act is amended by inserting a new paragraph immediately after paragraph (l) as follows -

"(m) A person co-opted by the Minister into the Technical committee on the basis of their experience, expertise and skill, for a specific assignment."

Amendment of section 40

28. Section 40 of the Principal Act is amended in subsections (1)(a),(b),(c) and (2)(a)(b),(c) of by removing the word "and" after anti-money laundering and replacing it with a "comma", then adding the following words after "counter financing of terrorism" –

"and proliferation financing"

Amendment of section 40 (2)

29. Section 40 subsection (2) of the Principal Act is amended by adding new paragraph (h), as follows –

"(h) shall coordinate co-operation between relevant authorities to ensure the compatibility of countering Anti Money Laundering /Countering Financing of Terrorism and Countering Proliferation requirements with Data Protection and Privacy rules and other similar provisions including data security or localization."

Amendment of section 41

30. Section 41 of the Principal Act is amended –

(a) '(a) in subsection (1), by deleting the words 'fifteen thousand Emalangeni (15 000)' and replace with 'twenty five thousand Emalangeni (E 25 000)'

(b) in subsection(2), by deleting the entire subsection and replacing it with a new subsection (2) as follows –

"(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to imprisonment of not less than 5 years or fine which is equivalent to triple the value of the concealed amount, whichever is greater"

(c) in subsection (8) by deleting it in its entirety and substituting it with a new subsection(8) as follows –

"(8) A person who makes a false declaration of currency at a port of entry commits an offence".

Amendment of section 77

31. Section 77 of the Principal Act is amended by adding a new section 77.*bis* immediately after section 77 as follows –

"77.*bis*. A person who engages in any act in contravention of section 5bis, commits an offence."

Amendment of section 89

32. Section 89 of the Principal Act is amended –

(a) in subsection (1) by adding the phrase "or77.*bis* " after the words "76 or 77".

(b) in subsection (1) paragraph (a) of the Principal Act by adding the words "not less than" before the words "10 years".

(c) by inserting a new subsection (4) immediately after subsection (3) as follows –

"(4) The sanctions applicable for proliferation financing or terrorist financing shall also apply to representative of organization or entities involved in such activities."

Amendment of section 91

33. Section 91 of the Principal Act is amended by inserting a new section immediately after section 91 as follows –

"Other Forms of International cooperation

91 *bis*. A competent authority may disclose any report or information in possession of the Competent Authority to an institution or agency of a foreign state or of an international organisation or body or other institution or agency established by the governments of foreign states that has powers and duties similar to those of the Competent Authority -

(a) on such terms and conditions as are set out in the agreement or arrangement between the Competent Authority and that foreign state or international organisation regarding the exchange of such information; or,

(b) where such an agreement or arrangement has not been entered into between Competent Authority and that foreign state or international organisation or body, on such terms and conditions as may be agreed upon by Competent Authority and the institution or agency at the time of disclosure, which terms and conditions shall include the stipulation that the report or information be used for intelligence purposes only and be treated in a confidential manner and not be further disclosed without the express consent of the Competent Authority.

(c) a competent authority shall refuse to provide information where the requesting competent authority cannot protect the information effectively.

(d) Competent authorities should be able to conduct inquiries on behalf of foreign counterparts, and exchange with their foreign counterparts all information that would be obtainable by them if such inquiries were being carried out domestically.

(e) Competent authorities shall exchange information indirectly with non-counterparts ensuring that the competent authority that request the information indirectly makes it clear for what purpose and on whose behalf the request is made."

PART III
AMENDMENT OF THE FINANCIAL INSTITUTIONS ACT 2005

34. In this Part, Principal Act means the Financial Institutions Act 2005.

Amendment of section 6

35. Section 6 of the Principal Act is amended by adding a new subsection immediately after subsection "(11)" as follows –

"(12) A financial institution shall not be granted a license in terms of this Act if it is incorporated as a shell company."

Amendment of section 38

36. Section 38 of the Principal Act is amended by deleting subsection (1) in its entirety and renumbering the subsequent sub sections accordingly.

PART IV
AMENDMENT OF THE FINANCIAL SERVICES REGULATORY ACT, 2010

37. In this Part, Principal Act means the Financial Services Regulatory Act, 2010.

Amendment of section 2

38. Section 2 of the Principal Act is amended by adding in alphabetical order the following new definitions –

"beneficial owner" means, in the case of a legal person, a natural person who, independently or together with another person, directly or indirectly-

(a) owns the legal person or account; or

(b) exercises effective control of the legal person or account,

and in the case of a transaction, a person on whose behalf a transaction is being conducted or an arrangement is being carried out;

"significant ownership" means where a person –

(a) holds, directly or indirectly, more than 25% of the shares in a company, which is calculated with reference to the nominal value of the shares in the case of a company with share capital but where the company does not have a share capital, the condition is met by an individual holding a right to share in more than 25% of the company's capital or profits;

(b) holds, directly or indirectly, more than 25% of the voting rights in the company; and voting rights held by the company itself are disregarded for this purpose;

(c) has the right directly or indirectly, to appoint or remove a majority of the board of directors of the company; or

(d) has the right to exercise, or actually exercises, significant control over the company and the trustees of a trust or the members of a firm that is not a legal person exercise control over the company in their capacity as such or would do if they were individuals, and the individual has the right to exercise, or actually exercises significant control over the activities of that trust or firm."

"controlling interest" means where –

(a) a person owns, at least 50% of the outstanding shares of a given company plus 1%;

(b) a person or group owns a majority of voting shares in a company; or

(c) a person or a group's interest allows him or the group to veto or overturn decisions made by existing board members.

Amendment of Section 36

39. Section 36 of the Principal Act is amended by deleting the section in its entirety and replacing it with a new section as follows –

"Application for a financial service licence

36. (1) An application for a licence shall be made to the Authority in the form and manner prescribed by the Authority and shall be accompanied by the prescribed fees.

(2) A license issued by the Authority shall remain in force until surrendered, cancelled, suspended or revoked, as the case may be.

(3) Notwithstanding subsection (2), a license issued by the authority may be subject to annual licensing fees as may from time to time be prescribed by the authority.

(4) The Authority may require an applicant to supply the Authority with such further information, in relation to the application, as the Authority considers necessary.

(5) Notwithstanding the generality of subsection (4), the applicant shall provide the Authority with-

(a) the risk management systems of the applicant including –

(i) internal control systems;

(ii) information technology systems; and

(iii) policies and procedures adequate for the nature and scale of the business in question;

(b) the business plan of the applicant, verified by auditors or actuaries, and projected out for a minimum of three years, which give details of-

(i) business lines and risk profile:

(ii) projected setting-up costs;

(iii) capital requirements;

(iv) projected development of the business:

(v) solvency margins; and

(vi) other relevant arrangements;

(c) information on the financial services to be offered by the applicant;

(d) information on contracts with affiliates and outsourcing arrangements:

(e) information on the reporting arrangements of the applicant, both internally to its own management and to the Authority;

(f) information on promoters, beneficial owners and people exercising a controlling interest over the applicant; and

(g) information on people who exercise significant ownership over the affairs of the applicant.

(6) The Authority shall not refuse to grant a licence without first giving the applicant an opportunity of being heard.

(7) An applicant shall ensure that –

(a) the applicant is a fit and proper person to carry on business as a licensed financial services provider;

(b) the applicant's representatives are fit and proper persons to carry out business as representatives;

(c) the applicant's officers, key personnel or equivalent persons are fit and proper persons for office;

(d) the applicant's significant owners or equivalent persons are fit and proper persons to be in such capacity; and

(e) persons who –

(i) own, directly or indirectly, not less than 25% of the voting power or such equivalent decision making power in the applicant entity; or

(ii) acquire or hold, directly or indirectly, not less than 25% of the issued shares or such equivalent share of ownership of the applicant entity, are fit and proper persons to control such power or hold such shares or share of ownership.

(8) A licensed financial services provider, key personnel and officers of the financial services provider, key personnel and officers of the financial services provider shall satisfy the Authority that they will continue to comply with the fit and proper requirements as prescribed by the Authority from time to time.

Insertion of section 36 bis

40. The Principal Act is amended by inserting a new section immediately after section 36 as follows –

"License of a company that is part of a group

36 *bis* (1) An application by a company that is part of a group shall be accompanied by -

(a) information on the group's capital resources, sources of funds and capital structure;

(b) information on the identity of significant and controlling shareholders of the group;

(c) information on the group's organisational, managerial and legal structures;

(d) information on the composition and suitability of the boards of directors and officers of companies that, directly or indirectly, control or are controlled by the applicant;

(e) audited financial statements of the group and of companies that, directly or indirectly, control or are controlled by the applicant;

(f) strategic, operational and financial plans of the group;

(g) agreements between the company and the group; and

(h) any other information as may be required by the Authority.

(2) The Authority may attach any conditions to the granting of a license issued under this section to ensure that –

(a) the capital available to the group is adequate and will not prejudice the financial position of the applicant;

(b) double or multiple gearing or excessive leveraging of capital does not exist and will not in the future exist;

(c) the group is structured and managed in such a manner that the applicant and the group as a whole may be properly supervised;

(d) the group and each member of the group maintains adequate internal control mechanisms enabling it to provide any data or information relevant to the supervision of the applicant and the group as a whole; and

(e) activities that may be prejudicial to the applicant are prevented."

Amendment of Section 37

41. Section 37 of the Principal Act is amended –

(a) in subsection (3) at paragraph (f) by replacing the "full stop" at the end of the paragraph with a "semicolon" and inserting the word "and" at the end ; and

(b) in sub section (3) by inserting the following new paragraph (g) immediately after paragraph (f) as follows –
"(g) has in place conditions of employment which protect staff who disclose breaches to the Authority from victimisation."

(c) by inserting sections 37*bis* and 37*ter* immediately after section 37 as follows -

"Issue or transfer of shares or any legal interest in a licensed financial services to a controller, beneficial owner and significant owner

37*bis* (1) Subject to subsection (2), no shares or any legal interest in a licensed financial services provider shall be issued or transferred to a controller, beneficial owner and

significant owner except with the prior written approval of the Authority.

(2) The financial services provider shall provide such particulars of any person seeking to acquire a legal interest in a licensed financial services provider under subsection (1) as may be required by the Authority including that the persons are fit and proper persons to control such power or hold such shares or share of ownership.

(3) Where, at any time, the Authority is not satisfied that a controller, beneficial owner or significant owner of a financial services provider is or remains a fit and proper person, it may, after giving the person and the financial services provider an opportunity to make representations about the matter, direct-

(a) such person to dispose of his shareholding in the financial services provider;

(b) such person not to exercise any voting rights with respect to his shareholding in the financial services provider; or

(c) the financial services provider to take such remedial measures as may be necessary in the circumstances.

(4) Where the Authority refuses an approval under subsection (1), it shall notify the financial services provider in writing, giving reasons for the refusal.

(5) The requirement under subsection (1) shall not apply to such classes of financial services providers, or types of shares or legal interest, as may be specified in Rules issued by the Authority.

(6) For the purpose of subsection (5), the Authority may impose such conditions as it may determine on the issue or transfer of the shares or legal interest.

Approval of controllers, beneficial owners and significant owners for purposes of section 37bis

37*ter* (1) Notwithstanding the provisions of section 37*bis* (1), where a controller, beneficial owner or significant owner of a financial services provider seeks to acquire shares or any legal interest in the licensed financial services provider, which if acquired, would result in a change in control in the financial services provider and the transfer of shares or legal interest is less than 5 per cent, the financial services provider shall notify the Authority of the transfer."

Amendment of section 38

42. Section 38 of the Principal Act is amended by deleting subsection (3) in its entirety and

replacing it with a new subsection (3) as follows –

"(3) The Authority may impose an administrative penalty pursuant to section 68 on a person who contravenes or fails to comply with any condition of, or restriction in, a licence granted to that person under this Act."

Amendment of section 39

43. Section 39 of the Principal Act is amended –

(a) in subsection (3), by replacing the words "twenty thousand Emalangeni (E20,000) with the words "fifty thousand Emalangeni (E50,000)".

(b) by inserting a new section 39 *bis* immediately after section 39 as follows –

"Disclosure to the Authority

39*bis*. (1) The Authority may, where it considers it necessary in order to fulfil the provisions of this Act, require a licensed financial services provider to disclose to it, in relation to any acquisition or disposal of securities, the name of the person from or through whom or on whose behalf the securities were acquired or disposed of and the nature of the instructions given to the stock broker or dealer or fund manager in respect of the acquisition or disposal.

(2) The Authority may require a person who has acquired, held or disposed of cash or securities to disclose to it –

(a) whether he or she acquired, held or disposed of cash or securities as trustee for or on behalf of another person or as a nominee;

(b) whether there is any other person who is a beneficial owner of the cash or securities;

(c) the name of any person on whose behalf he or she has acted or who is a beneficial owner of the cash or securities; and

(d) the nature of any instruction given to that person as trustee or nominee in respect of the acquisition, holding or disposal of the cash or securities.

(3) The Authority may require a securities exchange, bank or financial services provider to disclose to it, in relation to an acquisition or disposal of securities on a securities exchange, the names of the officers of that Securities Exchange, bank or financial services provider who acted in the acquisition or disposal of cash or securities.

(4) The Authority may by rules, prescribe the information to be maintained in respect of beneficial owners of cash or securities.

(5) A person who, contravenes the provisions of this section commits an offence and is liable on conviction, to a fine not exceeding one hundred and fifty thousand Emalangeni (E150,000) or to imprisonment for a term not exceeding three (3) years or to both such fine and imprisonment."

Amendment of Section 50

44. Section 50 of the Principal Act is amended by inserting the following new section immediately after section 50 as follows –

"Appointment of controller, beneficial owner and significant owner

50. *bis* (1) Without prejudice to any other enactment or to anything stated as a condition attached to a licence, a person shall not be appointed as a controller, beneficial owner or significant owner of a financial services provider without the prior approval of the Authority and, any appointment in contravention of this section shall be of no effect.

(2) An application for the Authority's approval in terms of subsection (1) shall –

(a) be accompanied by full particulars of the person to be appointed and such other information as may be required by the Authority;

(b) show that the person to be appointed meets the fit and proper requirements as are prescribed by the Authority from time to time;

(3) An application for the Authority's approval in terms of subsection (1) shall not be proceeded with by the Authority unless all information under that subsection has been submitted.

(4) Where the Authority objects to a proposed appointment, it shall give the person and the financial services provider an opportunity to make representations within such reasonable time as the Authority may specify.

(5) The Authority may, after having considered the representations submitted pursuant to subsection (4), approve the proposed appointment.

(6) A financial services provider shall forthwith notify the Authority of any removal or resignation of a controller, beneficial owner and significant owner and shall provide particulars of such removal or resignation as may be required by the Authority.

(7) Notwithstanding any other enactment, where, at any time, the Authority is not satisfied that a controller, beneficial owner and significant owner of a financial services provider is a fit and proper person, it may, after giving such officer and the financial services provider an opportunity to make representations thereon, direct the financial services provider to remove such officer."

Amendment of Section 89(1)

45. Section 89 subsection (1) of the Principal Act is amended by adding a new paragraph (f) as follows –

"(f) The development of new products, new business practices, new delivery mechanisms and the use of new technologies for both new and existing products."

PART V
AMENDMENT OF THE CRIMINAL MATTERS (MUTUAL ASSISTANCE) ACT, 2001

46. In this Part Principal Act means the Criminal Matters (Mutual Assistance) Act 2001.

Amendment of Section 2

47. Section 2 of the Principal Act is amended by –

(a) deleting the definition of "designated country" in its entirety and replacing it in alphabetical order with the following definition –

"foreign country" means any country or territory other than Eswatini.

(b) inserting in alphabetical the following new definition –

"Competent Authority" means the office of the Director of Public Prosecutions as established by section 162 of the Constitution.

Amendment of section 3

48. Section 3 of the Principal Act is amended by deleting it in its entirety and inserting a new section 3 as follows -

"Application of Act to foreign countries

3. This Act shall apply to any foreign country which is a member of the United Nations, the Commonwealth, the African Union or the Southern African Development Community or any other international organization of which Eswatini is a member or a country with whom Eswatini has reciprocal arrangements."

Amendment of sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 17 and PART III

49. Sections 5, 6, 7,8,9,10,11,12,13,14, 17 and PART III of the Principal Act are amended by deleting the phrase "designated country" wherever it appears and replacing it with the phrase "foreign country".

Amendment of section 17

50. Section 17 of the Principal Act is amended by inserting the following new sub sections immediately after sub section (3) –

"(4) Assistance may be provided to a foreign country subject to such conditions as the Minister may determine in a particular case or class of cases.

(5) Upon receipt of a request by the Ministry of Foreign Affairs, it shall be dispatched to the Competent Authority on the same day, unless it has arrived after 16h00 in which case it shall be dispatched as soon as possible the following day.

(6) Upon receipt by the Competent Authority it shall determine the nature of the request, the time frame within which it ought to be executed, the written undertaking to comply with a future request and whether there are any conditions attached to executing the request.

(7) Unless the request falls under section 18, the Competent Authority shall duly execute the request on the basis of urgency or as guided by the time frame within which the foreign country desires the request to be executed."

Amendment of section 18

51. Section 18 of the Principal Act is amended by deleting subsection (1) in its entirety and replacing it with the following new subsection (1) –

"18. (1) The Minister may refuse a request by a foreign country for assistance under this Part if in the opinion of the Minister –

(a) the foreign country has declined or neglected to give a written undertaking as to reciprocity, or cannot protect the information requested effectively; or

(b) the criminal matter concerns an offence or proceedings of a political

character; or

(c) the criminal matter concerns conduct in relation to which the person accused or suspected of having committed an offence has been acquitted or convicted by a court in the foreign country."

PART VI
AMENDMENT OF EXCHANGE CONTROL ORDER 1974

Amendment of Section 3

52. Section 3 of the Order by deleting the entire section and inserting a new section as follows –

"Regulations.

3.(1) The Minister may in consultation with the Central Bank of Eswatini, make regulations in regard to –

(a) any matter directly or indirectly relating to the control of the purchase, sale and loan of foreign currency, gold and securities.

(b) the development of new products, new business practices, new delivery mechanisms and the use of new technologies for both new and existing products.

(2) Such regulations may provide that the Minister may apply any sanctions therein set forth which the Minister thinks fit to impose, whether civil or criminal.

(3) The Minister may exempt from stamp duty any document made for the sole purpose of complying with any such regulation.

PART VII
AMENDMENT OF THE PREVENTION OF ORGANISED CRIME ACT, 2018

53. In this Part Principal Act means the Prevention of Organised Crime Act, 2018.

Amendment of Section 2

54. Section 2 of the Principal Act is amended in the definition of 'property' by replacing it with the following new definition –

"property" means currency or any asset of any kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible, and includes legal documents or

instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit, and any interest, dividends or other income on or value accruing from or generated by such funds and any other assets which potentially may be used to obtain funds, goods or services whether situated in Eswatini or elsewhere and includes any legal or equitable interest in any such property;

Amendment of Section 9

55. Section 9 subsection (3) of the Principal Act is amended by deleting it in its entirety and replacing it with the following new subsection (3) –

"(3) Evidence, which is inadmissible in criminal proceedings pursuant to a rule of evidence applicable only in those proceedings, is not for that reason alone inadmissible in proceedings under this Part."

Amendment of Section 29

56. Section 29 is amended by deleting it in its entirety and replacing it with a new section 29 as follows –

"29. When a respondent pays the amount ordered under section 23(2), that payment shall be made into the Fund."

Amendment of section 41

57. Section 41 subsection (3) is amended by deleting it in its entirety and replacing it with the following new sub section (3) –

"(3) Evidence which is inadmissible in criminal proceedings pursuant to a rule of evidence applicable only in those proceedings is not for that reason alone inadmissible in proceedings under this Part."

Amendment of section 43

58. Section 43 of the Principal Act is amended by deleting sub section (3) in its entirety and replacing it with a new sub section 3 as follows –

"(3) A person who has an interest in the property which is subject to the preservation of property order may give written notice of intention to oppose the making of a forfeiture

order".

Amendment of Section 50

59. Section 50 subsection (2) is amended by deleting the phrase "section 52(3)" and replacing it with the phrase "section 43(3)."

Amendment of section 59

60. (a) Section 59 of the Principal Act is amended by substituting section 59(1) (c) with the following new section –

"(c) dispose of property forfeited under section 58(2) by sale or any other means and recover from the proceeds of the sale of the property in respect of which the *curator bonis* is appointed any expenses associated with the functions or the duties of the *curator bonis* under section 46(1), and this section, which expenses shall not exceed 15% percent of the proceeds of the sale, and deposit the remaining proceeds of the sale or disposal into the fund."

(b) Section 59 (1) is amended by adding a new paragraph as follows –

" (d) Notwithstanding section 59(1) (c), where it appears that the expenses associated with the functions or the duties of the *curator bonis* exceed the prescribed limit, the High Court may, upon application by the Director of Public Prosecutions supported by an affidavit indicating the circumstances giving rise to the total costs of the *curator bonis*, grant an Order for the *curator bonis* to be paid an amount exceeding the prescribed limit."

(c) Section 59 is amended by adding a new subsection (3) immediately after subsection (2) as follows –

"(3) The High Court shall make an order relating to the fees and expenditure of the *curator bonis* as it considers fit, including an order for the payment of the fees of the *curator bonis* from the confiscated proceeds if a forfeiture order is made or from the State if no forfeiture order is made."

Amendment of Section 74

61. Section 74 subsection (1) paragraph (b) is amended by deleting it in its entirety and replacing it with the following new (b) –

'(b) proceeds of unlawful activities'.

Amendment of Section 82

62. Section 82 is amended by –

(a) renumbering the current section 82 as section 82(1) ; and

(b) inserting a new section 82(2) as follows-

"(2) For purposes of this section, staff member refers to a person who is a public officer and has the requisite skill and expertise to take care of the property concerned."

Amendment of Schedule

63. The Schedule to the Principal Act is amended by adding a new 39 as follows –

"39. Any offence under any law relating to the illicit dealing in or possession of drugs"

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