

In the Name of Allah , the Gracious , the Merciful

Republic of the Sudan
Provisional Order
The Money Laundering and Terrorism
Financing Bill 2009

Be it hereby made, by the President of the Republic, in accordance with the provisions of Article 109(1), of the Interim Constitution of the Republic of the Sudan, 2005, the following Provisional Order:

Chapter I

Preliminary Provisions

Title and commencement

This Provisional Order may be cited as, "Money Laundering and Terrorism Financing Act, 2009", and shall come into force, as of the date of signature.

Repeal and saving

The Money Laundering (Combating) Act, 2004 shall be repealed; provided that all the regulations, measures and decisions, made thereunder shall continue in force, until revoked, or amended under this Act.

Interpretation

In this Act, unless the context otherwise requires:

"Money" means property of any type, whether material, or immaterial, movable, or immovable, and currencies of all types thereof, foreign, or local, financial and commercial papers, bonds and documents, which prove acquiring, or possession of money, or any title, relating thereto;

"Central Bank" means the Central Bank of Sudan;

"Person" means any natural, or corporate person;

"Continuous relation" means any commercial, or professional relation, having connection with one of the activities, named in the definition of the Financial, or Non-financial Institution, whenever the Institution concerned expects the relation to continue for a period of time;

"Casual client" means the customer whom no continuous relation connects with the Financial, or Non-financial Institution;

"Committee" means the Administrative Committee, established under the provisions of section 29, hereof;

"Governor" means the Governor of the Central Bank;

"Real beneficiary" means the natural person having the ownership, or actual control of the client, or the person, for the account, or interest of whom the operation is made, or according to his will;

"Financial Institutions"

mean the Commercial Banks, companies, Exchange and Brokerage Shops, and include any person, or other bodies, which operate commercially, in a regular way, any of the following activities, or operations, for the benefit, or account of clients:

acceptance of deposits;

granting credit, of all types thereof;

financing hire;

transmission of money;

the issue of payment instruments of all types thereof; of the same are payment and credit cards and personal and banks cheques;

financial securities and undertakings;

dealing in the instruments of the monetary market and the capital market, in sale, and purchase in such dealing in foreign exchange , and the present, or postponed exchange markets;

participation in the issue of financial papers and rendering financial services, having a connection with such issue;

the investment purses, and the services of investment trustees;

management and keeping the financial papers and valuable things;

mutual help, or life insurance, and any other insurance products, having an investment element;

"Non-financial Institutions"

mean the Institutions, or persons, who commercially practice any of the following activities:

clubs of wagering games, or gambling;

estates brokerage;

trade of minerals and valuable gems;

the activity of advocacy, or accountancy, as a liberal profession;

services of instituting companies, and the activities, attached thereto;

any other activities, as a decision from the Minister may be issued for application of the provisions of this Act thereto.

"Unit" means the Financial Inquiries Unit, established under section 10, hereof.

"Minister" means the Federal Minister of Finance and National Economy;

Chapter II

Control and Supervision

Bodies of Control and Supervision

The following bodies shall have the competence of control and supervision of the activities of the Financial and Non-financial Institutions, belonging thereto, or situated in the scope of the competence thereof, in pursuance of the law organizing each of such bodies, namely:

the Central Bank;

the Khartoum Stock Exchange;

the Insurance Control Public Corporation;

any other body, whom the Minister issues an order for competence thereof, as a control, or supervision body, on any of the activities of the Financial, or Non-financial Institutions, provided therefor in this Act.

Duties of the Control and Supervision Bodies

The Control and Supervision Bodies shall have the following duties, in the field of combating Money Laundering and Financing Terrorism, to:

make the regulations implementing the provisions of this Act; each in the scope of the competence thereof, with respect to the Financial and Non-financial Institutions, which are subject to the control, or supervision thereof;

generalize and promote the procedure of audit and the means and standards of follow-up of abidance, of the Financial, and Non-financial Institutions, by the requirements of combating Money Laundering and Terrorism Financing, in accordance with the provisions of this Act;

ascertain satisfaction, by the Financial and Non-financial Institutions, which are subject to the supervision, or control thereof, of the obligations, prescribed under the provisions of this Act; and they may use all the control, or supervision powers, for the sake of the same; and shall abide by notifying the Unit of any information, relating to such information, as may be suspected of having a connection with the proceeds, or Financing Terrorism;

any other duties, as may lie on the shoulders of the Control and Supervision Bodies, in the field of combating Money Laundering and Financing Terrorism, under the provisions of this Act, or under the international and regional agreements, to which the Sudan is a party;

use the punitive powers thereof, prescribed therefor, in accordance with the laws organizing the same, in cases of breach, by the Financial and Non-financial Institutions, of the obligations, under the provisions of this Act;

The Central Bank shall enlist and control the size and movement of the money transmitted outside the State, or coming from outside the same, through the Financial Institutions, to inquire and know any unfamiliar exit of the movement of such money, as may not be proportionate to the natural, or ordinary rates , or to the economic reality of the State.

Obligations of the Financial and Non-financial Institutions

The Financial and Non-financial Institutions shall abide by the following:

exerting due care to know the identity of clients and beneficiaries of the natural persons and ascertain and identify the nature of their activity according to regulation in particular the following cases ;

upon performing an operation for a casual client, the value of which exceeds the limit shown by the regulations;

upon performing international telegraphic transmissions;

upon the presence of doubts about the precision, or validity of the pre-registered identification data;

upon the presence of a suspicion of Money Laundering, or Terrorism Financing.

Exercising of Telegraphic Transfers Operations

The financial institutions exercising the telegraphic transfers operations shall attach form of data of identity in accordance with the regulations. In case of non-attachment the financial bodies to which the same is sent shall strive to obtain such statement through the financial body sending the same. In case of failure such bodies shall take the necessary proceedings to secure that the transfer does not relate to money laundering or terrorism financing or reject receipt thereof whenever it thinks the high degree of risk.

Secrecy of Information

There shall be prohibited directly or indirectly or by any other means save to the bodies authorities competent to apply this Act , any action of notification or inquiry or examination taken in respect of any operation suspected to relate to proceeds or terrorism financing.

Negation of Responsibility

The criminal, civil, administrative and disciplinary responsibility shall extinguish in respect of any person who submits in good faith notification on any suspected transaction, or provide information or data in accordance with the provisions of this Act.

classify their clients and products, according to the degree of risks of occurring of the operations of Money Laundering , or Terrorism Financing.

thorough and continuous follow-up of the operations performed by the clients, to verify that they are consistent with the information, which are available about their identification, and the nature of their activities, and the degree of the risks of the same; and up-date the data, information and documents continuously; in particular where the client is classified as one of a high degree of risk.

notify the unit with transactions suspected to be connected with proceeds or financing terrorism whether such transactions made or not provided that advocates shall not be obliged to notify if the information connected with their clients acquired upon performing evaluation of legal status the client or his representation before courts or providing the legal opinion in a matter .

the Financial and Non-financial Institutions shall abide by laying down such systems, as may guarantee the application of the provisions of this Act; provided that such systems shall include laying the internal systems , which contain the internal policies , procedure, control systems, abidance, obligation, appointment and training, in accordance with the safeguards, standards and rules, made by the competent bodies, in such way, as may be compatible with the activity of each, and the degree of risks of Money Laundering and Terrorism Financing.

keep the following registers and statements

registers and statements relating to identity or client and real beneficiary for five years at least from the date of termination of the operation or date of termination of the relationship whatever longer;

registers and statements relating to local or international of operations for five years at least from the date of termination of the operation ;

any registers or other statements which shall be kept provisions of this Act and the regulations made thereunder;

registers and statements relating to suspicion or case till decided even if the specified period for keeping is exceeded.

Chapter IV

The Financial Inquires Unit

Establishment of the Unit

There shall be established, at the Central Bank, an independent unit , for which the necessary funding shall be provided, to be known as the, "Financial Inquiries Unit", The Unit shall have competence to analyze the information which relate to the money suspected to be the proceeds of an offence, or from Terrorism Financing, and send such information to the competent Prosecution Attorneys Bureau, to dispose thereof, whenever it considers the establishment of evidence of the commission of one of the offences, provided for in the Criminal Act, 1991, or any law, as may replace the same. Likewise any offence, provided therefor in this Act, or any other law.

Constitution of the Unit

The Governor shall issue a decision constituting the Unit, it shall be appropriate number .

The decision shall specify the way of management of the Unit and work system.

Secrecy of Information

Employees of the Unit shall abide by non-disclosure of the secrecy of such information, as they come to know, by the occasion of the business of their post; and such obligation shall continue up to after leaving work at the Unit . Such information shall not be disclosed, save for the purposes set forth in this Act.

Such obligation in sub-section (1) shall bind whoever peruses by virtue of his profession, post or work, directly, or indirectly such information.

Without prejudice to the provisions of section 6(1)(d), concerning the obligations of advocates, the Unit shall require, from any Financial, or Non-financial Institution, any information, as may be useful to carry

out its post, or upon a request it receives from a foreign financial inquiry unit; and the Financial and Non-financial Institutions shall supply the Unit with such information and documents, within such period and manner , as the unit may specify; in exceptional cases, during examining the cases of suspicion, may require from the following bodies, additional information , whenever it deems them useful for carrying out its post, or upon a request it receives from a financial inquiry unit:

the law enforcement bodies;

the Control and Supervision Bodies;

any other administrative bodies.

Notification of control and Supervision bodies

The Unit may notify the Control and Supervision Bodies, of any suspicion of contravention of the provisions of this Act, as may occur from the side of the Financial and Non-financial Institutions, which are subject to its control, or supervision power .

Temporary Suspension of Suspected Transaction

The Unit, in exceptional cases, during examining the cases of suspicion, it has received, may order suspension of the transaction, subject of suspicion temporarily, for a period not exceeding five days ; and the Unit, during such period shall transfer the notification to the Prosecution Attorneys Bureau, forthwith the availability of evidence of occurrence of an offence.

The Unit, upon requirement, and upon the establishment of evidence of occurrence of an offence, may request the Prosecutor General, to issue a temporary order to attach the Money, subject of suspicion; and the Prosecutor General, whenever he deems the request serious, may temporarily attach the Money, for a period, not exceeding two weeks; and he shall submit the matter to the competent Appellate Court, before the end of the period.

The Minister of Justice, of his own motion, or upon request of the Unit, may order revocation of the order of the Prosecutor General for attachment, whenever the necessity, which required its issue, or the elements of suspicion are negated.

The competent Appellate Court , after hearing the statements of those concerned, may order extension of the order of the Prosecutor General for attachment, for periods, which do not, in their total, exceed two months, or order its revocation, and the Court shall determine this matter urgently .

Those concerned may present their grievance against such order to the competent Appellate Court, within three days, of the date of their being notified of the order.

Receipt of Notification

The Unit shall inform the notified Institution of the receipt thereby of the notification, as to such safeguards, as the regulations may set forth.

Publication of Reports

The Unit shall abide by publication of periodical reports on the activities thereof, containing statistical data, and analytical studies, in the field of combating Money Laundering and Terrorism Financing.

Information Exchange

The Unit ,of its own motion, or upon request of the counterpart units, in other countries, may exchange therewith information, whenever the same are bound by the rules of secrecy; and on condition of reciprocity . Such information shall not be used, save in the purposes, relating to combating Money Laundering, and Terrorism Financing.

Chapter V

The Administrative Committee

Establishment, seat and supervision of the Administrative Committee

There shall be established a committee, to be known as the, "Administrative Committee for Combating the Offences of Money Laundering and Terrorism Financing", and shall have corporate personality, and be constituted as follows:

the Prosecutor General of the Republic of the Sudan, Chairperson ;

deputy Governor, at the Central Bank, deputizing Chairperson;

Under-Secretary of the Ministry of Finance and National Economy, Member;

Under-Secretary of the Ministry of External Trade, Member;

Under-Secretary of the Ministry of Foreign Relations, Member;

under-secretary of the Ministry of Investment;

Director of the Criminal General Administration (Investigation) Member;

Director of the Administration of International and Regional Police (Interpol), Member;

Director of the General Administration of Customs Police;

Secretary General of the Taxation Chambers, Member;

Director General of Banking Control, Member;

Director of the Administration of Commercial and Investment Security (at the Commercial Security Circuit), Member;

Director General of the information National Centre, Member;

Director of the Financial Inquires Unit, Member .

The quarters of the Committee shall be in the Khartoum State.

The Committee shall be subject to supervision of the Minister.

Functions and powers of the Committee

The Committee shall be the higher administrative authority for combating Money Laundering, and shall have competence to lay down the general policy and plans and programmes for combating Money Laundering and Terrorism Financing. Without prejudice, to the generality of the foregoing, the Committee shall have the following functions and powers, to:

plan for combating of the offences of Money Laundering and Terrorism Financing, and make the guidance rules for administrative inquiry, examinations and pursuing, in co-ordination with the competent bodies;

follow-up and study the world and regional developments, in the field of Money Laundering and Financing Terrorism, and participate in the symposiums and conferences and international forums, having connection;

facilitate exchange of information with similar authorities, and co-ordinate between the bodies, represented in the Committee ;

lay down the programmes for qualifying and training of cadres operating in the field of combating the offences of Money Laundering and Terrorism Financing;

lay down the annual general budget, and submit the same to the Minister, for approval thereof.

any other functions, as may be necessary for performing its business.

The Committee may delegate any of the powers thereof to its Chairperson, or any member thereof, or the Unit, as to such conditions, as it may deem fit.

Oath of the Committee

The Chairperson and members of the Committee shall, before receiving the tasks of work thereof, take the oath annexed thereto, before the Minister :

Immunity

No legal proceedings shall be taken against the Chairperson of the Committee, any member thereof or any of its employees, for any matter, which relates to the field of his work, save after taking the necessary permission from the Minister.

Chapter VI

Financial Provisions

Financial resources of the Committee

The Committee shall have the following financial resources:

such appropriations, as the State may allocate thereto;

gifts and donations accepted by the Committee;

any other financial resources.

Use of the resources of the Committee

The resources of the Committee shall be used to run its business and execute the functions thereof, in accordance with the provisions of this Act.

Budget of the Committee

The Committee shall have an independent budget, to be prepared in accordance with the sound accountancy bases laid down by the state from time to time Ministry of Finance and National Economy and the Committee shall submit such budget to the Council of Ministers through the Minister before the end of each financial year before sufficient time..

Keeping of Accounts Deposit of money

The Committee shall keep accurate and comprehensive accounts, in accordance with sound accountancy bases; and keep the books and registers, relating thereto.

The Committee shall keep its funds with the Central Bank, or any other bank, in current accounts, or investment deposits; provided that dealing in such accounts, and withdrawal therefrom shall be as to such manner, as the Committee may specify.

Audit

Accounts of the Committee shall be audited by the General Audit Chambers, or any other certified auditor, as the Auditor General may approve, and under his supervision after the end of each financial statement of final account and National audit Chambers.

Statement of final account and Audit Chambers report

The Audit shall submit, to the Minister, within three Months, of the end of the financial year, the following reports:

statement of the final account;

report of the General Audit Chambers;

a report showing the progress of the Committee work.

The statements and reports, referred thereto in sub-section (1), shall be discussed in a meeting, presided by the Minister, and presence of the Auditor General and Chairperson of the Committee, or whoever may represent them, for passing and approval thereof.

Chapter VII

General Provisions

Employees of the Committee

The Chairperson, members and employees of the Committee shall be deemed public servants, for the purposes of the Criminal Act.

Competent Court

The General Criminal Court shall have jurisdiction to consider the offences of Money Laundering, or Terrorism Financing .

Annulment of legal disposal

There Annulling of legal disposal disposal made of any money, or property, for the aim of avoiding the procedure of legal confiscation , or attachment; and in such case, there shall not be restituted, to the bona fide person, to whom the disposal is made, save the amount he has actually paid.

Offences of Money Laundering and terrorism financing

There shall be deemed to commit the offence of money laundering any person whose conduct entails acquiring proceeds, possession, disposal of, use, transfer, administer, keep, exchange, deposit or investment by cheating its value, movement, or lead to conceal , camouflage its source, real nature, place, way of disposal, ownership, rights relating thereto whether the offence occurred from which proceeds resulted inside or outside the Sudan on condition that it is punishable in the Sudanese law and the law of the country in which the offence committed.

There shall be deemed to commit the offence of terrorism financing whoever perform collection or providing money directly or indirectly for the purpose of commission of terrorist act or uses terrorist organization or a terrorist . Terrorist act means each act incriminated in terrorism combating Act 2001 or any law replacing it or any act of terrorist nature incriminated by international agreement to which Sudan is a party .

There shall be deemed to commit the offences provided for in this chapter, whoever attempts or criminally agree or participate, abet, or assist the commission of any of the same shall be punished with the prescribed punishment for the principal wrongdoer.

Penalties

Without affecting any severer penalty, provided for in any other law, there shall, upon conviction, be punished whoever contravenes the provisions of this Act, as follows:

the natural person: imprisonment, for a term, not exceeding ten years, and fine, not exceeding double the money, subject of the offence;

the corporate person: fine, not exceeding double the proceeds; and the natural person , who commits the offence in the name of, or for the interest of the corporate person, shall be punished with the penalty of imprisonment and fine provided therefor in paragraph (a) ; likewise the Court may sentence the corporate person to dissolution of the corporate person and suspension its activity, totally, or partially, or change of the administration.

In addition to the penalties, provided therefor in sub-section (1), there shall be confiscated the proceeds of the offence, and the instruments used for commission thereof, or prepared therefor. Where it is not possible to seize the proceeds, the Court may order confiscation of other money, equal thereto in value.

Disposal of confiscated money

The money confiscated under section 34(2) hereof, shall be deposited in a special fund, which the Committee shall establish and supervise it . Such money shall be used in the following:

combating the offences of Money Laundering, and otherwise of economic offences;

payment of incentives, to the persons, or organs, which clearly contribute to information and detection of the offence of Money Laundering, or Terrorism Financing, subject of the confiscation; and the Committee may prescribe the matter, type and amount of such incentives;

combating and treatment of incurable diseases;

any other uses, as the Committee may deem fit, upon necessity.

The Committee shall keep a special account for the confiscated money, and deposit in the fund, and the amounts, which are withdrawn, for the purposes of use, provided therefor in sub-section (1), hereof.

Declaration of Currency

Every person, upon entry of the country, or departure therefrom shall declare , to the Customs authorities, what he carries, in accordance with the regulations and circulars, of money , or any financial instrument for its bearer, whether in the national , or foreign currency, or metals and valuable gems.

The declaration shall be in a in form, including the value of the funds referred thereto, and data of identity of the passenger, and any other data, as the Financial Inquiries Unit may specify; provided that the declaration forms shall be available, at specific and conspicuous places at travel and arrival halls, at the various exits; or distributed among those, who arrive and depart; and the Customs authorities of the judicial detection officers.

In case of non-discharge of the duty to declare, or presenting false data with respect thereto, or the establishment of evidence of the commission of the offence of Money Laundering, or Terrorism Financing, may question the contravener about the source of what is in his possession, and the purposes of use thereof; and they, in such cases, may attach the property , subject of declaration, for a period, not exceeding one week, pending verifying the establishment of evidence of commission of the offence of Money Laundering, or Terrorism Financing.

Customs authorities shall refer the matter to the competent Prosecution Attorneys Bureau, whenever there is present evidence of commission of an offence.

The Customs Police shall be the competent Customs authority, to receive the declaration forms, at the entry and departure exits; and they shall appoint a chief liaison officer, to represent them at the Unit, in the affairs of Money Laundering and Terrorism Financing; provided that he shall be of competence and experience in such affairs, and of a suitable level of post, to perform the tasks, entrusted thereto, and notify the Unit of the name of their representative, and of who replaces him, in case of his absence.

Power to make regulations

The Competent Minister , the Financial Inquires Unit and Control and Supervision Bodies, each in the field of his competence may make such regulations, as may be necessary for implementation of the provisions of this Act.

Made, under my hand, on the , of , 2009, A.D., being the , of , 1430, A.H.

Field Marshal

Omar Hassan Ahmed Al-Bashir

President of the Republic

Schedule

See Section 28

Oath of the Committee

" I swear by Almighty Allah, his Holy book, to perform my the duties of the committee honesty, and keep secrecy of all what connected my work from information, documents and not disclose except to the competent authorities to make compromise between the required secrecy to preserve, the accounts and transactions of persons and the required transparency for combating offences of money laundering and terrorism financing , and Allah, is a witness to what I say".