

Asset (Money) Laundering Prevention (First Amendment) Act, 2068 (2011)

Date of Authentication and Publication

2068.2.18

Preamble: Whereas, it is expedient to amend Asset (Money) Laundering Prevention Act, 2064 (2008)

Now, therefore, be it enacted by the Constitution Assembly, in the capacity of legislature parliament, pursuant Article 83 of the Interim Constitution of Nepal, 2007.

1. **Short Title and Commencement:** (1) This Act may be called as "Asset (Money) Laundering Prevention (First Amendment) Act, 2068 (2011)"

(2) This Act shall come into force immediately.

2. **Amendment to Section 2 of Asset (Money) Laundering Prevention**

Act, 2008: Section 2 of Asset (Money) Laundering Prevention Act, 2008 (herein after referred to as "the Principal Act"):

(1) The following Clause (e1) shall be inserted after Clause (e) :

(e1) "Professional" means notary public, auditor, insolvency professional, drafting agent and other similar professionals.

(2) The words "and the term also means similar other transactions that the FIU declares from time to time as suspicious transaction" has substituted for "means" contained Clause (L)

(3) The following Clause (m) shall be substituted for Clause (m) :

(m) "Asset" means physical, non-physical, movable, immovable, tangible

or intangible property or any object or instrument which has a monetary value and the term also means any document, evidence interest, claim or any other instrument establishing ownership or rights over such asset.

3. **Amendment to Section 4 of the principal Act:** The following Section (4) shall be substituted for Section (4):

4. **Offence of Assets Laundering:** Any person commits the offence of assets laundering if that person owns, possesses, uses, consumes, utilizes or displays or does any transaction of, the asset obtained, held or possessed directly or indirectly from commission of any or all of the following act/s or offence/s, or the asset further generated from investment of such asset, as a legally earned asset; or transfers or converts so earned asset with an intention to conceal or disguise the source, nature, location, ownership, disposal or rights; or purchases, owns, possesses or uses, consumes or utilizes or does any other transaction of such asset where one has knowledge of the illegal origin of the asset or where there is reasonable ground for one to believe the asset has such origin; or assists directly or indirectly to convert or transfer such asset for the purpose of avoiding legal proceeding against the person who has obtained such asset.

- (a) Revenue evasion,
- (b) Organized crime,
- (c) Financing of terrorist activities,
- (d) Offence under existing law on arms and ammunition,
- (e) Offence under existing law on foreign exchange regulation,
- (f) Offence under existing law relating to homicide, theft, fraud, (cheating) forging of document, counterfeiting, abduction or hostage taking,

- (g) Offence under existing law on narcotic drug control,
- (h) Offence under existing law on national park and wildlife conservation,
- (i) Offence under existing law against human trafficking and transportation,
- (j) Offence under existing law on cooperative institution,
- (k) Offence under existing law on forest,
- (l) Offence under existing law relating to corruption,
- (m) Offence under existing law on bank and financial institution,
- (n) Offence under existing law on banking offences and penalty,
- (o) Offence under existing law on ancient monument conservation,
- (p) Offence under any other law or treaty which Nepal is a party to, as designated by the Government of Nepal through publishing a notice in Nepal Gazette

4. Section 4A and 4B inserted to the principal Act: The following Section 4A and 4B shall be inserted after Section (4):

4A. Prohibition on Financing on Terrorist Activities: No one shall finance or cause to finance on terrorist activities.

4B. To be Deemed as Terrorist Financing: Any person commits the offence of financing of terrorist activities if that person by any means collects or provides to any person any asset with the intention that they should be used or in knowledge that they are to be used in order to carry out any act which constitutes an offence within the scope of the following conventions or any

other act intended to cause death or serious bodily injuries to an individual.

- (a) Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963,
- (b) Hague Convention for the Suppression of Unlawful Seizure of Aircraft, 1970,
- (c) Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, 1971,
- (d) Convention on the Prevention and Punishment of Crime Against Internationally Protected Persons Including Diplomatic Agents, 1973,
- (e) International convention Against the Taking of Hostages, 1979,
- (f) SAARC Regional Convention on Suppression of Terrorism, 1987,
- (g) Any Convention against Terrorist Activities which Nepal is a party to.

5. **Section 5A inserted to the principal Act:** The following Section 5A shall be inserted after Section (5) :

5A. **Penalty for the offence committed abroad:** Notwithstanding anything contained in this Act, any act or offence referred to Section 4, 4A, 4B of this Act committed abroad may be liable to penalty as if they were committed in Nepal provided that the act or offence is a punishable offence in that foreign country where such offence were committed and

such country has not imposed penalty for the offence, in accordance with this Act.

6. **Amendment to Section 7 of the principal Act:** The word "Fifteen" shall be substituted for "Seven" contained in Clause (c) of Sub-section (1) of Section 7.

7. **Section 7A inserted to the principal Act:** The following Section 7A shall be inserted after Section 7 :

7A. **Responsibility of Professionals:** Notwithstanding anything contained in existing law, the professionals shall immediately report suspicious transaction to the Financial Information Unit if they know of any suspicious transaction in the course of their professional performance.

8. **Amendment to Section 8 of the principal Act:** Of section 8 of principal Act,

(1) The words "offence" shall be substituted for "money laundering" contained in Sub-section (1) and Clause (d1) and (d2) shall be inserted after clause (d) of same Sub-section:

(d1) Secretary, Prime Minister and Council of
Ministers

-Member

(d2) Deputy Attorney General, office of the
Attorney

-General member

(2) The following Clause (e1) shall be inserted after the (e) contained in Sub-section (1):

(e1) Inspector General of Police, Nepal Police

- member

9. **Section 8A inserted to the principal Act:** The following Section 8A shall be inserted after Section 8 :

8A. Functions, Duties and Powers of Coordination Committee: The coordination committee shall have following functions, duties and powers in addition to the functions, duties and powers mentioned elsewhere in this Act:

- (a) To prepare policy for prevention of offence and submit the policy to the Government of Nepal,
- (b) To implement or cause to implement the decision of the Government of Nepal taken for prevention of offence,
- (c) To recommend to the Government of Nepal, as per necessity, to implement the standards and policy developed for prevention of offence by international organization of which Nepal is a member,
- (d) To instruct concerned agencies for prevention of offence and to monitor whether or not the instructions are complied with,
- (e) To implement or cause to implement the annual report prepared by the Financial Information Unit.
- (f) To perform other tasks in relation to prevention of offence, as prescribed by the Government of Nepal.

10. **Amendment to Section 9 of the principal Act:** The word "offence" shall be substituted for "money laundering" contained in Sub-section (1) of Section 9.

11. **Amendment to Section 10 of the principal Act:** Of section 10 of principal Act:

- (1) **Of Sub-section (1):**

- (a) the words "regarding to document " shall be substituted for " the documents regarding to money laundering" contained in Clause (b).
 - (b) the words "regarding offence" shall be substituted for "regarding money laundering" contained in Clause (d).
- (2) The following Sub-section (2) shall be substituted for Sub-Section (2):
- (2) In course of performance of legal mandate, the Financial Information Unit may request any government agency or regulatory institution or any organization or any investigating agency or official to provide to the FIU any information, particular or document that is in their possession and such agency or official may, in course of performance of legal mandate, request the Financial Information Unit for information, particular or document that is in possession of the FIU.
- (3) The following Sub-section (2a) shall be inserted contained in Sub-Section (2):
- (2a) It shall be the duty of the agency, organization, official and Financial Information Unit to provide the information requested as per Sub-Section (2).
- (4) The following Sub-section (3) shall be substituted for Sub-Section (3):
- (3) The Financial Information Unit may, besides issuing directives on method, form, time and other procedures regarding the submission of details, statistics, notices and information pursuant to Clause (a) of Sub-Section (1), issue

directives to government agency, bank, financial institution, non-financial institution or professional about the measures they are to adopt while establishing business relation with the customer/beneficiary, during transaction, for identification of suspicious transaction, for risk management, for prevention of terrorist financing or for conducting transaction with politically exposed persons (high ranking) or for overall monitoring of implementation of the measures and it shall be the duty of such government agency, bank, financial institution and non-financial institution and professional to abide by such directives.

12. **Amendment to Section 11 of the principal Act:** The words "at least" shall be inserted after the words "civil service" contained in Sub-section (2) of Section 11.
13. **Amendment to Section 12 of the principal Act:** Of Sub-section (1) of Section 12 of the principal Act:
- (1) The following Clause (e) shall be substituted for Clause (e):
- (e) To freeze, take under control or order the concerned entity or official to freeze, take under control any assets located in Nepal which is in ownership, possession or control of the concerned person or any other benefit generated from such asset or any other instruments used in the offence whether possessed by the concerned person or somebody else, if investigation and inquiry so requires or if a request to this effect is received from any nation where the offence under this Act is committed or from any other international organization in accordance with the provision of bilateral or multilateral treaty or agreement which Nepal is a party to or any similar provisions; Or make a

similar request to foreign nation or international organization through diplomatic channel to freeze or take under control such asset, instrument or goods.

(2) The following Clause (f) shall be substituted for Clause (f):

(f) To adopt or cause to adopt measures or method as designated to conduct investigation and inquiry of the offence under this Act and to adopt designated standards for identification and evaluation of the asset.

14. Amendment to Section 14 of the principal Act: Sub-Section (3) of Section 14 of the principal Act has been deleted.

15. Amendment to Section 29 of the principal Act: The words " pursuant to Section 3 or 4a" shall be substituted for "pursuant to Section 3 and The words " pursuant to Section 4 or 4b" shall be substituted for "pursuant to Section 3 and The words "pursuant to Section 3 or 4a" shall be substituted for "pursuant to Section 3) contained in Section 29.

16. Amendment to Section 30 of the principal Act: The following Section 30 shall be substituted for Section 30:

30. Penalty: (1) Anyone who has committed an offence of financing on terrorist activities shall be liable for an imprisonment of One to Five years and fine equal to the claimed amount (*Bigo*) if such an amount is disclosed and a fine of Five Hundred Thousand Rupees of the claimed amount is not disclosed.

(2) Anyone who has committed the an offence as referred to in Chapter-2, except as provided in Sub-Section (1), shall be liable to a fine equal to the claimed amount and from One year to Four years of imprisonment or the both.

(3) In case any bank, financial institution or non-financial institution has committed offence, the official or staff of such bank, financial institution or non financial institution who is identified as perpetrator of the offence or in case such perpetrator is not identified, the official in charge of the institution at the time of commission of the offence shall be liable to penalty.

(4) If a person holding a public post or official, chief or staff of any bank, financial institution or non-financial institution has committed an offence; such person shall be liable to Ten percent of additional punishment to the punishment referred to in Sub-Section (1) and (2).

(5) Anyone who attempts, helps or incites the offence mentioned in this Act shall be liable to half of the punishment imposed to the offender of the offence.

(6) If anyone commits or causes to commit an offence by using the firm, company or institution, such firm, company or institution shall be liable to a fine as referred to in this Section.

(7) If anyone violates this Act or Rules framed or Directives issued thereunder, except as provided in Sub-sections (1) to (6), shall be liable to a fine equal to the claimed amount including forfeiture of the claimed amount if such an amount is disclosed and a fine upto Five Hundred Thousand Rupees if such an amount is not disclosed.

17. Amendment to Section 31 of the principal Act: Of Section 31 of principal Act:

- (2) The following Sub-section (1) shall be substituted for Sub-section (1):

(1) The Financial Information Unit may impose following fine for committing following acts:

- (a) From One Hundred Thousand to Three Hundred Thousand Rupees to a bank, financial or non-financial institution for not maintaining documents and records as provided in this Act.
- (b) Five Hundred Thousand Rupees for each case to a bank, financial institution or non-financial institution for not providing particulars or information to the Financial Information Unit as per Section 7 and Clause (a) of Sub-section (1) of Section.
- (c) From One Hundred Thousand to Three Hundred Thousand Rupees to a professional for not reporting to the Financial Information Unit referred to in Section 7(a).

(2) The words "the person not satisfied with the penalty imposed pursuant to Sub-Section (1)" shall be substituted for "the Financial Information Unit shall decide penalty pursuant to Sub-Section (1) and the person not satisfied with the penalty" in Sub-section (2).

18. Amendment to Section 34 of the principal Act: The following Sub-section (3) shall be inserted after Sub-section (2) of Section 34.

(3) Any property or instrument or goods, irrespective of who posses it, used in the offence under this Act shall be confiscated.

Provided that, such property, instrument or goods shall be returned to its owner if such property, instrument or goods was used in the offence

without the consent of the owner or if the owner had no knowledge of its use in the offence in such a manner that the offender shall be made liable for such liability if it is so proved.

19. Section 44A, 44B, 44C and 44D have been inserted: The following Section 44A, 44B, 44C and 44D shall be inserted after Section 44:

44A. Information or particulars not to be disclosed: (1) The Financial Information Unit, government agency, bank, financial institution, non-financial institution or any official or staff of such Unit, Agency, Bank or institution or professionals shall not disclose any information and particular they have received to any third party, except to the agency, institution or official authorized to receive such information or particular.

(2) Any person, government agency, bank, financial institution, non-financial institution or professional who breaches the provision contained in Sub-Section (1) shall be liable to a fine of upto Ten Thousand Rupees and if the provision is breached by any official, such official shall be liable to an additional fine of Five Thousand Rupees; and if it is a staff, the staff shall be subject to departmental action as well.

44B. Responsibilities of Regulatory Body: (1) For the purpose of this Act, the functions, duties and powers of the Regulatory Body of a business or profession shall be as follows:

- (a) To implement or cause to implement this Act and the Rules framed thereunder,
- (b) To cause the person or institution conducting business or profession to implement this Act and the Rules framed thereunder,
- (c) To make mandatory condition, while registering or issuing permission or license of the business, for the

person or institution conducting or operating business, to comply with this Act,

- (d) To inspect, supervise or monitor whether or not the person or institution conducting business has complied with Clause (b) and (c).
- (e) To award appropriate sanction or penalty to the person or institution who does not implement this Act or Rules framed hereunder, in accordance with the law that applies to specific regulatory body or to impose fine in accordance with this Act in case there is no specific law,
- (f) To submit to the Financial Information Unit a report on activities conducted in accordance with Clause (a) to (c) and other tasks performed for prevention of the offence.

(2) Where there is no regulatory body to regulate any reporting institution having an obligation to report to the Financial Information Unit information, notice and particulars as per the provision of this Act and the Rules thereof, the government of Nepal may, in consultation with the coordination committee, designate any regulatory institution to regulate, monitor, inspect or supervise such institution or person.

(3) The penalty imposed on any person or institution as per this Section shall not bar from initiating any other proceeding and imposing penalty against such person as per this Act.

Explanation: For the purpose of this Section, "institution" means any institution incorporated under existing law and it shall also include the firm.

44C. Report to be submitted: (1) Government agency, bank, financial institution and non-financial institution shall maintain a separate record of the tasks they have performed in relation to this Act and shall prepare a report thereof within Two months from the end of fiscal year.

(2) A copy of the report prepared pursuant to Sub-Section (1) shall be made available to the Financial Information Unit within Seven days from the day the report is prepared.

(3) The Financial Information Unit shall submit such report which is received pursuant to Sub-section (2), to the meeting of the Co-ordination Committee and the Co-ordination Committee shall make necessary decision on such report.

44D. Minimum expense may be given : (1) Where all asset of an individual is frozen in the course of investigation and inquiry of the offence or in the course of the proceeding of the case and there is no other means or source of livelihood for the concerned person or his/her dependents, the court may order the department to release the portion of the asset required for basic condition of livelihood.

(2) The department shall release the property as per the order issued pursuant to Sub-Section (1).

44E. Computer processed records may be taken as Evidence: (1) Notwithstanding anything contained elsewhere in the prevailing law and except otherwise proved, the documents processed and developed from electronic means may be taken as an evidence for the purpose of this Act.

(2) The necessary provisions relating to receiving, analyzing or processing of records, particulars and data may be provided as prescribed.