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PROCLAMATION NO. 175/2014

**The Anti-Money Laundering and Combating Financing of
Terrorism Proclamation**

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The Anti-Money Laundering and Combating Financing of Terrorism Proclamation

WHEREAS, money laundering and the financing of terrorism are serious crimes which threaten the peace, security and development of the country and the world at large;

WHEREAS, the Government of Eritrea is committed to protect the well-being of its citizens from terrorism and guarantee their safety in their day-to-day activities;

WHEREAS, it is necessary to ensure that all financial institutions in the country are in the forefront in combating money laundering and terrorism financing; and

NOW, THEREFORE, it is proclaimed as follows:

PART I

PRELIMINARY PROVISIONS

Article 1. Short Title

This Proclamation may be cited as “Anti-Money Laundering and Combating Financing of Terrorism Proclamation No. 175/2014.”

Article 2. Definitions

(1) In this Proclamation, unless the context otherwise requires:

- (1) **“Bank”** means the Bank of Eritrea, which is the central bank of Eritrea as defined in Proclamation No. 93 of 1997;
- (2) **“Beneficial Owner”** refers to the natural person who ultimately owns or controls a customer or account, the person on whose behalf a transaction is being conducted, or the person who ultimately exercises effective control over a legal person or arrangement;
- (3) **“Competent Authority”** means any physical person or government body which has a delegated or vested authority, capacity, or power to perform a designated function;
- (4) **“Correspondent Banking”** means the provision of banking services by one bank (the correspondent bank) to another bank (the respondent bank);
- (5) **“Cross-Border Transfer”** means any transfer where the originator and beneficiary persons are located in different countries at the time of initiating the transfer. The term also refers to any chain of transfers that has at least one cross-border element;
- (6) **“Customer”** in relation to a transaction or account, includes:
 - (a) a person in whose name a transaction or account is arranged, opened or undertaken;
 - (b) a signatory to a transaction or account;
 - (c) any person to whom a transaction has been assigned or transferred; or
 - (d) any person who is authorized to conduct a transaction;

- (7) **“Domestic Transfer”** means any transfer where the originator and beneficiary persons are located within the same country at the time of initiating the transfer. The term refers to any chain of transfers that takes place entirely within the borders of a single country, even though the system used to effect the transfer may be located in another country;
- (8) **“Depository Institution”** means any financial institution authorized to engage in the business of collecting deposits or their equivalents from the public;
- (9) **“Financial Institution”** means both any authorized depository and non-depository financial institution;
- (10) **“Financing of Terrorism “** means an act by any person who, by any means, directly or indirectly, willfully, provides or collects funds, or attempts to do so, with the knowledge and intention that they would be used in full or in part to carry out a terrorist act by a terrorist or terrorist organization;
- (11) **“Freezing”** means prohibiting the transfer, conversion, disposition or movement of funds or other property on the basis of, and for the duration of the validity of, a decision of a judicial or other competent authority. The frozen funds or other property shall remain the property of the persons or entities that held an interest in the specified funds or other property at the time of the freezing, and may continue to be administered by the financial institution;
- (12) **“High Risk Categories”** means customers, businesses or transactions that need to be subjected to more regular reviews, particularly against the know-your-customer information held by the bank and the activity in the account. Such categories shall include, but not be limited to:
- (a) complex, unusual or large transactions;
 - (b) relationships or transactions with countries known to have material deficiencies in anti money laundering and terrorist financing strategies;
 - (c) politically exposed persons;
 - (d) non-resident customers such as those staying in the country for less than one year or those in short visit or travel; and
 - (e) companies that have shares in bearer form;
- (13) **“Large Cash Transaction”** means a transaction exceeding USD 10,000 or its equivalent in other convertible currencies;
- (14) **“Money Laundering”** means the offence provided for in Article 31 of this Proclamation;
- (15) **“Money or Value Transfer Service”** shall mean carrying on the business of accepting cash, cheques or any other monetary instrument or other means of storing value, and paying a corresponding sum in cash or in other form to a beneficiary, by means of communication, message, transfer or through a clearing system to which the money or value transfer service belongs.
- (16) **“Non-Depository Financial Institution (NDFI)”** means any authorized financial institution which does not collect deposits or their equivalent from the public;
- (17) **“Non-Depository Financial Institution Public’s Funds (NDFIPF)”** means any authorized financial institution which does not collect deposits or their equivalent from the public, but which does collect funds from the public in some form for its operations, and

which is of a specialized nature and includes insurance companies, pension funds, investment funds as well as others which may be designated by the Bank;

- (18) **“Non-Depository Financial Institution Non-Public’s Funds (NDFINPF)”** means any authorized financial institution which does not collect deposits or their equivalent from the public and does not collect funds from the public in any form, and engages in one or more specialized financial activities, foreign exchange dealership, factoring and leasing companies, venture capital firms, credit card companies, installment credit and consumer credit institutions, security companies (such as brokers, dealers, investment analyst, investment fund management, investment advisors, underwriters and investment bankers), stocks (shares) and bond exchanges and clearing, settlement and depository institutions, trustees, custodians, and any other which may be designated as NDFINPF by the Bank;
- (19) **“Non-Face-to-Face Customers”** are customers who do not present themselves for personal interview when they open accounts with financial institutions such as non-resident customers;
- (20) **“Originator”** is a bank account holder or, where there is no account, the person that places an order with the bank or other financial institution to perform a transfer;
- (21) **“Payable-Through Accounts”** refers to correspondent accounts that are used directly by third parties to transact business on their own behalf;
- (22) **“Person”** means any natural or juridical person;
- (23) **“Politically exposed person”** shall mean any person who is or has been entrusted with prominent public functions as well as members of such person’s family or those closely associated with him/her.
- (24) **“Predicate Offence”** shall mean any offence, which generates proceeds of crime and is punishable with rigorous imprisonment;
- (25) **“property”** shall mean assets or funds of every kind, whether movable or immovable, tangible or intangible, and 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, traveler’s cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit, and any interest, dividends or other income on or value accruing from or generated by such assets;
- (26) **“Proceeds of Crime”** means any property derived or obtained, directly or indirectly, from an offence under Articles 31 and 32 of this Proclamation and includes property converted or transformed, in part or in full, into other property and investment yields from such an offence;
- (27) **“Seizing”** means prohibiting the transfer, conversion, disposition or movement of funds or other property on the basis of, and for the duration of the validity of, a decision of a judicial or other competent authority. The seized property shall remain the property of the persons or entities that held an interest in the specified property at the time of the seizure, but shall be administered by the judicial or other competent authority;
- (28) **“Senior Management”** means a team of executives at the highest level who have the day-to-day responsibilities of managing a financial institution as defined by the instruments establishing it;

- (29) **“Shell Bank”** means a bank that has no physical presence in the country in which it is incorporated and licensed, and which is unaffiliated with a regulated financial services group that is subject to effective consolidated supervision;
- (30) **“Supervisory Authority”** means the Bank which is entrusted with the oversight authority of all financial institutions;
- (31) **“Suspicious Transaction”** refers to a transaction which is inconsistent with a customer's known legitimate business or personal activities or with the normal business for that type of account, or a complex and unusual transaction or pattern of transaction that has no apparent or visible economic purpose;
- (32) **“Terrorist Act”** means shall mean an act intended to cause death or serious bodily injury to a civilian, or any other person not taking an active part in the hostilities in a situation of armed conflict, to commit kidnapping or hostage taking, cause serious damage to property, cause serious risk to the safety and health of the public, cause damage to the natural resources, environment, historical or cultural heritage, or to endanger, seize or put under control, cause serious interference or disruption of any public service when the purpose of such act, by its nature or context, is to intimidate a population or to compel a government or an international organization to do or to abstain from doing so;
- (33) **“Terrorist”** shall mean any natural person who:
- (a) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and willfully;
 - (b) participates as an accomplice in terrorist acts;
 - (c) organizes or directs others to commit terrorist acts; or
 - (d) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act;
- (34) **“Terrorist Organization”** shall mean any group of terrorists that:
- (a) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and willfully;
 - (b) participates as an accomplice in terrorist acts;
 - (c) organizes or directs others to commit terrorist acts; or
 - (d) contributes to the commission of terrorist acts by group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act.
- (35) **“Transaction with No Apparent or Visible Economic Purpose”** includes:
- (a) a transaction that gives rise to a reasonable suspicion that it may involve the laundering of money or the proceeds of any crime and is made in circumstances of unusual or unjustified complexity;
 - (b) a transaction whose form suggests that it might be intended for an illegal purpose or the economic purpose of which is not discernible;

- (c) a customer relationship with the financial institution that does not appear to make economic sense, such as a customer having a large number of accounts with the same bank, frequent transfers between different accounts or exaggeratedly high liquidity;
- (d) a transaction in which assets are withdrawn immediately after being deposited, unless the customer's business activities furnish plausible reason for immediate withdrawal;
- (e) a transaction that cannot be reconciled with the usual activities of the clientele of the financial institution or branch office in question, and in which the reason for the customer's choice of that particular financial institution or branch cannot be ascertained;
- (f) a transaction which, without plausible reason, results in the intensive use of what was previously a relatively inactive account, such as a customer's account which shows virtually no normal personal or business related activities but is used to receive or disburse unusually large sums which have no obvious purpose or relationship to the customer or his or her business; or
- (g) a transaction which is incompatible with the financial institution's knowledge and experience of the customer in question or with the purpose of the business relationship;

(36) **“Wire Transfer”** refers to any transaction carried out on behalf of an originator through a bank or other financial institution by electronic means with a view to making an amount of money available to a beneficiary at another bank or financial institution. The originator and the beneficiary may be the same person; and

(2) Any expression in the masculine gender shall also include the feminine.

Article 3. Objectives

The objectives of this Proclamation are to:

- (a) detect, deter and prosecute offences of money laundering and the financing of terrorism;
- (b) maintain public confidence in the financial system;
- (c) facilitate co-operation among reporting entities, Anti-Money Laundering and Combating Financing of Terrorism (AML/CFT) supervisors, and various government agencies, in particular law enforcement and regulatory agencies; and
- (d) sensitize financial institutions to establish and maintain policies and procedures to guard against money laundering and the financing of terrorism.

Article 4. Scope of Application

This Proclamation applies to all financial institutions in Eritrea.

PART II

CUSTOMER DUE DILIGENCNE AND IDENTIFICATION

Section I. Customer Due Diligence of Financial Institutions

Article 5. Customer Acceptance Policy, Procedure, and Compliance Arrangement

- (1) Financial Institutions shall establish and maintain internal policies, procedures, and controls to prevent money laundering and terrorist financing, and communicate the same to their employees and the Bank. The said policies, procedures and controls shall at a minimum cover:
 - (a) explicit criteria for identification and acceptance of customers;
 - (b) appropriate risk management systems to determine whether a potential customer, an existing customer or beneficial owner is a politically- exposed person or a customer in a high risk category;
 - (c) record retention techniques, methods and periods;
 - (d) unusual and suspicious transactions detection techniques, methods and reporting obligations;
 - (e) measures to be taken to prevent the misuse of technology for the purposes of money laundering or terrorist financing schemes; and
 - (f) specific risks associated with non-face-to-face business relationships or transactions.
- (2) Financial institutions shall develop appropriate compliance management arrangements which at a minimum include:
 - (a) designation of a compliance officer at the management level; and
 - (b) ascertain application of all laws related to anti-money laundering and combating terrorist financing; as well as internal policies, procedures and controls when establishing customer relationships and conducting ongoing due diligence.
- (3) Financial institutions shall maintain an adequately-resourced and independent internal audit function to test compliance with laws and directives of the Bank, as well as internal policies, procedures and controls.

\Article 6. Customer Identification and Due Diligence

- (1) Financial institutions may not keep anonymous accounts or accounts in fictitious names.
- (3) Financial institutions may not enter into, or continue, correspondent banking relationships with shell banks.
- (5) Financial institutions shall undertake customer due diligence measures when:
 - (a) establishing business relations with a customer;
 - (b) carrying out occasional cash transaction with a customer exceeding USD 10,000 or its equivalent in other currencies, and shall include situations where

the transaction is carried out in a single operation or in several operations that appear to be linked or structured;

- (c) there is a suspicion of money laundering or terrorist financing, regardless of any exemptions or thresholds provided under this Proclamation; and
 - (d) they have doubts about the veracity or adequacy of previously-obtained customer identification data.
- (4) Financial institutions shall identify the customer, whether regular or occasional, natural or juridical person or legal arrangement, and verify that customer's identity using, as much as possible, reliable independent source documents, data or information.
- (5) Identification requirements for natural persons shall include:
- (a) given or legal name and all other names used;
 - (b) identity card or residence permit or passport;
 - (c) permanent address;
 - (d) telephone number, fax number, mailing and e-mail address, if available;
 - (e) date and place of birth;
 - (f) nationality;
 - (g) occupation, public position held and/or name of employer, if any;
 - (h) type of account; and
 - (i) signed statement certifying accuracy of the information provided.
- (6) For customers that are juridical persons or legal arrangements, financial institutions shall:
- (a) take reasonable measures to understand the ownership and control structure of the customer and determine who the natural persons that ultimately own or control the juridical person or arrangement are, including those natural persons who exercise ultimate effective control over the juridical person or arrangement;
 - (c) verify that any person purporting to act on behalf of the customer is so authorized, and identify and verify the identity of that person;
 - (e) verify the legal status of the juridical person or legal arrangement at a minimum by obtaining proof of incorporation or similar evidence of establishment or existence. Information concerning the juridical person or legal arrangement's shall include:
 - (i) name;

- (ii) legal form;
 - (iii) some form of official identification number such as tax identification number, if available;
 - (iv) address which includes country, region/city/town/zonal administration in which the head office is located and, if available, house number, mailing address, telephone number and fax number;
 - (v) names of the general manager or chief executive officer and of directors, if applicable;
 - (vi) provisions regulating the power to bind the juridical person or arrangement;
 - (vii) the resolution of the board of directors, if applicable, or any other authorized body or person that authorizes to open an account; and
 - (viii) identification of those who have authority to operate the accounts.
- (7) In carrying out transactions with any person, a financial institution shall identify the ultimate beneficial owner and take reasonable measures to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source such that the financial institution is satisfied that it knows who the beneficial owner is. A financial institution shall, for all its customers, determine whether the customer is acting on his own behalf or on behalf of another person and, if the customer is found to be another person, it shall take reasonable steps to obtain sufficient identification data to verify the identity of that other person.
- (9) Establishment of a financial institution's new business relationship with a politically-exposed person shall be approved by a senior management member of the financial institution.
- (11) Where a customer has been accepted and the customer or beneficial owner is subsequently found to be, or subsequently becomes, a politically-exposed person, continuation of business relationship with such person shall be approved by a senior management member of the financial institution.
- (13) Financial institutions shall take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as politically- exposed persons.
- (15) Financial institutions shall obtain information on the purpose and intended nature of the business relationship.
- (17) Banks shall perform enhanced due diligence on high risk categories of customers, business relationships or transactions.

- (13) Financial institutions shall give particular attention to business relationships and transactions with natural and judicial persons from countries which do not or insufficiently apply anti-money laundering and combating terrorist financing laws.

Article 7. Account Monitoring

(1) Financial institutions shall conduct ongoing due diligence measures on existing customers and business relationships, including scrutiny of transactions undertaken throughout the course of that relationship to ensure that:

(a) the transactions being conducted are consistent with the financial institution's knowledge of the customers, their business and risk profile, and where necessary, the source of funds; and

(b) documents, data or information collected under the due diligence process are kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships.

(2) Where financial institutions are in a business relationship with a politically-exposed person, they shall conduct enhanced ongoing monitoring.

(3) Financial institutions shall pay special attention to all complex, unusually large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose, such as significant transactions relative to a relationship, transactions that exceed certain limits, very high account turnover inconsistent with the size of the balance, or transactions which fall out of the regular pattern of the activity relating to the account.

(4) Financial institutions shall examine as far as possible the background and purpose of transactions specified under this Article and set forth their findings in writing.

Article 8. Cross-Border Correspondent Banking

(1) With respect to cross-border correspondent banking and other similar relationships, financial institutions, in addition to performing normal customer due diligence measures, shall:

(a) gather sufficient information about a respondent institution to understand fully the nature of the respondent's business and to determine from publicly- available information the reputation of the institution and the quality of supervision, including whether it has been subject to a money laundering or terrorist financing investigation or regulatory action;

(b) assess anti-money laundering and combating terrorist financing controls of the respondent institution, and ascertain that they are adequate and effective; and

(c) document the respective anti-money laundering and combating terrorist financing responsibilities of each institution;

(2) Where a correspondent relationship involves the maintenance of payable-through accounts, banks shall be satisfied that:

(a) their respondent financial institution has performed all the normal customer due diligence obligations set out in this Proclamation on its customers that have direct access to the accounts of the correspondent financial institution; and

(b) the respondent financial institution is able to provide relevant customer identification data upon request to the correspondent bank.

(3) Where a correspondent bank fails to comply with national anti-money laundering and combating terrorist financing laws, financial institutions shall not open an account, commence business relations or perform transaction or shall terminate the business relationship with such correspondent bank and consider making a suspicious transaction report in relation to that correspondent bank.

(4) Financial institutions shall satisfy themselves that respondent banks in foreign countries do not allow business relationship with shell banks.

Article 9. Wire Transfers

(1) For all wire transfers exceeding USD 10,000 or its equivalent in other convertible currencies, ordering banks shall be required to obtain and maintain the originator's:

(1) Identification of a customer does not need to be verified where the customer is itself a

(a) full name;

(b) account number or a unique reference number; if no account number exists;

(c) complete address; and

(d) date and place of birth.

(2) Banks shall adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator

information. **Article 10. Exemptions**

regulated bank or other financial institution that is subject to anti-money laundering and combating terrorist financing laws and regulations;

(2) Credit and debit card transactions are exempted from standard customer due diligence, provided that they are not used as payment tools to effect money transfer.

Article 12. Training Programs

Section II. Keeping Records on Customer's Identification

Article 11. Records on Customer Identification and Maintenance of Records of Transactions

(1) A financial institution shall keep records on customer identification including copies or records of official identification documents like passports, identity cards, driving licenses or similar documents, account files and business correspondence for a period of 10 years after an account is closed to enable it comply with requests from competent authorities.

(2) A financial institution shall maintain, for a period of 10 years, all necessary records of transaction to enable it to comply with information requests from competent authorities.

(3) The records referred to in sub-Article (2) hereinabove shall be kept in sufficient form to permit reconstruction of individual transaction, including the amounts and types of currency involved, if any, so as to provide evidence for prosecution and criminal proceedings.

(1) Financial institutions shall establish ongoing employee training programs which at a minimum incorporate:

- (a) responsibilities under the financial institution's arrangements for money laundering and terrorist financing prevention;
- (b) policies, procedures, controls and practices for obtaining identification evidence, applying "know-your-customer" standard, account monitoring; enhanced due diligence, record keeping and reporting of suspicion of money laundering and terrorist financing;
- (c) audit function to ensure the bank's compliance with anti-money laundering and combating terrorist financing laws, directives, and internal policies and procedures;
- (d) domestic laws related to money laundering and terrorist financing;
- (e) relevant typologies of money laundering and terrorist financing; and
- (f) potential risks, including reputational, operational and legal risks for being involved in laundering the proceeds of crime or financing of terrorism.

(2) A financial institution shall provide to the Bank the dates and descriptions of all anti-money laundering and combating terrorist financing staff training events, at the beginning of each financial year of the Bank.

PART III

DETECTION OF MONEY LAUNDERING AND FINANCING OF TERRORISM

Section I. Establishment of Financial Intelligence Unit (FIU)

Article 13. Establishment of Financial Intelligence Unit (FIU)

- (1) An autonomous Financial Intelligence Unit (hereinafter referred as “**FIU**”) is hereby established to serve as a national authority responsible for receiving, requesting, analyzing and disseminating information concerning money laundering and financing of terrorism, as provided for by this Proclamation.
- (2) The head of FIU shall be appointed by the President of the State of Eritrea. The composition, organization, operation and resources of the Financial Intelligence Unit shall be prescribed by Government directive.

Article 14. Powers and Functions of FIU

- (1) The functions of FIU shall be to:
 - (a) receive, analyze and access reports of suspicious transactions issued by financial institutions;
 - (b) send any reports referred in sub-Article (1)(a) of this Article to the appropriate law enforcement authorities and the supervisory authority where, on the basis of its analysis and assessment, it has determined that there is an element of money laundering or financing of terrorism;
 - (c) send to the appropriate law enforcement authorities any information derived from an inspection carried out pursuant to sub-Article (2)(a) of this Article if it gives FIU reasonable grounds to suspect that a transaction involves offences of money laundering or terrorist financing;
 - (d) identify training requirements and provide such training for any financial institution in respect of customer identification, transaction record keeping, and report obligations and identification of suspicious transactions; and
 - (e) conduct any investigation into money laundering or terrorist financing in the financial institutions only for the purpose of ensuring compliance of the financial institution with the provisions of this Proclamation.
- (2) FIU may also:
 - (a) enter the premises of any financial institution during ordinary business hours to inspect any record kept in respect of money laundering or financing of terrorism, and ask any questions related to such records, make notes and take copies of whole or any part of the record;

- (b) extend assistance to foreign countries with respect to property tracking, monitoring and confiscation orders in accordance with the laws of Eritrea;
- (c) instruct any financial institution to take such steps as may be appropriate to facilitate an investigation that may be conducted by FIU;
- (d) compile statistics and records, disseminate information within Eritrea and elsewhere as may be necessary, make recommendations arising out of information received, issue guidelines to financial institutions and advise the competent authorities;
- (e) provide periodic feedback to the supervisory authority, financial institutions and other relevant agencies regarding outcomes related to the reports or information received;
- (f) conduct research regarding trends and developments in the area of money laundering and financing of terrorism and improved ways of detecting, preventing and deterring money laundering and terrorist financing;
- (g) educate the public and create awareness on matters related to money laundering and terrorist financing;
- (h) enter into agreement with any domestic government institution or agency regarding exchange of information pertaining to money laundering and/ or terrorist financing through signing memorandum of understanding;
- (i) require the police or prosecutorial bodies to report progress and outcomes on matters referred to them; and
- (k) it may perform such other activities incidental to the attainment of its objectives under this Proclamation;

Article 15. Confidentiality

The staff of the FIU shall be required to keep confidential any information obtained within the scope of their duties, even after the cessation of their duties with FIU. Such information shall only be used for the purposes of this Proclamation. Violations of these provisions shall entail liability under the relevant laws of Eritrea.

Article 16. Relations with Foreign Counterpart Agencies

FIU may, on its own initiative or upon request, share information with any foreign counterpart agency that performs similar functions and is subject to similar secrecy obligations and for this purpose, FIU may enter into an agreement or arrangement with the counterpart agency. The information so provided shall be used only for the purposes of combating money laundering and financing of terrorism and only with the consent of the foreign counterpart agency.

Article 17. Access to information

- (1) FIU shall have the authority to request information from any financial institution, supervisory authority and/or law enforcement authority for purposes of this Proclamation.
- (2) FIU shall, in relation to any information it has received in accordance with its functions, have the authority to obtain from any person, subject to reporting obligations, any additional information it deems useful for fulfillment of its function. The information requested shall be provided within the time limit set by FIU.

Article 18. Disclosure to the Supervisory Authority

Whenever FIU determines that a financial institution is not complying or has not complied with the obligation set-out in this Proclamation, it shall inform the supervisory authority accordingly.

Article 19. Annual budget

FIU shall prepare for each new financial year an annual budget which shall be submitted to the Government at least three months prior to the commencement of the financial year.

Article 20. Annual report

The head of FIU shall:

- (1) from time to time advise the President of the State of Eritrea on the activities of FIU and, in particular, on matters that could affect public policy or the priorities to be set by FIU.
- (2) prepare and submit to the President on or before 31st December of each year an annual report reviewing the activities of FIU.

Article 21. Financial Year

The financial year of FIU shall be a period of twelve months commencing on the 1st of January and ending on the 31st of December each year.

Article 22. Auditing

- (1) FIU shall be audited annually by the Auditor-General or auditors designated by him.
- (2) The Auditor-General or his designee may not use or disclose any information related to the activities of FIU that they have obtained or accessed in the course of auditing. Violations of these provisions shall entail liability under the relevant laws of Eritrea.

Section II. Reporting of Suspicious

Article 23. Obligation to Report Suspicious Activities

Financial institutions that have reasonable grounds to suspect that property constitutes offences of money laundering or is linked or to be used for the financing of terrorism shall submit promptly a report setting forth their suspicions to FIU. This obligation shall apply to attempted transactions as well.

Article 24. Cash Transaction Reporting

Financial institutions shall report to FIU cash transactions exceeding USD 10,000 or its equivalent in other convertible currencies, whether conducted as a single transaction or several transactions that appear to be linked.

Article 25. Postponing of Transactions

- (1) Financial institutions shall refrain from carrying out transactions which they suspect to be related to money laundering or financing of terrorism until they have reported their suspicion to FIU for a period not exceeding three working days.
- (2) Where refraining from the carrying out of a transaction in sub-Article (1) above is impossible or is likely to frustrate the efforts to investigate a suspected transaction, the financial institution may execute the transactions and shall report its suspicion to FIU immediately thereafter.

Article 26. Prohibition of Tipping-off

Except where the law prescribes it, financial institution directors, other officers and employees may not disclose or communicate to their customer or a third party that¹⁵

information was provided to FIU or that a report concerning suspected money laundering or financing of terrorism has been or would be submitted to FIU or that a money laundering or financing of terrorism investigation is being or has been carried out. Disclosures or communications regarding suspicious money laundering or financing of terrorism between and among directors, other officers and employees of a financial institution shall not, however, be precluded.

Section III. Exemption from

Liability Article 27. Exemption

- (1) No criminal, civil, disciplinary or administrative proceedings for breach of banking or professional secrecy or contract may be instituted against the supervisory authority or a financial institution, or directors, other officers or employees thereof who in good faith submit reports or provide information in accordance with the provisions of this Proclamation.
- (2) No criminal action for money laundering and financing of terrorism may be instituted against the supervisory authority or a financial institution, or directors, other officers and employees thereof regarding the execution of a suspicious transaction where a report of suspicions was made in good faith pursuant to the provisions of Articles 23, 24, and 25 hereof.
- (3) No action shall lie against FIU, its head or other officers or employees or any person acting under the direction of FIU for acts done in good faith in the exercise of the powers and/or functions provided for in this Proclamation.
- (4) Persons mentioned under sub-Articles (1), (2) and (3) shall, however, be liable under the relevant laws of Eritrea where they abuse or exceed the limits of their powers provided under this Proclamation.

Section IV. Obligations of Supervisory authority

Article 28. Obligations

The supervisory authority, in order to attain the objectives of this Proclamation, shall:

- (1) adopt the necessary measures to establish appropriate criteria for owning, controlling or participating in the directorship, management or operation of a financial institution;
- (2) regulate and supervise financial institutions for compliance with the requirements of this Proclamation through off-site and on-site examinations;
- (3) issue instructions, guidelines or recommendations to assist financial institutions in complying with their obligations set out in this Proclamation;

- (4) cooperate and share information with other competent authorities, and provide assistance in investigations, prosecutions or proceedings relating to money laundering and financing of terrorism;
- (5) develop, in cooperation with FIU, criteria applicable to the reporting of suspicions taking into account other existing and future national and/or international standards;
- (6) report promptly to FIU information concerning suspicious transactions or facts related to money laundering or terrorism financing;
- (7) provide timely and effective cooperation to agencies performing similar functions in other countries, including exchange of information; and
- (8) maintain records on measures adopted and sanctions imposed in enforcing the requirements of this Proclamation.

PART IV

MEASURES, OFFENCES AND PENALTIES

Article 29. Measures to be Taken by Supervisory Authority

The supervisory authority may impose one or more of the following measures on any financial institution which fails to comply with obligations provided under this Proclamation:

- (1) written warning;
- (2) order compliance with specific instructions;
- (3) order regular reports from the financial institution on the measures it is taking;
- (4) fine in an amount not less than Thirty Thousand (30,000.00) Nakfa and no greater than Fifty Thousand (50,000.00) Nakfa;
- (5) restrict the powers of managers, directors or controlling owners, including the appointing of an ad-hoc administrator;
- (6) suspend, restrict or withdraw the license and prohibit certain activities; or
- (7) other measures that may be

deemed necessary. **Article 30. Offences** Any person who:

- (1) enters into or continues business relations with:

- (a) financial institutions registered in countries where they are not physically present and are not affiliated with a regulated financial group subject to effective consolidated supervision, or

- (b) financial institutions in a foreign country that permit their accounts to be used by shell banks;

- (2) fails to maintain adequate, accurate and current information on the beneficial ownership and control structure of juridical persons and arrangements as required by this Proclamation;

- (3) fails to undertake the identification of customers and risk management¹⁸

measures as required by this Proclamation;

- (4) fails to undertake the monitoring measures as required by this Proclamation;
- (5) fails to maintain the records as per the requirements of this Proclamation;
- (6) fails to implement internal control programs as required by this Proclamation;
- (7) fails to provide information or records or access thereto in a timely fashion when requested by FIU;
- (8) fails to submit a report to FIU as required by this Proclamation;
- (9) discloses to a customer or a third party such information as referred to in Article 26 hereof;

commits an offence and shall, upon conviction by the competent court, be punishable with simple imprisonment from three months to one year or fine not exceeding Ten Thousand (10,000.00) Nakfa.

Article 31. Criminal Offence of Money Laundering

(1) Whosoever intentionally engages in:

- (a) the conversion or transfer of property knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of such property or of assisting any person who is involved in the commission of the predicate offense to evade the legal consequence of his actions;
- (b) the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime; and/or
- (c) the acquisition, possession or use of property, knowing at the time of receipt that such property is the proceeds of crime;

commits money laundering offence and shall, upon conviction by the competent court, be punishable with rigorous imprisonment from five years to ten years, and fine not exceeding Fifty Thousand (50,000.00) Nakfa.

(2) An attempt to commit a money laundering offence or aiding, abetting, facilitating or counseling the commission of any such offence shall be punished as if the offence had been committed.

(3) Participation in, association with or conspiracy to commit a money laundering offence shall be punishable with the same penalty provided for in sub-Article (1) above.

Article 32. Criminal Offence of Financing of Terrorism

(1) Any person who, by any means, directly or indirectly, intentionally, provides or collects funds, or attempts to do so, with the knowledge and intention that they would be used in full or in part to carry out a terrorist act, or by a terrorist or terrorist organization commits financing of terrorism offence shall, upon conviction by the competent court, be punishable with rigorous imprisonment from five years to ten years, and fine not exceeding Fifty Thousand (50,000.00) Nakfa..

(2) An attempt to commit financing of terrorism offence or aiding, abetting, facilitating or counseling the commission of any such offence shall be punished as if the offence had¹⁸

been committed.

(3) Participation in, association with or conspiracy to commit financing of terrorism offence shall be punishable with the same penalty provided for in sub-Article (1) above.

Article 33. Penalties Applicable to Juridical persons

(1) Any juridical person other than the State of Eritrea on whose behalf or for whose benefit money laundering and terrorism financing offence has been committed by any natural person, acting either individually or as part of an organ of the juridical person, who has a leading position within the juridical person or based on a delegated power or an authority to take decisions on behalf of the juridical person shall, upon conviction by the competent court, be punishable with a fine not exceeding One Hundred Thousand (100,000.00) Nakfa, irrespective of the conviction of those individuals as perpetrators of or accomplices to the offence.

(2) The liability of the juridical person shall not preclude that of the natural person.

(3) Without prejudice to the provisions of sub-Article (1) above, a juridical person may also be held liable where the lack of supervision or control over a natural person referred to in sub-Article (1) above has made possible the commission of money laundering or terrorism financing offence. The competent court may order one or more of the following measures on a juridical person found guilty under this Article:

- (a) prohibit permanently or for a maximum period of two years from directly or indirectly carrying on certain business activities;
- (b) place under court supervision;
- (c) close permanently or for a period of two years the premises which were used for the commission of the offence; and /or
- (d) wind up.

Article 34. Provisional Seizure of Property

(1) The competent authority may, either on its own initiative or that of the Attorney General's Office, request the court to impose provisional measures of seizing property associated with money laundering or terrorism financing.

(2) This provision shall apply without prejudice to the rights of third parties acting in good faith.

(3) Such provisional measures may be lifted at any time by the court that

imposed them. Article 35. Provisional Freezing of Funds

(1) The funds associated with money laundering and those of terrorists and those who finance terrorists and terrorist organizations shall be frozen by the decision of the supervisory authority and such decision shall define the terms, conditions and time limits applicable to the freezing. A financial institution holding such funds shall immediately freeze them upon receiving the decision of the supervisory authority.

(2) A financial institution shall report without delay to FIU the existence of funds linked to money laundering and of terrorists, terrorist organizations, or individuals or entities associated with or that belong to such individuals or organizations.

(3) A financial institution which fails to comply with the provisions of sub-Articles (1) and (2) above shall be subject to measures under Article 29 of this Proclamation.

Article 36. Confiscation of Property

(1) Without prejudice to the provisions of Articles 31 and 32 hereof, the court shall order the confiscation of:

(a) property constituting the proceeds of crime; and/or

(b) property forming the object of the predicate offence;

(2) The court shall, however, not order confiscation of property transferred to a third party if it is satisfied that the third party has acquired the property by paying reasonable price or in return for the provision of services corresponding to its value or any other legitimate grounds, and that he was unaware of its illicit origin.

PART V

MISCELLANEOUS PROVISIONS

Article 37. Establishment of Central Seizure and Confiscation Agency

An autonomous Central Seizure and Confiscation Agency (hereinafter “**The Agency**”) shall be established by Government directive in order to manage and administer properties subject to seizure and confiscation pursuant to this Proclamation. The Agency shall, in particular:

(1) assist the competent authorities and other law enforcement bodies responsible for investigating and prosecuting offences, in identifying and tracing property that may be subject to seizure and confiscation. The Agency shall collect and maintain all data associated with its mandate and manage seized properties in cooperation with the Attorney General’s Office or the court overseeing the investigations;

(2) administer or manage seized property in accordance with the feasible means available to it, and with a view to returning or confiscating such property in a condition reasonably comparable to its condition at the time of the seizure. The court overseeing the investigations may authorize the sale of property likely to incur significant depreciation as the result of management or for which the cost of preservation is unreasonably disproportional to its value; and

(3) manage seized sums of money unless they were already entrusted to a financial institution or were seized or blocked there. **Article 38.**

Judicial Review

(1) Any person aggrieved by an adverse decision of the Bank under this Proclamation may seek a review by the High Court of Eritrea within thirty days of such decision.

(2) The High Court shall set aside a decision which it finds is:

(a) arbitrary, an abuse of discretion, or otherwise not consistent with law; or

(b) unsupported by substantial evidence.

(3) The decision of the High Court shall be final.

Article 39. International Cooperation

(1) A court or competent authority in Eritrea shall cooperate with courts or other competent authorities of another country in taking appropriate measures to provide assistance in matters concerning money laundering and terrorist financing, including the exchange of information, joint investigations and court proceedings such as provisional measures, confiscation and extradition, in accordance with this Proclamation and within the limits of the Eritrean laws.

(2) A final judicial order or judgment that provides for the confiscation of property connected to money laundering or the financing of terrorism, issued by a court or other competent authority of another country may, subject to Eritrean laws, be recognized by Eritrean courts as evidence.

Article 40. Power to Issue Regulations

The Bank may issue regulations for the effective implementation of the provisions of this Proclamation.

Article 41. Effective Date

This Proclamation shall enter into force as of the date of its publication in the Gazette of Eritrean Laws.

Done at Asmara, this 8th day of September, 2014,
Government of Eritrea.