

REPUBLIC OF NAURU

ANTI-MONEY LAUNDERING AND TARGETED FINANCIAL SANCTIONS BILL 2023

EXPLANATORY MEMORANDUM

The *Anti-Money Laundering and Targeted Financial Sanctions Bill 2023* is a Bill for the *Anti-Money Laundering and Targeted Financial Sanctions Act 2023*.

This memorandum provides an explanation of the Bill and is only intended to indicate the general effect.

EXPLANATION OF CLAUSES

PART 1 - PRELIMINARY

Clause 1 provides that, once enacted, the short title of the Bill will be the *Anti-Money Laundering and Targeted Financial Sanctions Act 2023*.

Clause 2 provides that the Act commences upon certification by the Speaker.

Clause 3 provides for the objectives of the Bill. The objectives of the Bill stem from the 40 Recommendations of the Financial Action Task Force ('FATF'). The FATF is an inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and proliferation financing of weapons of mass destruction. The FATF Recommendations have been adopted by the Asia Pacific Group of which Nauru is a member.

This Clause provides that the objectives of the Bill are to:

- (a) provide for the effective legal, regulatory and operational measures for combating money laundering, terrorist financing and proliferation financing and other related threats in the Republic;
- (b) provide for measures enabling the detection and prevention of money laundering, terrorist financing and proliferation financing;
- (c) protect the financial system of the Republic from being used for money laundering and the financing of terrorism and proliferation financing;
- (d) provide for and empower the Financial Intelligence Unit and certain other departments or government agencies to carry out their powers, functions and responsibilities under the Bill or any other written law; and

- (e) enable the Republic to enforce targeted financial sanctions to prevent and arrest terrorism, terrorist financing and proliferation financing;
- (f) make provision for reporting entities to establish procedures and commit resources to comply with the requirements of combatting money laundering, terrorist financing and proliferation financing;
- (g) continue to further enhance the international reputation of the Republic where appropriate by the adoption of the financial action task force and other mutually agreed relevant international commitments;
- (h) facilitate cooperation amongst reporting entities domestically and internationally, with government agencies, international partners which are vested with similar duties, functions and responsibilities; and
- (i) establish public confidence in the financial system of the Republic.

PART 2 – DEFINITIONS

Clause 4 defines the key terms that are used in the Bill.

- The term '*account*' means a facility or arrangement through which a reporting entity takes custody of or accepts deposits of property or allows returning, withdrawals or transfers of property of a customer and includes:
 - (a) a facility or arrangement by which a reporting entity pays, collects or draws on a bearer negotiable instrument on behalf of another person, provides secured storage facility to the customers to keep his or her property;
 - (b) a closed account, the records of which a reporting entity is required to maintain for 7 years;
 - (c) an inactive or dormant account; and
 - (d) an account with no balance.

This definition domesticates the requirements of the FATF Standards which requires the definition to include similar business relationships between financial institutions and their customers.

- The term '*activity*' means an act or omission made by a person.
- The term '*AML/CFT*' means Anti-Money Laundering and Combatting the Financing of Terrorism and other financial crime, in or outside of the Republic. The term '*AML/CFT*' is defined for the purposes of Recommendations 1, 2, 13, 14, 1, 18, 19, 26, 27, 28, 30, 33, 34, 35 and of the FATF Standards.
- The term '*AML/CFT compliance programme*' means an AML/CFT compliance programme developed under Clause 19.

- The term '*bearer negotiable instruments*' means a bill of exchange, cheque, promissory note, bearer bond, traveller's cheque, money order, postal order or similar order or any other instrument prescribed by regulations. The term '*AML/CFT*' is defined for the purposes of Recommendation 32 of the FATF Standards.
- The term '*beneficial owner*' has the same meaning given to it under Section 5 of the *Beneficial Ownership Act 2017* and any amendments to the definition under that Act, is to *mutatis mutandis* apply to the Bill. The term '*beneficial owner*' is defined for the purpose of Recommendations 10, 12, 24, 25, 26 and 28 of the FATF Standards.
- The term '*beneficiary entity*' means a financial institution that receives a request from a person to receive an electronic currency transfer;
- The term '*business relationship*' means a business, professional or commercial relationship that is connected with the professional activities of a reporting entity and expected at the time when the initial contact is established, to have an element of duration. The term '*business relationship*' is defined for the purpose of Recommendations 10, 11 and 12 of the FATF Standards.
- The term '*cash*' means currency in physical form. The term '*cash*' is defined for the purpose of Recommendations 22, 23 and 32 of the FATF Standards.
- The term '*criminal conduct*' is defined in paragraphs:

Paragraph (a) provides that it is conduct that occurs in and constitutes an offence in the Republic for which the maximum penalty is a term of imprisonment of 2 years or more or the imposition of a fine of more than \$5,000.

Paragraph (b) provides that it is conduct that occurred outside of the Republic, but had it occurred in the Republic, would constitute an offence in the Republic for which the maximum penalty under the law of the Republic is a term of imprisonment of 2 years or more or the imposition of a fine of more than \$5,000.

Paragraphs (a) and (b) are not new. These are currently provided for in the definition of '*serious offence*' under the *Proceeds of Crimes Act 2014*. There is an increase in the threshold of the penalty for imprisonment, which is increased from 12 months to 2 years.

Paragraph (c) of the definition of '*criminal conduct*' includes conduct that constitutes an offence under Section 234, 239, 242, 250, 251, 252, 253, 254 or 255 of the *Customs Act 2014*:

- (i) Section 234 provides for the offence of adapting craft for smuggling;
- (ii) Section 239 provides for the offences in relation to manufacture, movements and storage of goods;

- (iii) Section 242 provides for the offences in relation to entries that are required or are made erroneously or with defect.
- (iv) Section 250 provides for the offences in relation to importation or exportation of prohibited goods;
- (v) Section 251 provides for offences in relation to exportation of goods;
- (vi) Section 252 provides for offence of defrauding the revenue of Customs;
- (vii) Section 253 provides for the offence of possession or custody of uncustomed goods or prohibited imports;
- (viii) Section 254 provides for the purchase, sale exchange of uncustomed goods or prohibited imports; and
- (ix) Section 255 provides for the offence of concealing goods that are dutiable or prohibited goods.

Paragraph (d) of the definition of '*criminal conduct*' includes the Section 58 of the *Copyright Act 2019*. Section 58 provides for the general offence under that Act. It provides that where a person infringes any rights or related rights of an author or owner of any copyright or related rights, such person commits an offence and upon conviction is liable to a penalty under Section 59.

Paragraph (e) of the definition of '*criminal conduct*' includes the non-payment or evasion of any form of tax, duty or other statutory levy.

Paragraph (f) of the definition of '*criminal conduct*' includes conduct that consists of insider trading, including dealing in publicly traded property or securities whilst in possession of information, that is not generally available but, which would materially affect the price or value of the property or securities if it were generally available.

Paragraph (g) of the definition of the '*criminal conduct*' includes conduct that consists of market manipulation, being conduct involving entering into or carrying out two or more transactions for the purpose of influencing the price of the subject-matter of the transaction in order to induce other persons to buy, sell, or subscribe for the same subject-matter.

The term '*criminal conduct*' is defined for the purpose of Recommendation 3 of the FATF Standards which deals with the money laundering offence. The intention is to cover all serious offences with a view of including the widest range of predicate offence for the purposes of money laundering.

- The term '*criminal property*' means property, whether situated within or outside of the Republic, that is, in whole or in part and whether directly or indirectly, derived or realised

from, obtained, used or intended to be used, in connection with criminal conduct and includes:

- (a) any interest in such property;
- (b) any dividend, other income or value accruing from or generated by such property; and
- (c) property that was later converted, transformed or intermingled from such property; regardless of who carried out the criminal conduct or who benefited from it.

The term '*criminal property*' is defined for the purpose of the offence of money laundering. By providing that this is property derived or realised from, obtained, used or intended to be used, in connection with criminal conduct, it extends the scope of money laundering. It includes the widest possible predicate offences which are listed within the definition of '*criminal conduct*'. This is in line with Recommendation 3 of the FATF Standards.

- The term '*currency*' means legal tender in physical or non-physical form or tender, that is customarily used and accepted as a medium of exchange whether in or outside of Nauru. The term '*currency*' is relevant to the domestication of all the FATF Standards.
- The term '*customer*' means in relation to a transaction, business relationship or an account, means the person in whose name or for whom the transaction, relationship or account is arranged, opened or undertaken and includes:
 - (a) a signatory to the transaction, relationship or account;
 - (b) any person who is authorised to conduct the transaction or control the relationship or account;
 - (c) any person who has been assigned or transferred a business relationship or account or rights or obligations under the transaction or relationship; or
 - (d) any other prescribed person or prescribed class of persons.

The term '*customer*' is defined for the purposes of Recommendation 10, 12, 13, 15, 16, 17, 22, 23, 24 and 40 of the FATF Standards.

- The term '*customer due diligence*' means the obligations that are imposed on reporting entities by Division 3 of Part 4. The term '*customer due diligence*' is defined for the purposes of Recommendation 10, 12, 13, 15, 16, 17, 22, 23, 24 and 40 of the FATF Standards.
- The term '*deal or dealing with property*' includes a number of things. It includes:
 - (a) concealing property;

- (b) disguising property;
- (c) converting property;
- (d) transferring property;
- (e) removing property from the Republic;
- (f) bringing the property into the Republic;
- (g) receiving property;
- (h) acquiring property;
- (i) using property;
- (j) possessing property;
- (k) engaging in a banking transaction relating to property;
- (l) entering into an agreement, arrangement or understanding in relation to property; or
- (m) consenting to, authorising or enabling any of the actions referred to in any of paragraphs (a) to (l).

The term '*deal or dealing with property*' is defined for the purpose of Recommendation 3 of the FATF Standards which deals with the offence of money laundering. This term constitutes as one of the elements to prove for the offence of money laundering. The term '*money laundering*' is defined to mean 'deal or dealing with property that is criminal property'

- The term '*document*' means any record of information and includes:
 - (a) anything on which there is writing;
 - (b) anything on which there are marks, figures, symbols or perforations having meaning for persons qualified to interpret them;
 - (c) anything from which sounds, images or writings can be produced, with or without the aid of anything else;
 - (d) a map, plan, drawing, photograph or similar thing;
 - (e) bearer negotiable instruments; or
 - (f) an electronic document.

The term '*document*' is defined for the purposes of Recommendations 1 and 6 of the FATF Standards. It relates to aspects of Recommendation 3 in that a document is also regarded as property, which is therefore relevant to the offence of money laundering. It is also relevant to Recommendation 10 and 11 of the FATF Standards.

- The term '*domestic electronic currency transfer*' means an electronic currency transfer, or a chain of electronic currency transfers, where the originating entity and the beneficiary entity are located in the Republic. The term '*domestic electronic currency transfer*' is defined for the purpose of Recommendations 15 and 20 of the FATF Standards.
- The term '*electronic currency transfer*' means a transaction carried out on behalf of a person who is the sender through a reporting entity by electronic means with a view to making an amount of currency available to a person who is the receiver, who may also be the sender at another reporting entity, but excludes:
 - (a) transfers and settlements between reporting entities where both the sender and the receiver are reporting entities acting on their own behalf; and
 - (b) credit and debit card transactions where the credit or debit card is issued within the Republic.

The term '*electronic currency transfer*' is defined for the purpose of Recommendations 10, 15 and 20 of the FATF Standards.

- The term '*false name*' means a fictitious, pseudo name, incorrect, anonymous or any other name which is not a registered name under the *Births, Deaths and Marriages Act 2017* or any other similar legislation in another country. The term '*false name*' is defined for the purpose of Recommendations 10 of the FATF Standards.;
- The term '*fiat currency*' means currency issued by a government as legal tender.
- The term '*financial crime*' is a new definition however, it refers to newly proposed offences, and existing offences.

Paragraph (a) includes the offence of money laundering as provided under Clause 9.

Paragraph (b) includes the offence of dealing with property reasonably suspected to be criminal property as provided under Clause 10.

Paragraphs (c) refers to an offence for breach of regulations made under Clause 125 of the Bill.

Paragraph (d), (e) and (f) refer to Sections 10 (terrorism financing), 11 (provision of property or services to terrorist group) and 12 (dealing with terrorist property) of the *Counter Terrorism and Transnational Organised Crime Act 2004*.

Paragraph (g) refers to an offence under Part 9 of the *Crimes Act 2016* which provides for theft, fraud, bribery and related offences.

Paragraph (h) refers to the provision of financial support to persons, that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery.

Paragraph (i) refers to the provision of financial support to countries or states that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery where such conduct violates one or more resolutions of the United Nations Security Council.

Paragraph (j) refers to any other conduct or class of conduct prescribed by regulations.

Paragraph (k) refers to any conduct outside of the Republic that, had the conduct occurred in the Republic, would constitute an offence referred to in paragraphs (a) to (f) or an offence prescribed pursuant to paragraph (j).

Paragraphs (a) to (k) apply irrespective of whether or not criminal or other proceedings have been brought, in or outside of the Republic, in relation to that conduct.

The term '*financial crime*' is defined for the purposes of Recommendations 1, 3, 10, 12, 15 and 22 of the FATF Standards.

- The term '*financial group*' has the meaning given by Clause 5. The term '*financial group*' is defined for the purposes of Recommendations 10, 14, 18 and 26.
- The term '*financial institution*' is not a new definition. The proposed definition provides the list of activities that are currently provided for under the Schedule of the current *Anti-Money Laundering 2008*. That is a list of activities of financial institutions. The proposed definition of '*financial institution*' means any natural or legal person engaged in the conduct of the following activities or operations:
 - (a) accepting of deposits and other repayable funds from the public, including private banking;
 - (b) lending, including, but not limited to, consumer credit, mortgage credit, factoring with or without recourse and financing of commercial transactions, including forfeiting;
 - (c) finance leasing;
 - (d) provision of a money or value transfer service which for example is conducted by Western Union;

- (e) issuing and managing the means of payment which includes, credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic transactions and virtual currencies
- (f) issuing financial guarantees and commitments;
- (g) trading in, bearer negotiable instruments, foreign exchange, exchange, interest rate and index instruments, transferable securities or commodity futures trading;
- (h) participation in securities issues and the provision of financial services related to such issues;
- (i) individual and collective portfolio management;
- (j) safekeeping and administration of currency, bearer negotiable instruments or liquid securities on behalf of other persons;
- (k) investing, administering or managing funds or money on behalf of other persons;
- (l) underwriting and placement of insurance, including insurance intermediation by agents and brokers;
- (m) money and currency conversion; or
- (n) provision of services in relation to virtual assets, including, but not limited to exchange between virtual assets and fiat currencies, exchange between one or more forms of virtual assets, the transfer of virtual assets, safekeeping or administration of virtual assets or instruments enabling control over virtual assets and participation in and provision of financial services relating to an issuer's offer or sale of virtual assets.

The term '*financial institution*' is defined for the purpose of Recommendation 10 of the FATF Standards.

- The term '*FIU*' means the Financial Intelligence Unit established under the *Anti-Money Laundering Act 2008* and continued under Clause 68. This is not a new definition. It is currently provided under Section 2 of the *Anti-Money Laundering Act 2008*.
- The term '*foreign financial intelligence body*' means a foreign institution or agency which:
 - (a) has functions and powers similar to those of the FIU; or
 - (b) is an institution or agency of a foreign state or an international organisation established by the governments of various States.

The term '*foreign financial intelligence body*' is defined for the purposes of Recommendations 38 and 40 of the FATF Standards.

- The term '*foreign law enforcement body*' means a foreign institution or agency which:
 - (a) has law enforcement functions and powers;
 - (b) is an institution or agency of a foreign state or an international organisation established by the governments of various States.

The term '*foreign law enforcement body*' is defined for the purposes of Recommendations 38 and 40 of the FATF Standards.

- The term '*high value dealer*' means a person who is in the business of buying and selling the following articles by way of currency, cash, transactions or series of related cash transactions:
 - (a) jewellery;
 - (b) watches;
 - (c) gold, silver or other precious metals;
 - (d) diamonds, sapphire and other precious metals;
 - (e) paintings;
 - (f) protected Republic or foreign objects;
 - (g) artistic and cultural artefacts; and
 - (h) any such other articles as may be prescribed.

The term '*high value dealer*' is defined for the purposes of Recommendations 10, 22 and 34. A high value dealer is included in the definition of reporting entity. As such a *high value dealer* is required to comply with the requirements domesticating Recommendations 10, 22 and 34 of the FATF Standards.

- The term '*identification information*' means:
 - (a) in the case of an individual, the person's full name, current or last known address and occupation; and
 - (b) in the case of a body corporate, other body or any other legal person, its name, legal form, registration number, registered address and principal place of business where it is different from the registered address.

The term '*identification information*' is defined for the purposes of Recommendations 10 and 17 of the FATF Standards. The requirements relating to identification information in the Bill include those relating to customer due diligence and relying on third parties for customer due diligence.

- The term '*intermediary entity*' means a financial institution that receives a request to receive and transmit an electronic currency transfer on behalf of an originating entity and a beneficiary entity or another intermediary entity. The term '*intermediary entity*' is defined for the purposes of Recommendations 10, 16 and 17 of the FATF Standards. The requirements relating to '*intermediary entities*' in the Bill include those relating to customer due diligence and relying on third parties for customer due diligence.
- The term '*international electronic currency transfer*' means a single or a chain of electronic currency transfers that occur where one of the following parties to the transaction is located outside the Republic:
 - (a) the originating entity;
 - (b) the intermediary entity; or
 - (c) the beneficiary entity.

The term '*international electronic currency transfer*' is defined for the purposes of Recommendations 10, 11 and 16 of the FATF Standards.

- The term '*money laundering*' means deal or dealing with property that is criminal property. The term '*money laundering*' is defined for the purpose of Clause 9(1) which provides that a person must not engage in '*money laundering*'. When a person engages in '*money laundering*', it means according to this definition, that the person has firstly, *dealt with property* and secondly, that such property is *criminal property*.

According to the definition of '*deal or dealing with property*' it includes, (which means it is not limited to), matters listed in paragraphs (a) to (m) of that definition. It includes concealing, disguising, converting, transferring, removing from Nauru, bringing into Nauru, receiving, acquiring, using, possessing property or engaging in a banking transaction relating to property or entering into an agreement, arrangement or understanding in relation to property. It also includes consenting to, authorising or enabling all of the aforementioned listed actions. Therefore, when a person does any of these things listed in the definition of '*deal or dealing with property*' it means that the person has met one of the elements that amount to money laundering. Furthermore, subclause (2) provides that for the purposes of the definition of '*deal or dealing with property*', concealing or disguising property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights in relation to it.

According to the definition of '*criminal property*' it means property, whether situated within or outside of the Republic, that is, in whole or in part and whether directly or indirectly,

derived or realised from, obtained, used or intended to be used, in connection with criminal conduct and includes matters listed in that definition. The definition of '*criminal property*' is connected to '*criminal conduct*'. This means that such criminal property is connected to any of the offences or conduct that are listed in the definition of '*criminal conduct*'.

Therefore, the definition of the term of '*money laundering*' ties in the following factors:

- (i) deal or dealing with property;
- (ii) property that is criminal property; and
- (iii) such criminal property connected in some way to criminal conduct.

This definition of the term '*money laundering*' retains the substance of the current definition in the *Anti-Money Laundering Act 2008*. By providing a relationship between criminal property and criminal conduct, this definition clarifies the relationship between money laundering and predicate offences. The definition of the term '*money laundering*' is for the purposes of Recommendation 3 of the FATF Standards.

- The term '*money or value transfer service*' means a service that involves:
 - (a) the acceptance of currency, cheques, other monetary instruments or other stores of value; and
 - (b) the payment of a corresponding sum in currency or other form to a beneficiary by means of a communication, message or transfer or through a clearing network to which the provider of the service belongs.

The term '*money or value transfer service*' is defined for the purposes of Recommendations 10, 14 and 16 of the FATF Standards.

- The term '*occasional transaction*' means any transaction that does not take place in the context of a business relationship. The use of this term is not new as it is also defined under Section 34 of the *Anti-Money Laundering Act 2008*. The term '*occasional transaction*' is defined for the purposes of Recommendations 10, 11, 15, 25 and 26 of the FATF Standards.
- The term '*originating entity*' means a financial institution that receives a request from a person to execute an electronic currency transfer. The term '*originating entity*' is defined for the purposes of Recommendations 10, 15, 16 of the FATF Standards.
- The term '*politically exposed person*' has the meaning given under Clause 6. This is not a new definition and it is currently defined under Section 2 of the *Anti-Money Laundering Act 2008*. The term '*politically exposed person*' is defined for the purpose of Recommendations 10, 11 and 12 of the FATF Standards.

- The term '*property*' means assets of any kind, whether real or personal, corporeal or incorporeal, moveable or immovable, tangible or intangible, whether situated within or outside the Republic and includes documents or instruments in electronic, digital or other form, evidencing title to or an interest in, any such assets:
 - (a) an enforceable right of action in relation to any such assets;
 - (b) a legal or equitable interest, in any such assets; and
 - (c) virtual currency or assets or non-fungible tokens.

The use of the term '*property*' is not new as it is also defined under Section 2 of the *Anti-Money Laundering Act 2008*. It is defined for the purposes of Recommendations 3, 4, 5, 6, 30, 31, 33 and 38 of the FATF Standards.

- The term '*record*' means any material on which data or information is recorded or marked and which is capable of being read or understood by a person, computer system or other device. The term '*record*' is defined for the purposes of Recommendations 3, 4, 5, 6, 10, 11, 30, 31, 33 and 38 of the FATF Standards.
- The term '*reporting entity*' has the meaning given under Clause 7. The term '*reporting entity*' is defined for the purposes of Recommendations 1, 6, 7, 10, 11, 16, 17, 22, 23, 24, 25, 28, 31, 34, 35, 37 and 40 of the FATF Standards.
- The term '*Secretary*' means the Secretary for Justice and Border Control.
- The term '*sender*' means a person who requests a reporting entity to execute an electronic currency transfer. The term '*sender*' is defined for the purposes of Recommendation 10 of the FATF Standards.
- The term '*senior management*' means the directors of the reporting entity or the key employees of the reporting entity who are appointed to ensure that the reporting entity is effectively controlled on a day to day basis and who have responsibility for overseeing the reporting entity's proper conduct. The term '*senior management*' is defined for the purpose of Recommendation 1, 10, of the FATF Standards.
- The term '*shell bank*' means a bank that:
 - (a) is incorporated or licensed in a country in which the bank has no physical presence; and
 - (b) is not affiliated with a financial group that is subject to effective consolidated supervision.

The criteria in both paragraphs (a) and (b) must be met in order for a bank to be deemed a shell bank. The term '*shell bank*' is defined for the purposes of Recommendation 13 of the FATF Standards.

- The term '*Supervisor*' means the Financial Intelligence Supervisor appointed under Clause 70;
- The term '*supervisory authority*' means any body or agency having regulatory, supervisory or licensing authority over a reporting entity. The term '*supervisory authority*' is defined for the purpose of Recommendations 10, 12 and 29 of the FATF Standards.
- The term '*suspicious activity report*' means a report submitted under Clause 59. The term '*suspicious activity report*' is defined for the purposes of Recommendation 20 of the FATF Standards.
- The term '*suspicious transaction*' means a transaction that gives rise to a reasonable suspicion that it relates to the contravention of the Bill. The term '*suspicious transaction*' is defined for the purposes of Recommendations 20 and 34 of the FATF Standards.
- The term '*transaction*' has the meaning given by Clause 8.
- The term '*value transfer service*' means a service that involves the acceptance of currency, cheques, other monetary instruments or other stores of value and the payment of a corresponding sum in currency or other form, to a beneficiary by means of a communication, message or transfer or through a clearing network to which the provider of the service belongs. The term '*value transfer service*' is defined for the purposes of Recommendations 10, 14 and 16 of the FATF Standards.
- The term '*verifying evidence*' means reliable official source documents, data, information or other evidence that is reasonably capable of verifying the identity of the person. The term '*verifying evidence*' is defined for the purposes of Recommendation 10 of the FATF Standards.
- The term '*verifying the identity*' means verifying the accuracy of the identification information for the person using verifying evidence for the person. The term '*verifying the identity*' is defined for the purposes of Recommendation 10 of the FATF Standards.
- The term '*virtual asset*' means a digital representation of value that is digitally traded or transferred and that can be used for payment or investment purposes, but does not include digital representations of fiat currencies, securities and other financial assets. The term '*virtual asset*' is defined for the purposes of Recommendation 10 of the FATF Standards.

Subclause (2) of this Clause provides that for the purposes of the definition of '***deal or dealing with property***', concealing or disguising property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights in relation to it. This rule further domesticates Recommendation 3 of the FATF Standards.

Clause 5 provides for the meaning of '*financial group*'. Subclause (1) provides that a group of 2 or more legal persons is a financial group. This is where the group consists of a parent company

or other type of legal person and the parent company or that other legal person exercises control and coordinating functions over the rest of the group. This includes branches and subsidiaries, for the application of group policies and controls and taken as a whole.

Subclause (2) provides that for the avoidance of doubt, members of a financial group, including the parent company, branches and subsidiaries, may be in different countries.

The term '*financial group*' is defined to domesticate the requirements of Recommendations 10, 14, 18 and 26 of the FATF Standards.

Clause 6 provides for the meaning of '*politically exposed person*'. This is not a new term. This term is currently provided for under Section 2 of the current *Anti-Money Laundering Act 2008*.

Subclause (1) provides that several categories of persons are defined as politically exposed persons. Firstly, it includes persons entrusted with prominent public functions by a foreign country and includes but is not limited to the President or the head of the government, a senior politician, a senior government official, a senior judicial official, a senior military official, a senior executive of a State-owned Corporation and a senior political party official.

Subclause (2) provides the second category. This includes persons who are entrusted with a prominent function by an international organisation and includes but is not limited to a director, deputy director, a member of the board or governing body of the organisation and a person holding an equivalent position within the organisation.

Subclause (3) provides the third category. This includes persons entrusted in Nauru with prominent public functions is a politically exposed person. It includes but is not limited to:

- (a) the President of the Republic;
- (b) the Speaker;
- (c) a Minister;
- (d) a Deputy Minister;
- (e) the Deputy Speaker;
- (f) a Member of Parliament;
- (g) a head of a department;
- (h) the Chief Justice and a judge of the Supreme Court;
- (i) a Chief Executive Officer and the Chairperson of the Board of an instrumentality of the Republic or a prescribed public enterprise under the *Public Enterprise Act 2019*; and

(j) any other person as may be prescribed.

Subclause (4) provides the fourth category. This includes a person who is a family member or close associate of a person referred to in subclauses (1) to (3).

The term '*politically exposed person*' is defined for the purposes of domesticating the requirements of Recommendation 12 of the FATF Standards.

Clause 7 provides for the meaning of '*reporting entity*'. The definition of reporting entity is very extensive. It includes in any person that undertakes banking under the *Banking Act 1975*, a financial institution, a real estate agent, a person operating a casino or conducting a lottery, including those carried out over the internet or a high value dealer.

A '*reporting entity*' also includes a corporation:

- (i) forming partnerships or other legal arrangements;
- (ii) acting as, or arranging for another person to act as, a director or secretary of a company or a partner of a partnership or a similar position in relation to other bodies or legal arrangements;
- (iii) providing a registered office, business address or accommodation, correspondence or administrative address; and
- (iv) acting as, or arranging for another person to act as, a nominee shareholder for another person.

A '*reporting entity*' includes a trust:

- (i) providing a registered office, business address or accommodation, correspondence or administrative address; and
- (ii) acting as or arranging for another person to act as, a trustee of an express trust.

A '*reporting entity*' also includes a legal practitioner or an accountant when they prepare for or carry out transactions for their clients relating to buying or selling real estate, managing client money, securities or other assets, managing bank, savings or securities accounts, organising contributions for the creation, operation or management of companies, creating, operating or managing legal persons or legal arrangements and buying and selling of business entities.

A '*reporting entity*' also includes a person collecting, holding, cashing in, remitting or delivering cash as part of a business providing payroll services.

A '*reporting entity*' excludes a person or class of persons prescribed under this Bill.

The term '*reporting entity*' is defined for the purposes of domesticating Recommendations 1, 6, 7, 10, 11, 16, 17, 22, 23, 24, 25, 28, 31, 34, 35, 37 and 40 of the FATF Standards.

Clause 8 provides for the meaning of '*transaction*'. A transaction is defined as a deposit, withdrawal, exchange or transfer of property, in physical currency, by cheque, payment order or other instrument, by electronic or other non-physical means or in satisfaction, in whole or part, of any contractual or other legal obligation. Transaction also includes the establishment of a business relationship, the opening of an account, the engagement of a service, any payment made in respect of a lottery, bet or other game of chance, the establishment or creation of a body or legal arrangement or any other transactions or class of transactions prescribed by the regulations.

The term '*transaction*' is defined for the purposes of meeting the requirements of Recommendation 10 of the FATF Standards.

PART 3 – MONEY LAUNDERING

Clause 9 provides for the offence of money laundering. Subclause (1) provides that a person must not engage in money laundering.

Subclause (2) provides that a person who contravenes subclause (1) commits an offence. The penalty for the offence in the case of an individual is a fine not exceeding \$500,000 or imprisonment for a term not exceeding 20 years, or both. The penalty for the offence in the case of a body corporate is a fine not exceeding \$2,500,000.

The term '*money laundering*' is defined under Clause 4 as dealing with property that is criminal property. The terms '*deal or dealing with property*' and '*criminal property*' are also defined under Clause 4. Therefore, in order for the offence of '*money laundering*' to be proved, the elements that must be proven, are that the person dealt with property and such property is criminal property.

Deal or dealing with property includes, (which means it is not limited to), matters listed in paragraphs (a) to (m) of that definition. It includes concealing, disguising, converting, transferring, removing from Nauru, bringing into Nauru, receiving, acquiring, using, possessing property or engaging in a banking transaction relating to property or entering into an agreement, arrangement or understanding in relation to property. It also includes consenting to, authorising or enabling all of the aforementioned listed actions. Therefore, when a person does any of these things listed in the definition of '*deal or dealing with property*' it means that the person has met one of the elements that amount to money laundering. Furthermore, subclause (2) provides that for the purposes of the definition of '*deal or dealing with property*', concealing or disguising property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights in relation to it

Criminal property is defined in Clause 4. According to the definition of '*criminal property*' it means property, whether situated within or outside of the Republic, that is, in whole or in part and whether directly or indirectly, derived or realised from, obtained, used or intended to be used, in connection with criminal conduct and includes matters listed in that definition. The definition of '*criminal property*' is connected to '*criminal conduct*'. This means that such criminal property is connected to any of the offences or conduct that are listed in the definition of '*criminal conduct*'.

Criminal conduct is defined as conduct amounting to any of the offences or activities that are listed in the definition. The conduct amounts to criminal conduct irrespective of whether it occurred within or outside of Nauru.

Therefore, the definition of the term of '*money laundering*' ties in the following factors:

- (i) deal or dealing with property;
- (ii) property that is criminal property; and
- (iii) such criminal property connected in some way to criminal conduct.

The offence of money laundering domesticates Recommendation 3 of the FATF Standards.

Clause 10 provides for the offence of dealing with property reasonably suspected to be criminal property. This Clause provides that a person must not deal with property in circumstances where it is reasonable to suspect that such property is criminal property.

Subclause (2) provides that the penalty for the offence in the case of an individual is a fine not exceeding \$60,000 or imprisonment for a term not exceeding 5 years, or both. The penalty in the case of a body corporate is a fine not exceeding \$300,000.

Subclause (3) provides that without limiting subclause (1) it is reasonable to suspect that property is criminal property if dealing with the property involves a number of transactions that are structured or conducted to avoid the reporting requirements under the Bill or any other written law. It is also reasonable to suspect that property is criminal property if dealing with the property involves using one or more accounts maintained in false names or the value of the property involved is grossly disproportionate to the person's lawful income and expenditure over a reasonable period of time within which the conduct occurs.

The offence of dealing with property reasonably suspected to be criminal property, domesticates Recommendation 3 of the FATF Standards.

Clause 11 provides for combining several contraventions in a single charge. A single charge of an offence against Clause 9 or 10 constitutes an offence against that Clause even though it may

include more than one instance of the person engaging in conduct, whether that conduct occurs at the same time or at different times

This Clause domesticates Recommendation 3 of the FATF Standards.

Clause 12 provides for proof of criminal property. This Clause provides that in order to establish or prove that property is criminal property for the purpose of Clause 9 or 10, it is not necessary to establish who committed the criminal conduct in relation to the property nor is it necessary to establish that there is a conviction relating to the criminal conduct.

The prosecution is also not required to prove that the property had derived from particular criminal conduct. It is enough to prove the general type of criminal conduct from which the property had derived. The prosecution may also rely on evidence that the circumstances in which the property had been handled, are circumstances that give rise to the inference that it can only be derived from criminal conduct.

This Clause domesticates Recommendation 3 of the FATF Standards.

Clause 13 provides for parallel investigations or proceedings. This Clause provides that nothing in this Part prevents investigations or proceedings of a criminal, civil or administrative nature arising from the same facts in relation to the same or different persons.

This Clause domesticates Recommendation 3 of the FATF Standards.

PART 4 – OBLIGATIONS OF REPORTING ENTITIES

Division 1 – Preliminary matters

Clause 14 provides for the exemption and modification of this Part. Subclause (1) provides that subject to subclause (2), the Minister for Justice in consultation with the Cabinet may make determinations exempting a reporting entity from certain provisions of this Part. The Minister may also make determinations providing for the modification of the application of this Part to a reporting entity.

Under the Constitution the Cabinet is collectively responsible to the Parliament. It is anticipated that the Government must fulfil its obligations under various international instruments. Exempting a financial institution will be a serious matter as such, decisions have to be made by the Cabinet as a whole.

Subclause (2) provides that a determination may only be made unless the Cabinet and the Minister are satisfied that there is a low risk of financial crime in the circumstances covered by the determination or the circumstances covered by the determination will be adequately regulated and supervised by the anti-money laundering laws of another jurisdiction.

This subclause is necessary to ensure that the Republic of Nauru has a financial institution providing financial services. The size of the Republic of Nauru is important in that it may have foreign financial institutions operating in Nauru. Appropriate arrangements need to be done to ensure that reporting of the Nauruan operation is supervised by the authorities of the foreign financial institution. Furthermore, any unlawful transactions or suspicions must be reported to Nauru FIU by those reporting entities.

Subclause (3) provides that FIU shall work independently in ensuring that the arrangements in subclause (2)(b) are duly complied with.

The FIU as an independent body will be given the authority and power to deal with any such arrangements in ensuring that Nauru's obligations under this Bill or other international obligations are duly complied with.

Subclause (4) provides that a determination made under this Clause is valid for a period of 5 years, unless earlier revoked or rescinded by the Cabinet.

Subclause (5) provides that a determination made under this Clause may be renewed from time to time as the Cabinet deems fit.

Clause 15 provides for the obligation to comply despite secrecy obligations. This Clause is subject to Clause 16. This Clause provides that reporting entities are to comply with the requirements of the Bill once enacted, despite any obligation as to secrecy or other restriction on the disclosure of information imposed by any written law or otherwise.

This Clause is provided domesticates Recommendation 9 of the FATF Standards. This is not a new provision. It is currently provided for under Section 25 of the *Anti-Money Laundering Act 2008*.

Clause 16 provides for the protection of legal professional privilege. This Clause provides that nothing in the Bill once enacted, requires a lawyer to disclose information, documents or communications that are protected by a law governing legal professional privilege.

This Clause domesticates Recommendations 9 and 37 of the FATF Standards. This is not a new provision. It is currently provided for under Section 23 of the *Anti-Money Laundering Act 2008*.

Clause 17 provides for sanctions for directors and senior management of reporting entities that are not individuals. Subclause (1) provides that this Clause applies to a reporting entity that is not an individual.

Subclause (2) provides that a director or other member of senior management of the reporting entity commits an offence under the Bill where certain events are deemed to have occurred.

Paragraph (a) provides that one of the events is an act or omission constituting an offence took place with the actual knowledge or reckless disregard of the director or other member of senior management.

Paragraph (b) provides that the director or other member of senior management, by act or omission, gave his or her authority, permission or consent to the act or omission constituting the offence.

Subclause (3) provides that the maximum level of penalty that applies to the reporting entity applies to the director or other member of senior management concerned.

Subclause (4) provides that to avoid doubt, criminal proceedings may be taken against a reporting entity for an offence under the Bill despite that a director or other member of senior management of the reporting entity has not been charged with an offence.

This Clause domesticates Recommendation 35 of the FATF Standards.

Clause 18 provides for actions done in good faith. Subclause (1) provides that this Clause applies to a reporting entity, auditor or supervisory authority, director of a reporting entity, an officer, employee or agent of a reporting entity or person who previously held these offices.

Subclause (2) provides that civil, criminal or disciplinary proceedings are not to be made against a person listed in subclause (1) for any act done or omission made by that person if the act or omission is done or omitted in good faith or in compliance with a lawful direction by the FIU.

Subclause (3) provides that a person this Clause applies to, is deemed for the purposes of the prosecution of a financial crime, not to have been in possession at any time of information in a report made to the FIU under this Bill if the report is true or accurate truthful to the best of the person's knowledge and contains all relevant particulars requested by the FIU that are available to the person.

Subclause (4) provides that if an act or omission relates to criminal conduct or a suspicion of criminal conduct, the protection of this Section applies despite that the person affected did not know what criminal offence had been committed and that the criminal conduct had actually occurred.

Subclause (5) provides that the proceedings referred to in subsection (2) include proceedings for breach of a restriction on the disclosure of information imposed by a contract or by any written law.

This Clause domesticates Recommendation 21 of the FATF Standards. This is not a new provision. It is currently provided for under Section 22 of the *Anti-Money Laundering Act 2008*.

Division 2 – Ongoing compliance obligations

Clause 19 provides for the general requirement for AML/CFT compliance programme. Subclause (1) provides that a reporting entity is required to develop an AML/CFT compliance programme within 1 month after commencing business.

Subclause (2) provides that the AML/CFT compliance programme must meet certain requirements.

Subclause (2)(a) provides that it must be documented setting out internal procedures policies and controls that the reporting entity must establish, operate and maintain to ensure that the reporting entity complies with its obligations the Bill. The AML/CFT compliance programme must also allow the reporting entity to manage and mitigate the risks identified in any business risk assessment carried out under Clause 24.

Subclause (2)(b) provides that the programme must also enable the reporting entity to meet its obligations under Clauses 20 to 24.

Subclause (2)(c) provides that the AML/CFT compliance programme must be approved by senior management of a reporting entity.

Subclause (2)(d) provides that the AML/CFT compliance programme must be disclosed to the directors, officers, employees and agents of the reporting entity.

Subclause (3) provides that the reporting entity must implement its AML/CFT compliance programme.

Subclause (4) provides that the FIU may request a copy of the AML/CFT compliance programme from a reporting entity. The reporting entity must provide such report to the FIU within 14 working days of receiving the request.

This Clause domesticates Recommendations 9 to 23 of the FATF Standards.

Clause 20 provides for a financial compliance officer. Subclause (1) provides that a reporting entity must appoint a financial crime compliance officer.

Subclause (2) provides the functions of the officer. Subclause (2)(a) provides that the officer must to administer and maintain the reporting entity's AML/CFT compliance programme.

Subclause (2)(b) provides that the officer must serve as the FIU's primary point of contact within the reporting entity.

Subclause (2)(c) provides that the officer's other functions may be assigned by the reporting entity to comply with the requirements of this Bill or any other written law.

Subclause (2)(d) provides that the office is to ensure the reporting entity complies with the requirements of AML/CFT and this Bill.

Subclause (3) provides the eligibility requirements that the officer must have. Subclause (3)(a) provides that the officer must be a member of the senior management of the reporting entity.

Subclause (3)(b) provides that the officer must have a right of direct access to the directors or the managing board of the reporting entity.

Subclause (3)(c) provides that the officer must have sufficient time and resources to properly discharge the responsibilities of the position so as to be effective in the exercise of the financial crime compliance officer functions.

Subclause (3)(d) provides that the officer must act independently in carrying out his or her functions.

Subclause (4) provides that a reporting entity may appoint one or more deputy financial crime compliance officers to exercise the functions of the financial crime compliance officer in the officer's absence from work or to assist the officer with his or her duties.

Subclause (5) provides that the reporting entity may adequately remunerate the officer for carrying out his or her functions under the Bill.

This Clause domesticates Recommendation 18 of the FATF Standards. This is not a new provision. It is currently provided for under Section 24 of the *Anti-Money Laundering Act 2008*.

Clause 21 provides for independent audit of a reporting entity's compliance. Subclause (1) provides that a reporting entity must maintain appropriate procedures and adequate resources to independently and periodically, test and assess the effectiveness of the reporting entity's AML/CFT compliance programme and the reporting entity's compliance with its obligations under this Part.

Subclause (2) provides that the reporting entity must review the outcome of its testing and assessment procedures and consider on a regular basis whether changes to its AML/CFT compliance programme are necessary.

This Clause domesticates Recommendation 18 of the FATF Standards.

Clause 22 provides for appointment of new director, officer, employee or agent. A reporting entity shall establish, maintain and operate screening procedures to enable the reporting entity to satisfy itself of the competence and integrity of a new appointment or newly appointed director, officer, employee or agent to oversee or undertake duties related to obligations under this Part.

This Clause domesticates Recommendation 18 of the FATF Standards. This is not a new provision. It is currently provided for under Section 24 of the *Anti-Money Laundering Act 2008*.

Clause 23 provides for training. This Clause provides that a reporting entity must take appropriate steps to ensure that its directors, officers, employees and agents receive regular and

adequate training. Paragraph (a) provides the trainings must give due regard to the risks of financial crime as they apply in the circumstances of the reporting entity.

Paragraph (b) provides that trainings must give due regard to the reporting entity's AML/CFT compliance programme.

Paragraph (c) provides that trainings must give due regard to any new developments, methods and trends in financial crime of relevance to the business of the reporting entity.

Paragraph (d) provides that the trainings must give due regard to the requirements of the Bill and how to recognise and report suspicious activity.

This Clause domesticates Recommendation 18 of the FATF Standards. This is not a new provision. It is currently provided for under Section 24 of the *Anti-Money Laundering Act 2008*.

Clause 24 provides for a reporting entity's obligation to conduct a business risk assessment. Subclause (1) provides that a reporting entity must prepare a written business risk assessment as soon as reasonably practicable. A written business risk assessment must be conducted no later than 3 months after the date on which the reporting entity commences business.

Subclause (2) provides that the assessment must identify and assess the financial crime risks posed by certain factors. Subclause (2)(a) provides for risks posed by customers, countries or geographic areas with which the reporting entity engages.

Subclause (2)(b) provides for risks posed by the products, services, transactions and delivery channels utilised by the reporting entity.

Subclause (2)(c) provides for risks posed by the nature, scale and complexity of the reporting entity's activities.

Subclause (2)(d) provides for risks posed by any reliance on third parties for elements of the customer due diligence process.

Subclause (2)(e) provides for risks posed by new products, business practices or delivery methods or systems proposed to be implemented by the reporting entity.

Subclause (2)(f) provides for risks posed by developing technologies for both new and pre-existing products and services proposed to be used by the reporting entity.

Subclause (2)(g) provides for risks posed by the impact of any new technologies.

Subclause (2)(h) provides for risks posed by any other relevant risk factor that may be prescribed by regulations.

Subclause (3) provides for other matters that a reporting entity must refer to when preparing its business risk assessment. Subclause (3)(a) provides that it must refer to any available risk

assessment prepared by the FIU or other relevant authorities, whether in the Republic or elsewhere.

Subclause (3)(b) provides for regard to be given to guidelines published by the FIU.

Subclause (3)(c) provides for regard to be given suspicious activity reports under Clause 59 and reports under Clause 61 that the reporting entity has prepared and any analysis relating to such reports that have been conducted.

Subclause (3)(d) provides for regard to be given to open-source intelligence on the reporting entity's customers, in particular those with high net worth and those who are politically exposed persons.

Subclause (3)(e) provides for proprietary databases that provide customer due diligence information on politically exposed persons and high-risk customers.

Subclause (3)(f) provides for regard to be given to court cases relating to the reporting entity's customers if there are any such cases.

Subclause (4) provides that a reporting entity must, through its AML/CFT compliance programme, take appropriate measures to manage and mitigate the risks identified in its business risk assessment and relevant risk assessments prepared by the FIU and other relevant authorities, whether in the Republic or elsewhere.

Subclause (5) provides that a reporting entity must review its business risk assessment at least once every 12 months to keep it up to date.

Subclause (6) requires a reporting entity to keep a record of its business risk assessment and the underlying reasoning, its review of its business risk assessment and the underlying reasoning and the methodology used to prepare and review its business risk assessment.

Subclause (7) provides that a reporting entity must identify and assess the financial crime risks that the reporting entity may be exposed to including identifying any risk factors.

Subclause (8) provides that a business risk assessment must be approved by the senior management of the reporting entity.

This Clause domesticates Recommendation 18 of the FATF Standards.

Clause 25 provides for compliance obligations for existing businesses. Subclause (1) provides that this Clause applies to reporting entities carrying on businesses that are existing at the commencement of the Bill.

Subclause (2) provides that the reporting entity must carry out a business risk assessment in accordance with Clause 24 within 12 months after that commencement and develop and implement an AML/CFT compliance programme within 12 months after such commencement.

This Clause domesticates Recommendation 18 of the FATF Standards.

Clause 26 provides for the obligations of reporting entities that are financial groups to implement AML/CFT compliance programme. Subclause (1) provides that a financial group is required to establish, operate and maintain a group-wide AML/CFT compliance programme.

Subclause (2) provides requirements that the group-wide AML/CFT compliance programme must meet. Subclause (2)(a) provides that the AML/CFT compliance programme must be applicable and appropriate to all branches and majority-owned subsidiaries of the financial group.

Subclause (2)(b) provides that the AML/CFT compliance programme must include the requirements referred to in Clause 19.

Subclause (2)(c) provides that the AML/CFT compliance programme must include policies and procedures for sharing information between members of the financial group required for the purposes of customer due diligence and AML/CFT risk management.

Subclause (2)(d) provides that the AML/CFT compliance programme must include policies and procedures for branches and majority-owned subsidiaries to provide customer account and transaction information to the financial group when necessary.

Subclause (2)(e) provides that the AML/CFT compliance programme must have adequate safeguards on the confidentiality and use of information exchanged, including safeguards to prevent disclosure of information contrary to the provisions of a law with confidentiality provisions.

Subclause (3) provides for the purpose of subclause (2)(c) and (d), the definition of ***‘information’***. Subclause (3)(a) provides that the term ***‘information’*** is defined to include but is not limited to, information and analysis of transactions or activities which appear unusual where such analysis is made.

Subclause (3)(b) provides that ***‘information’*** includes a suspicious activity report and its underlying information.

Subclause (3)(c) provides that ***‘information’*** includes the fact that a suspicious activity report has been submitted to the FIU.

Subclause (3)(d) provides that ***‘information’*** includes other transaction information from branches and subsidiaries when necessary for AML/CFT purposes.

This Clause domesticates Recommendations 18 and 26 of the FATF Standards.

Clause 27 provides that foreign branches and majority-owned foreign subsidiaries must comply with this Part. Subclause (1) requires a reporting entity to ensure that its foreign branches and majority-owned foreign subsidiaries located outside the Republic apply, to the extent permitted by the law of that foreign country, measures equivalent to those set out in this Part.

Subclause (2) provides that if the law of a foreign country does not permit the application of the equivalent measures provided under this Part, the reporting entity must, as soon as is reasonably practicable, inform the FIU accordingly and take such additional measures as are permitted to implement the requirements of this Part.

This Clause is provided for the purposes of Recommendation 18 of the FATF Standards.

Clause 28 provides for the obligation to maintain records. Subclause (1) requires a reporting entity to maintain records of any matter that the Bill require to be documented and keep those records up to date.

Subclause (2) provides that any record that is required to be kept under this Bill must be maintained in a particular manner and form. That is a manner and form that will enable the reporting entity to comply immediately with requests for information from the FIU or other law enforcement authorities.

Subclause (3) provides that the Cabinet may make regulations to provide for further requirements for the keeping of records, including the list of records to be kept.

This Clause domesticates Recommendation 11 of the FATF Standards. This is not a new provision. It is currently provided for under Section 35 of the *Anti-Money Laundering Act 2008*.

Clause 29 provides for the period in which records are to be kept. Subclause (1) provides that records required to be maintained under Clause 28 are to be kept for a minimum period of 7 years.

Subclause (1)(a) provides that the 7-year period commences from the date the record was created.

Subclause (1) (b) provides that it may commence from the date on which the record was most recently updated or modified.

Subclause (1)(c) provides that the period may commence from the date an account was closed.

Subclause (1)(d) provides that the period may commence from the date a business relationship ceased.

Subclause (2) provides that for the avoidance of doubt, the year 7 period referred to under subclause (1), commences from the latest date of any of the events referred to under Subclause (1)(a) to (1)(d).

Subclause (3) provides that a reporting entity in breach of this Clause commits an offence. The penalty upon conviction for an individual is a fine not exceeding \$100,000 or imprisonment for a term not exceeding 10 years, or to both. The penalty for a body corporate is a fine not exceeding \$500,000.

Subclause (4) provides that for the avoidance of doubt, the seven-year period referred to in subclause (1) is deemed not to have commenced if the record relates to an open account or ongoing business relationship, even if the record itself was created and last modified more than seven years ago.

This Clause domesticates Recommendation 11 of the FATF Standards. This is not a new provision. It is currently provided for under Section 35 of the *Anti-Money Laundering Act 2008*.

Division 3 – Obligation to conduct customer due diligence

Subdivision 1 – Preliminary matters

Clause 30 provides for customer due diligence records. A reporting entity is required to keep a record of the process used to conduct a customer due diligence and retain such documentation as part of its records under Division 2 of this Part.

This Clause domesticates Recommendation 11 of the FATF Standards. This is not a new provision. It is currently provided for under Section 35 of the *Anti-Money Laundering Act 2008*.

Clause 31 provides for when customer due diligence is not able to be completed. Subclause (1) provides that where a reporting entity is unable to comply with the customer due diligence required under the Bill, the reporting entity must not conduct a transaction, open an account or enter into a business relationship with that person, an agent or a beneficial owner.

Subclauses (2) provides that where a business relationship exists with a reporting entity and the reporting entity is not able to comply with the customer due diligence requirement, the reporting entity must terminate the existing business relationship.

Subclause (3) provides that subclauses (1) and (2) are subject to a direction made under subsection (5).

Subclause (4) provides that in complying with this Clause, the reporting entity shall consider making a suspicious activity report in accordance with Division 5 of this Part.

Subclause (5) provides that the FIU may direct in writing the manner in which the reporting entity is to manage a transaction, account or business relationship for the person and the reporting entity shall comply with the direction.

This Clause domesticates Recommendation 10 of the FATF Standards.

Clause 32 provides for requirements when customer due diligence risks tipping off customer. A reporting entity is to file a suspicious activity report in accordance with Division 5 of this Part.

This is where the reporting entity forms a suspicion of a financial crime occurring and reasonably believes that the performance of customer due diligence in accordance with the requirements of this Division discloses or is likely to disclose such suspicion to the customer concerned.

This Clause domesticates Recommendation 10 of the FATF Standards.

Clause 33 provides for reliance on third parties in relation to obligations under this Division. Subclause (1) provides that this Clause applies if a reporting entity relies on an intermediary entity or a third party to undertake the reporting entity's obligations under this Division or to introduce business to the reporting entity.

Subclause (2)(a) provides that the reporting entity is required immediately obtain from the intermediary entity or third party in the case of an individual, the identification information required by Clause 37, in the case of a body corporate, the identification information required by Clauses 37 and 38, in the case of a person acting in the capacity of a trustee, the identification information required by Clauses 37 and 39, the information required by Clause 40 and the information required by Clauses 41 and 42 and regulations made pursuant to Clause 45, if applicable.

Subclause (2)(b) provides that a reporting entity must ensure that verifiable copies of verifying evidence relating to the requirements of Clauses 37, 38, 39, 40 and 42, where relevant are made available to it by the intermediary entity or third party upon the request of such reporting entity and without delay.

Subclause (2)(c) provides that a reporting entity must assess whether the location of the intermediary entity or third party is a high-risk location and the countries or geographical areas in which the intermediary entity or third party operates are high risk countries or geographical areas.

Subclause (2)(d) provides that the reporting entity must satisfy itself that the intermediary entity or third party is supervised and has measures in place, to comply with the requirements set out in this Part and if the third party is located outside the Republic, it is regulated and supervised and has measures in place, to comply with requirements equivalent to those set out in this Part.

Subclause (3) provides that a reporting entity is deemed to have satisfied the requirements of subclause (2) if the Minister certifies in writing that the reporting entities meets the requirements listed in this subclause.

Subclause (4) for provides that a reporting entity remains liable for any failure to undertake the reporting entity's obligations under this Division, despite the use of an intermediary entity or third party.

This Clause domesticates Recommendation 17 of the FATF Standards. This is not a new provision. It is currently provided for under Section 29 of the *Anti-Money Laundering Act 2008*.

Clause 34 provides for customer due diligence for existing customers. Subclause (1) provides that a reporting entity shall assess an existing customer's information and implement procedures under Subdivisions 2 and 3. This is if the reporting entity finds that it is necessary to do so for the purposes of mitigating risk.

Subclause (2) provides that in making that assessment, the reporting entity shall consider any previous due diligence undertaken, when that due diligence was last undertaken for existing customers and the adequacy of the information, documents or data obtained.

This Clause domesticates Recommendation 10 of the FATF Standards. This is not a new provision. It is a revision of Section 33(a) of the *Anti-Money Laundering Act 2008*.

Clause 35 provides for the prohibition of false accounts. Subclause (1) prohibits a person from opening or operating an account with a reporting entity if the account is an anonymous or numbered account, or is in a fictitious, false or incorrect name. It also prohibits a person from authorising, allowing or facilitating the opening or the operation of an account, with a reporting entity where the account is an anonymous or numbered account, or is in a fictitious, false or incorrect name.

Subclause (2) also prohibits a person with more than one name, to open an account under one name if the person does not disclose all his or her names to a reporting entity.

Subclause (3) provides that if a person using a particular name in the person's dealings with a reporting entity discloses to the reporting entity a different name or names by which he or she is commonly known, the reporting entity must keep a record of this and disclose this to the FIU.

Subclause (4) provides that reporting entity must not open, operate or maintain any anonymous or numbered account, or any account which is in a fictitious, false or incorrect name.

Subclause (5) provides that circumstances that amount to a person opening an account in a false name. Subclause (5)(a) provides that this occurs if the person in opening the account, or becoming a signatory to the account, uses a name other than the name by which the person is

known. Subclause(5)(b) provides that this occurs if the person does any act in relation to the account and in doing so, uses a name other than the name by which the person is known.

Subclause (6) provides that a person who opened an account under a false name shall upon the commencement of the Bill, cease to operate or maintain such account.

This Clause domesticates Recommendation 10 of the FATF Standards. This is not a new provision. It is currently provided for under Section 26 of the *Anti-Money Laundering Act 2008*.

Clause 36 provides for the obligation to provide information within 14 days. This Clause proposes that where a reporting entity is required to provide information under this Part to the FIU, the information must be provided within 14 days of receiving the request.

This Clause domesticates Recommendation 29 of the FATF Standards.

Subdivision 2 – Standard customer due diligence

Clause 37 provides for the obligation to identify and verify the identity of customers, agents and beneficial owners. Subclause (1)(a) provides that this Clause applies to a reporting entity that enters into a business relationship with a person.

Subclause (1)(b) provides that this Clause applies to a reporting entity that conducts an occasional transaction for a person of the value of \$10,000 or more. It also provides that this Clause applies to a reporting entity that conducts a series of isolated transactions that appear to be linked or have a combined value of \$10,000 or more.

Subclause (1)(c) provides that the circumstances surrounding a business relationship of the reporting entity or a transaction or series of transactions conducted give rise to a reasonable suspicion of a financial crime. It also applies to circumstances that give rise to reasonable doubt as to the veracity or adequacy of the identification and verification documents obtained by the reporting entity.

Subclause (2) provides that a reporting entity must identify and verify a person's identity such persons listed in this subclause (2).

Subclause (3) provides that in relation to identifying and verifying the identity of an agent, the reporting entity must also verify the authorisation for the agent to act on behalf of the customer.

Subclause (4) provides that subject to a direction issued under Clause 31(5), the reporting entity must comply with the requirements of subclause (2). This must be done before establishing a business relationship or before conducting a transaction or series of transactions.

This Clause domesticates Recommendation 10 of the FATF Standards. This is not a new provision. It is based on Section 28 of the *Anti-Money Laundering Act 2008*.

Clause 38 provides for due diligence for a customer, agent and beneficial owner that is a body corporate. Subclause (1) provides that this Clause applies to a reporting entity if the circumstances referred to in Clause 37(1) apply and any of the persons referred to in Clause 37(2) is a body corporate.

Subclause (2) provides that in relation to a body corporate, the reporting entity must develop and document its understanding of the body corporate's business, ownership and control structure.

Subclause (3) provides that the reporting entity must identify and verify the laws that regulate and bind the body corporate and the name of an individual with a senior management position in the body corporate.

Subclause (4) provides that the reporting entity must verify the identity of the beneficial owners of the body corporate through any or all of the information listed in this subclause.

This Clause domesticates Recommendation 10 of the FATF Standards. This is not a new provision. It is currently provided for under Sections 27 and 28 of the *Anti-Money Laundering Act 2008*.

Clause 39 provides for due diligence for customers acting as trustees and related persons. Subclause (1)(a) applies to a person who in his or her capacity as a trustee or related person enters into a business relationship with a reporting entity.

Subclause (1)(b) applies to a person who in his or her capacity as a trustee or related person in the absence of a business relationship, conducts through a reporting entity a transaction with a value of \$10,000 or more or a series of linked transactions that have a combined value of \$10,000 or more.

Subclause (2) requires that a trustee or related person must when entering into a business relationship or conducting a transaction, inform the reporting entity that they are doing so in their capacity as the trustee or related person.

Subclause (3)(a) provides that the reporting entity is required to develop an understanding of the nature of the trust. This includes understanding the settlor, trustee, protector, beneficiary or class of beneficiaries or person exercising effective control over the trust.

Subclause (3)(b) provides that a reporting entity is required to develop an understanding of the control structure of the trust.

Subclause (4) provides that a reporting entity must document its understanding and keep copies of the trust deed another information that provide evidence of its documented understanding.

Subclause (5) provides defines '*related person*' as including a director, officer, employee or agent of the trustee.

This Clause domesticates Recommendation 10 of the FATF Standards. This is not a new provision. It is currently provided for under Sections 27 and 28 of the *Anti-Money Laundering Act 2008*.

Clause 40 provides for the obligation to understand occasional transactions. Subclause (1) provides that this Clause applies to a reporting entity that conducts an occasional transaction of the value of \$10,000 or more, or a series of occasional transactions that appear to be linked and have a combined value of \$10,000 or more.

Subclause (2) requires the reporting entity must obtain sufficient information that allows it to understand the transaction or series of transactions. It must document such understanding.

This Clause domesticates Recommendations 1 and 10 of the FATF Standards.

Clause 41 provides for customer due diligence for the beneficiaries of insurance policies. Subclause (1) provides that this Clause applies to a reporting entity if the reporting entity issues an insurance policy.

Although there are no insurance companies in Nauru, this provision protects Nauru from the potential impacts of money laundering if in future insurance companies are established. Such would be bound by the requirements of this Clause.

Subclause (2) requires insurance companies to record the name of the natural person or body that is a beneficiary of an insurance policy.

Subclause (3) provides that if a beneficiary under the insurance policy is designated by characteristics or other means, the reporting entity must obtain and record sufficient information concerning the beneficiary. This is to satisfy the reporting entity that it will be able to establish the identity of the beneficiary at the time of any payout under the insurance policy.

Subclause (4) provides that at the time of any payout to a beneficiary under the insurance policy, the reporting entity must identify the beneficiary and verify the identity of the beneficiary and any beneficial owner of the beneficiary.

Subclause (5) provides that the reporting entity must file a suspicious activity report with the FIU if the reporting entity is unable to comply with a requirement under subsection (2), (3) or (6).

Subclause (6) provides that a reporting entity must take reasonable measures to determine whether a beneficiary under the insurance policy or any beneficial owner of the beneficiary of any insurance policy issued by it is a politically exposed person.

Subclause (7) provides that it is determined that a beneficiary under the insurance policy or any beneficial owner of the beneficiary is a politically exposed person, the reporting entity must, before making a payment to the beneficiary or beneficial owner undertake the actions listed in this subclause.

This Clause domesticates Recommendation 10 of the FATF Standards.

Clause 42 provides for ongoing customer due diligence obligations. Subclause (1) provides that a reporting entity must conduct ongoing due diligence in respect of all of its business relationships.

Subclause (2) provides that in conducting ongoing due diligence, a reporting entity must, at a minimum scrutinise transactions carried out on behalf of its customers to ensure that such transactions are consistent with certain factors. These factors being, the reporting entity's knowledge of its customers, the source of its customers' property and the business and risk profile of its customers.

Subclause (3) provides that additional requirements may be prescribed relating to conducting ongoing customer due diligence.

This Clause is provided for the purposes of Recommendation 10 of the FATF Standards.

Subdivision 3 – Enhanced and simplified customer due diligence

Clause 43 provides for enhanced customer due diligence obligations of a reporting entity. Subclause (1) requires a reporting entity to conduct enhanced customer due diligence before or during establishing or continuing a business relationship referred to in subclause (2) or conducting a transaction for a customer.

Subclause (2) provides that the enhanced customer due diligence obligations apply to a business relationship or transaction if the customer, agent, beneficial owner of the customer or the beneficiary in the case of a life insurance policy is caught under the listed categories in this subclause.

Subclause (2)(a) provides that such person is a resident of a country where there is a high risk of financial crime, in which there are no adequate systems in place to prevent or deter financial crime or is the subject of information provided by the FIU to a reporting entity in accordance with Clause 85(k).

Subclause (2)(b) provides that such person is involved in a business activity that involves a high risk of financial crime.

Subclause (2)(c) provides that in the case of a body, has an unusual or excessively complex ownership structure which is not proportionate to the nature of the business.

Subclause (2)(d) provides that the person is a politically exposed person.

Subclause (2)(e) provides that the person could, in the circumstances, be suspected on reasonable grounds to be involved in financial crime, either in the Republic or elsewhere.

Subclause (2)(f) provides that the person satisfies any other criteria published or provided by the FIU that is determined to be high-risk by the FIU.

Subclause (3) provides that enhanced customer due diligence obligations also apply to a reporting entity if the reporting entity is required to conduct further analysis under Clause 61.

Subclause (4) provides that the reporting entity must establish and use systems and processes to determine whether any of the circumstances referred to in subclauses (2) or (3) are present in relation to a business relationship or a transaction.

Subclause (5) provides that in conducting enhanced customer due diligence, the reporting entity must obtain senior management approval before establishing the business relationship or continuing the business relationship if one already exists or conducting the transaction. A reporting entity is also required to take reasonable measures to establish that financial crime is not involved in the procurement or proposed use of the wealth of the customer or beneficial owner of the customer for the business relationship or funds for the transaction. It must also keep a record of the measures taken under any previous requirement and record the findings made, file a suspicious activity report. It must also conduct enhanced ongoing monitoring of the business relationship to assess whether expenditure is occurring in a manner consistent with a legitimate process of expenditure given the reporting entity's understanding of the customer.

Subclause (6) provides as to what may be included in the definition of '*reasonable measures*'.

Subclause (7) provides that in undertaking enhanced customer due diligence, the reporting entity shall have regard to any guidance provided or published by the FIU in relation to enhanced customer due diligence.

Subclause (8) provides that additional requirements relating to conducting enhanced customer due diligence may be prescribed by regulations.

This Clause domesticates Recommendation 10 of the FATF Standards.

Clause 44 provides for enhanced customer due diligence deemed not completed. Subclause (1) provides that if a reporting entity is unable to establish the matters referred to in Clause 43(5)(b), enhanced customer due diligence is deemed not completed.

Subclause (2) provides where enhanced customer due diligence is deemed not completed, the reporting entity shall comply with the requirements of Clause 31.

This Clause domesticates Recommendation 10 of the FATF Standards.

Clause 45 provides for simplified customer due diligence obligations. Subclause (1) provides that simplified due diligence obligations that must be met by reporting entities may be prescribed by regulations.

Subclause (2) provides that simplified due diligence must not be undertaken where there is a suspicion of money laundering or terrorist financing or where higher risk scenarios as may be prescribed apply.

This Clause domesticates Recommendation 10 of the FATF Standards.

Subdivision 4 – Due diligence in relation to correspondent banking relationships and shell banks

Clause 46 provides for correspondent banking due diligence. Subclause (1) provides that before entering into a business relationship or isolated transaction that involves correspondent services, a reporting entity must assess the suitability of the respondent entity by taking the steps outlined in subclause (2), ensure that a member of senior management approves establishing the correspondent services relationship and clearly understand and document the respective AML/CFT responsibilities of each respondent entity.

Subclause (2)(a) provides that a reporting entity must also in relation to correspondent banking due diligence obtain sufficient information about the respondent entity to understand fully the nature of its business.

Subclause (2)(b) provides that a reporting entity must also determine from publicly available information the reputation of the respondent entity, the quality of the supervision to which it is subject and whether it has been subject to investigation or regulatory action in respect of financial crime.

Subclause (2)(c) also provides that a reporting entity must assess the respondent entity's financial crime controls and ascertain whether they are adequate and effective.

Subclause (3) provides that if the correspondent services involve a payable-through account, the reporting entity must be satisfied that the respondent entity has taken customer due diligence measures to the standard required by the Bill with respect to every customer having direct access to the account and will provide the reporting entity with the relevant evidence of identity upon request.

Subclause (4) defines '*correspondent services*' as meaning banking services provided by a bank in the Republic to a reporting entity in another jurisdiction.

This Clause domesticates Recommendation 10 of the FATF Standards. This is not a new provision. It is a revision of Section 28 of the *Anti-Money Laundering Act 2008*.

Clause 47 provides for shell banks. Subclause (1) provides that a reporting entity must not establish, continue or conduct a business relationship or occasional transaction with a shell bank.

Subclause (2) requires a reporting entity to take appropriate measures to satisfy itself that its respondent entities do not allow their accounts to be used by shell banks.

This Clause domesticates Recommendation 13 of the FATF Standards.

Subdivision 5 - Enforcement

Clause 48 provides for the offence of contravention under this Division. It provides that a reporting entity that contravenes any provision of this Division commits an offence and is liable upon conviction for an individual to a fine not exceeding \$200,00 or imprisonment for a term not exceeding 10 years or to both. A body corporate is liable to a fine not exceeding \$1,000,000.

This Clause domesticates Recommendation 35 of the FATF Standards.

Division 4 – Obligations in relation to electronic currency transfers

Clause 49 provides for the application of this Division. Subclause (1) provides that this Division applies to a reporting entity that conducts any of the activities or operations referred to in the definition of '*financial institution*' as defined under Clause 4.

This Clause domesticates Recommendation 16 of the FATF Standards.

Clause 50 provides for the overview of customer due diligence for electronic transfers. Subclause (1) provides that a reporting entity is not required to verify the identity of a person in circumstances described in Clauses 52 to 55. This is if the reporting entity has previously verified the identity of a person under Division 3 of this Part or under any other provision of the Bill.

Subclause (2) provides that subclause (1) does not apply if there are reasonable grounds for the reporting entity to doubt the adequacy or accuracy of the documents, data or information previously obtained.

This Clause domesticates Recommendation 16 of the FATF Standards. This is not a new provision. It is a revision of Section 27 of the *Anti-Money Laundering Act 2008*.

Clause 51 provides for records for electronic currency transfers. This Clause provides that a reporting entity must maintain records of the information required to be obtained under this Division for electronic currency transfers in accordance with Clauses 28 and 29.

This Clause domesticates Recommendation 11 of the FATF Standards. This is not a new provision. It is provided for under Sections 35 of the *Anti-Money Laundering Act 2008*.

Clause 52 provides for the requirements for originating entity-electronic currency transfer. Subclause (1) provides for the requirements applying to a reporting entity that is an originating entity for an electronic currency transfer for a value of \$1000 or more.

Subclause (2) provides that an originating entity must identify the sender of the transfer by obtaining the identity information. The information is the sender's full name, any one of the

sender's account number, unique transaction reference number if there is no account or any other information that is prescribed by Regulations. The information also includes any one of the sender's address, customer identification number, date of birth or passport number.

Subclause (3) provides that the originating entity must, in the case of a domestic electronic currency transfer, provide the information specified in subclause (2) within 3 working days after the request is made by the beneficiary entity to execute the electronic currency transfer or after the FIU makes a request to the originating entity for that information.

Subclause (4) provides that the originating entity shall, in the case of an international electronic currency transfer, identify the receiver of the electronic currency transfer by obtaining the identity information listed in this subclause.

Subclause (5) provides that an originating entity must verify the sender's identity so that it is satisfied that the information obtained under subclause (2) is correct and verify the sender's identity before ordering the electronic currency transfer.

Subclause (6) provides that if several international electronic currency transfers from a single sender are put in one file for transmission to multiple receivers, the originating entity shall ensure that the file contains the information listed in this subclause.

Subclause (7) provides that an originating entity must transmit with the electronic currency transfer to an intermediary entity the identity information listed in this subclause.

Subclause (8) provides that an originating entity must not execute a currency transfer if the information requirements under subclauses (2) and (5) are not met.

Subclause (9) provides that an originating entity shall retain records of all sender and receiver information that accompanies an electronic currency transfer and shall comply with the record keeping requirements in this Part.

This Clause domesticates Recommendations 10, 11 and 16 of the FATF Standards.

Clause 53 provides for the requirements for originating entity-electronic currency transfer of less than \$1,000. Subclause (1) provides that this Clause applies to a reporting entity that is an originating entity of an international electronic transfer of an amount less than \$1,000.

Subclause (2) requires the originating entity to obtain the sender's identity information as set out in this subclause.

Subclause (3) requires the originating entity to obtain the receiver's identity information as set out in this subclause.

Subclause (4) provides that if circumstances give rise reasonable suspicion of the occurrence of a financial crime, the originating entity must verify the information obtained in relation to the sender and file a suspicious activity report.

Subclause (5) requires the originating entity to transmit the electronic currency transfer together with the information the originating entity has obtained in relation to the sender and the receiver.

Subclause (6) provides that an originating entity must not execute the currency transfer if the originating entity cannot identify the sender and the receiver or if it cannot verify the identity of a sender.

This Clause domesticates Recommendations 10, 11 and 16 of the FATF Standards.

Clause 54 provides for the requirements for intermediary entity-electronic currency transfer. Subclause (1) provides that this Clause applies to a reporting entity that is an intermediary entity for an electronic currency transfer.

Subclause (2) requires the intermediary entity to transmit information that it receives under Clauses 52 or 53 together with an electronic transfer.

Subclause (3) provides that an intermediary entity must take reasonable measures to identify international electronic currency transfers that lack the information required by Clause 52.

Subclause (4) provides that an intermediary entity shall have risk-based policies and procedures for determining certain matters. These are when to execute, reject or suspend an electronic currency transfer which lacks any of the information required under Clause 52 to accompany the transfer. Policies and procedures must also be in place in relation to follow up action and that nature of follow up action to be done.

Subclause (5) provides that a reporting entity must retain records of all information relating to a sender or a receiver that accompanies a transaction in accordance with the record keeping requirements in this Part.

This Clause domesticates Recommendation 10, 11 and 16 of the FATF Standards.

Clause 55 provides for the requirements for beneficiary entity-electronic currency transfer. Subclause (1) provides that this Clause applies to a reporting entity that is a beneficiary entity for an electronic currency transfer.

Subclause (2) provides that in the case of a transfer that is \$1,000 or more, a beneficiary entity is required to verify the receiver's identity. This is so that the beneficiary entity is satisfied that the information obtained by an originating entity under Clause 52(4) is correct.

Subclause (3) provides that a beneficiary entity is also required to use reasonable measures to identify international transfers that lack any of the information required under Clauses 52 and 53 to accompany such transfers.

Subclause (4) provides that the beneficiary entity is to have in place risk-based policies and procedures to determine certain matters. These are when to execute, reject or suspend an electronic currency transfer which lacks any of the information required under Clause 52 and 53 to accompany the transfer. Policies and procedures must also be in place in relation to follow up action and that nature of follow up action to be done.

Subclause (5) provides that the beneficiary entity must retain records of all information relating to a sender or a receiver that accompanies a transaction in accordance with the record keeping requirements in this Part.

This Clause domesticates Recommendation 10, 11 and 16 of the FATF Standards.

Clause 56 provides for additional information. This Clause provides that regulations may prescribe additional information required to be provided by reporting entities in the fulfilment of their obligations under this Division.

This Clause domesticates Recommendation 10, 11 and 16 of the FATF Standards.

Clause 57 provides for additional requirements for reporting entities controlling the sending and receiving side of an electronic currency transfer. Subclause (1) provides that this Clause applies to a reporting entity that provides a money or value transfer service.

Subclause (2) provides that a reporting entity that controls both the sending and the receiving side of an electronic currency transfer, the reporting entity must consider all information required to be obtained under Clauses 52 to 54 relating to the sender and the receiver in order to determine whether a suspicious activity report should be filed.

Subclause (3) provides that where the reporting entity determines that a suspicious activity report should be filed it must do so in the country affected by the transfer. It must also make all relevant transaction information available to the relevant authorities in the country affected.

Subclause (4) provides that the reporting entity must have in place policies and procedures in place to ensure that it does not contravene the prohibitions of Part 6. This is in relation to Targeted Financial Sanctions.

This Clause domesticates Recommendations 10, 11 and 16 of the FATF Standards.

Clause 58 provides for the offence for contravention of this Division. It provides that a person who contravenes a provision of this Division is liable upon conviction to penalties. The penalty for an individual is a fine not exceeding \$200,000 or an imprisonment term not exceeding 10 years or to both. The penalty for a body corporate is a fine not exceeding \$1,000,000.

This Clause domesticates Recommendation 35 of the FATF Standards.

Division 5 – Reporting obligations in relation to suspicious activity

Clause 59 provides for the obligation to report a suspicious activity. Subclause (1) provides that this clause applies to a reporting entity if the reporting entity knows or suspects on reasonable grounds that certain matters have occurred as listed in subclause (1)(a). Subclause (1)(b) provides that it also applies if the reporting entity is required under another provision of this Part to make a suspicious activity report.

Subclause (2) provides that the reporting entity is to have regard to any applicable guidance published or provided by the FIU in assessing whether one or more of the circumstances referred to in subclause (1) has occurred.

Subclause (3) provides that after the occurrence of one of the circumstances referred to in subclause (1), the reporting entity shall no later than 2 working days after its occurrence report such occurrence to the FIU.

Subclause (4) provides that the report must be in such form, contain such details, and be provided to the FIU in such manner as may be prescribed and must be prepared with regard to any applicable guidance published or provided by the FIU.

Subclause (5) provides that the FIU may request further information from a reporting entity in relation to a report provided to the FIU under this Section.

Subclause (6) provides that in receiving the request under subclause (5), a reporting entity must, within 14 working days give the FIU any further information that the reporting entity has about any of the circumstance referred to in subclause (1).

This Clause domesticates Recommendations 10 and 20 of the FATF Standards. This is not a new provision. It is currently provided for under Section 17 of the *Anti-Money Laundering Act 2008*.

Clause 60 provides for a suspicious activity report not filed. This Clause provides that where a reporting entity is required by this Part to consider making a suspicious activity report but decides not to, the reporting entity must document the same. It must have on record, the circumstances and the reasons for its decision not to file a suspicious activity report.

This Clause domesticates Recommendations 10 and 20 of the FATF Standards. This is not a new provision. It is currently provided for under Section 17 of the *Anti-Money Laundering Act 2008*.

Clause 61 provides for the obligation to analyse suspicious activity. Subclause (1) provides that a reporting entity that knows or suspects on reasonable grounds that any of the circumstances listed in Clause 59(1)(a) has occurred, must analyse the same. The analysis is to confirm or refute the relevant suspicion.

Subclause (2) provides that the reporting entity must provide the results of the analysis to the FIU within 14 working days or longer period allowed by the FIU.

Subclause (3) provides that if the analysis does not refute the suspicion, the reporting entity shall conduct enhanced due diligence in accordance with Clause 43 and report that it has undertaken enhanced due diligence to the FIU.

Subclause (4) provides that the reporting entity must provide the results of the further analysis to the FIU within 14 days, or such longer period as the FIU allows in writing, after the suspicious activity report is made.

This Clause domesticates Recommendations 10 and 20 of the FATF Standards.

Clause 62 provides for the obligation to report certain transactions. Subclause (1) provides that this Clause relates to the reporting of certain transactions relating to international electronic currency transfer, a domestic international currency transfer to the value of \$10,000 or more and any transaction involving cash to the value of \$10,000 or more. It also applies to a series of transactions which have been structured in a manner that causes reasonable suspicion to have been structured to avoid meeting the threshold referred to in this Clause.

Subclause (2) provides that in relation to such transfers or transactions, the reporting entity must make a report of the transfer, transaction or series of transactions to the FIU within 7 days after receiving the request to conduct the same.

Subclause (3) provides that the report must be in the form, contain such details and be transmitted to the FIU in a manner that is prescribed by Regulations.

Subclause (4) provides that the FIU may request for further information in relation to the report.

Subclause (5) provides that a reporting entity must provide such information to the FIU within 14 working days after receiving the request relating to the transfer, transaction or series of transactions or the parties related to it.

This Clause domesticates Recommendations 10 and 20 of the FATF Standards.

Clause 63 provides for FIU direction in relation to a report made under this Division. Subclause (1) provides that the FIU may issue a written direction to a reporting entity that has transmitted a suspicious activity report under Clause 59, or a report under Clause 61. Such direction is to direct the manner in which the activity, attempted activity or property that is the subject of the report is to be dealt with by the reporting entity.

Subclause (2) provides that without limiting subclause (1) the FIU may direct a reporting entity to not continue further with the enhanced due diligence, to not continue with the business relationship or transaction. It may also direct a reporting entity to conduct enhanced due

diligence, enhanced monitoring of the business relationship or transaction or to conduct any other course of action specified by the FIU in the direction.

This Clause domesticates Recommendations 1, 10 and 34 of the FATF Standards.

Clause 64 provides for the obligation of supervisory authority or auditor to report suspicious activity. Subclause (1) provides that this Clause applies if a supervisory authority or an auditor of a reporting entity has reasonable grounds to suspect that information that is has concerning any activity or attempted activity meet requirements listed in this subclause.

Subclause (2) provides that the supervisory authority or auditor of the reporting entity must report activity or attempted activity as listed in subclause (1) to the FIU.

Subclause (3) provides that in making such report, the supervisory authority or auditor must comply with the requirements of Clause 59(2) to (6) as if it were a reporting entity.

This Clause domesticates Recommendation 27 of the FATF Standards. This is not a new provision. It is currently provided for under Section 18 of the *Anti-Money Laundering Act 2008*.

Clause 65 provides for false or misleading statements. This clause provides prohibitions on person making a suspicious activity report under Clause 59 or 64, or a report under Clause 61. It provides that the person must not include anything that the person knows or ought to have known is false or misleading in any particular. It also provides that a person must not omit anything that the person knows or ought to have known would results in a report that is false or misleading in any particular.

This Clause domesticates Recommendations 18 and 35 of the FATF Standards.

Clause 66 provides for the obligation not to disclose suspicious activity reports and related information. Subclause (1) provides that this Clause applies to certain persons listed in this subclause.

Subclause (2) provides that if a person listed in subclause (1) knows or suspects on reasonable grounds that any matters referred to in Clause 59(1) or has received a request under Clause 62(4), the person must not disclose certain matters to another person the matters listed in this subclause. This is apart from complying with the reporting obligations under the Bill.

Subclause (3) provides that a person must not say or do anything that may allow another person to infer any of the circumstances provided in subclause (2).

Subclause (4) provides that subclause (2) does not apply where disclosure is required to be made in accordance with the requirements listed in this subclause.

Subclause (5) provides that subject to subclause (6) a person who receives information in accordance with subclause (4), must keep such information confidential.

Subclause (6) provides that nothing in this Clause prevents a person from disclosing information to a court if the person discloses the information for the purposes of, or in the course of, any proceedings before the court and the court is satisfied that it is necessary in the interests of justice for that person to disclose the information.

This Clause domesticates Recommendations 10, 20 and 21 of the FATF Standards. This is not a new provision. It is currently provided for under Section 20 of the *Anti-Money Laundering Act 2008*.

Clause 67 provides for a general offence. This Clause provides that a reporting entity that contravenes any provision of this Division commits an offence. The penalty upon conviction for an offence under this provision for an individual is a fine not exceeding \$200,000 or imprisonment for a term not exceeding 10 years or to both. For a body corporate the penalty is a fine not exceeding \$1,000,000.

This Clause domesticates Recommendation 35 of the FATF Standards.

PART 5 – FINANCIAL INTELLIGENCE UNIT

Division 1 – Financial Intelligence Unit

Clause 68 this Clause provides for the continuance of the Financial Intelligence Unit. The FIU established by Section 7 of the *Anti-Money Laundering Act 2008* is continued in existence within the Department of Justice and Border Control.

This Clause domesticates Recommendations 29 of the FATF Standards. This is not a new provision. It is currently provided for under Section 7 of the *Anti-Money Laundering Act 2008*.

Clause 69 provides for the functions of the Financial Intelligence Unit. Subclause (1) provides for the continued functions of the FIU which are:

- (a) to enforce this Bill;
- (b) to supervise the compliance of reporting entities with this Bill;
- (c) to receive and analyse suspicious activity reports and other information available to it, whether by any means or under any law, in order to identify activity that may constitute or may relate to a financial crime or criminal conduct and to carry out any further investigations it considers necessary;
- (d) to disseminate information derived from analysis and reports of information received by the FIU to domestic and foreign law enforcement bodies or foreign intelligence bodies;
- (e) to enquire into conduct that constitutes as or relates to financial crime or is suspected to do so;

- (f) to conduct related inquiries, investigations, analysis and oversight;
- (g) to identify, analyse and assess on an ongoing basis financial crime trends, patterns and risks of relevance to the Republic, including in relation to new technologies, business practices and products;
- (h) to coordinate with supervisory authorities and other authorities in the Republic that have a role in combatting financial crime or criminal conduct;
- (i) to engage in cooperation with foreign governments and international bodies on matters relating to financial crime;
- (j) where necessary, to commence proceedings in any court for the purposes of enforcing any part of the Bill or any other written law, in the performance of its functions;
- (k) to ensure that reporting entities, supervisory authorities, other competent authorities and the public at large are adequately informed about the trends, patterns and risks of financial crime and the appropriate responses; and
- (l) such other functions which may from time to time be given to the FIU by any written law, the Cabinet or the Minister.

Subclause (2) provides that the FIU has all the powers that are necessary to give effect to or for carrying out its functions under subclause (1).

This Clause domesticates Recommendations 2 and 29 of the FATF Standards. This is not a new provision. It is currently provided for under Section 8 of the *Anti-Money Laundering Act 2008*.

Clause 70 provides for office of the Supervisor of FIU. Subclause (1) provides that there is established the office of the Supervisor of the FIU.

Subclause (2) provides that the Supervisor is to be appointed by the Minister in consultation with the Cabinet.

Subclause (3) provides that the terms and conditions of the office of the Supervisor shall be determined by the Cabinet.

Subclause (4) provides that the Supervisor shall be appointed for a period of 3 years and may be reappointed for any further term.

Subclause (5) provides that the Supervisor reports to the Secretary.

This Clause domesticates Recommendation 29 of the FATF Standards.

Clause 71 provides for the appointment of officers of the FIU. Subclause (1) provides that subject to subclause (3) the Chief Secretary in consultation with the Secretary for Justice must, in writing, appoint an officer of the FIU on such terms and conditions determined in consultation with the Supervisor.

Subclause (2) provides that subject to subclause (3) the Supervisor may, in writing, appoint an authorised person to exercise powers, duties and functions of the FIU specified in the authorisation, subject to the direction and supervision of the Director or such other person as the Director specifies in such authorisation.

Subclause (3) provides that the Director must ensure that a person appointed under subclause (1) or (2) has the necessary security clearance levels and understanding of his or her roles and functions, including his or her responsibilities in handling and disseminating sensitive and confidential information.

Subclause (4) provides that an officer of the FIU may exercise all of the functions, duties and powers, of the FIU under this Part, subject to the direction and supervision of the Director.

Subclause (5) provides that an authorised person is deemed to be an officer of the FIU when acting within the scope of the authorisation.

Subclause (6) provides that an officer of the FIU and an authorised person must report to the Director on the exercise of his or her powers and functions and advise the Director on any matter relating to financial crime.

This Clause domesticates Recommendations 29 of the FATF Standards. This is not a new provision. It is currently provided for under Section 7 of the *Anti-Money Laundering Act 2008*.

Clause 72 provides for the removal of the Supervisor from office. This Clause provides that the Cabinet may terminate or suspend the Supervisor from office if the Cabinet is satisfied of certain matters as provided in this Clause. These are, that the Director has a physical or mental incapacity that affects the performance of his or her duty, has neglected his or her duty, is incompetent, has committed a misconduct whether or not such amounts to the breach of any law or commits conduct that brings the FIU or the Republic into disrepute.

Subclauses (2), (3) and (4) are necessary to ensure that the Supervisor is able to work free from the fear of being terminated or removed. More so, he or she will be involved in inquiries, investigations, prosecutions or other functions under the Bill relating to politically exposed persons. The involvement of the Resident Magistrate is important as he or she will be a judicial officer. There is no element of any interference or unfairness because the office itself is involved in dispensing justice on a day to day basis.

Subclause (5) provides that where the Supervisor is to be removed for physical or mental incapacity, a health practitioner with requisite qualification must provide a medical report of the

Supervisor's incapacity and that such incapacity will impair him or her from performing the functions or exercising the powers of the office.

The assessment of physical and mental incapacity requires an expert opinion. It should be provided by a health practitioner. This Clause domesticates Recommendations 29 of the FATF Standards.

Clause 73 provides for the immunity of the Supervisor and officers of the FIU for acting in good faith. This Clause provides that the Supervisor and officers of the FIU acting under this Bill or any other written law, are to not be liable for any criminal, civil or administrative liability, for any act done or ordered to be done in the discharge of the functions and powers, whether or not within the limits of his or her functions or powers, provided that he or she at the time in good faith believed himself or herself to have the requisite functions and powers.

This Clause domesticates Recommendations 29 of the FATF Standards. This is not a new provision. It is currently provided for under Section 16 of the *Anti-Money Laundering Act 2008*.

Clause 74 provides for the independence of the Financial Intelligence Unit. This is a new provision which is not expressly provided for under the current *Anti-Money Laundering Act 2008*. Such standards require for the FIU to operate independently to ensure it effectively and efficiently carries out its functions under the Bill. The FIU should be operationally independent and autonomous, meaning that the FIU should have the authority and capacity to carry out its functions freely, including the autonomous decision to analyse, request or disseminate specific information.

Subclause (1) provides that FIU must perform all such functions and exercise all such powers under this Bill or any other written law independently.

Subclause (2) provides that Secretary for Justice can from time to time issue administrative directions to the FIU.

Subclause (3) provides that the Supervisor and other officers of the FIU report to the Secretary for Justice for administrative purposes.

Subclause (4) provides that for avoidance of doubt, no person can give directions or obstruct the FIU from acting independently in carrying out its functions and powers under this Bill.

Subclause (5) provides that the FIU will have its own budget, as part of the budget of the Department for Justice and Border Control. The budget is to be spent in accordance with the *Public Finance (Control and Management) Act 1997* ('PFCMA') and the respective appropriation law. The requirement for the budget to be spent in accordance to be subject to the PFCMA is so that audit requirements are met.

This Clause domesticates Recommendations 29 of the FATF Standards.

Clause 75 provides for the annual audit of the FIU by the Auditor General. Subclause (1) provides that the FIU shall be subject to examination and audit by the Auditor General, conducted pursuant to the *Audit Act 1973*.

Subclause (2) provides that the Auditor General or any person acting on behalf of or under the direction of the Auditor General must not use or disclose any information obtained or to which they have had access to in the course of an audit.

Subclause (3) provides that subclause (2) does not apply to a disclosure required for the purposes of exercising powers or performance of functions under the *Audit Act 1973*.

This Clause domesticates Recommendations 29 of the FATF Standards.

Clause 76 provides for the Annual Report of the FIU. Subclause (1) provides that the FIU must submit an Annual Report to the Minister for Justice and Border Control within 3 months from the end of the financial year.

Subclause (2) provides that the Minister for Justice and Border Control shall present the report to the Cabinet no later than 30 days from the receipt of the report.

Subclause (3) provides that the format and content of the annual report of the FIU shall be determined by the Supervisor in consultation with the Secretary for Justice and Border Control.

This Clause domesticates Recommendations 29 of the FATF Standards.

Division 2 – Powers and duties of the Financial Intelligence Unit

Subdivision 1 – Powers to monitor compliance

Clause 77 provides for the powers relating to information exchange with domestic authorities. This Clause provides that the FIU has the necessary powers to implement the requirements of the Bill. This includes the power to collect information for the purpose of the Bill. Such information may be collected from publicly available information or information on databases maintained by the government. It includes information from law enforcement agencies. It also includes information exchanged under agreements entered into by the FIU on agreed terms with other domestic agencies.

This Clause domesticates Recommendations 29 and 31 of the FATF Standards. This is not a new provision. It is currently provided for under Section 8 of the *Anti-Money Laundering Act 2008*.

Clause 78 provides for the power to conduct inspection. Subclause (1) provides that the FIU may with notice conduct an inspection in person or by way of requesting information from a reporting entity for the purposes of monitoring the reporting entity's compliance and for the purposes of enforcement of anti-money laundering and combatting terrorism and proliferation financing.

Subclause (2) provides that without limiting subclause (1), an inspection includes examination of records, making inquiries concerning the business and affairs of the reporting entity, examining the premises of the entity, reviewing the reporting entity's procedures, systems and controls and reviewing the business risk assessment produced by the reporting entity and its AML/CFT compliance program and policies.

Subclause (3) provides that for the necessary powers that enable an authorised officer to carry out inspections. These include entering premises, using or causing the use of a computer system or data processing system to examine data contain in such system, make copies of records and request information from an officer or employee of a reporting entity.

Subclause (4) provides that the powers set out in this Clause must be exercised only so far as is reasonably necessary to confirm compliance, by the reporting entity, with this Clause.

Subclause (5) provides that the owner, occupier or any person found to be lawfully in control of the premises must give any officer of the FIU all reasonable assistance to enable them to carry out their responsibilities and furnish an officer of the FIU with any information that they may reasonably require for the purposes of the Bill.

Subclause (6) provides that the FIU may transmit any information from, or derived from, an inspection to the appropriate law enforcement authorities or supervisory authorities if the FIU has reasonable grounds to suspect that the information meets the requirements listed in this subclause.

Subclause (7) provides that a person must not obstruct, hinder or fail to cooperate with the FIU in the lawful exercise of the powers under subclause (1), (2), (3) or (5).

Subclause (8) provides that a person who contravenes subclause (7) commits an offence. The penalty for a conviction in relation to an individual, is a fine not exceeding \$20,000 or imprisonment of not more than 2 years or to both. The penalty for a body corporate, to a fine not exceeding \$100,000.

The offence is expected to be committed in 2 tiers. In the first instance, it may involve any individual. Secondly, it will involve the senior managers of a reporting entity. The penalty for them has to be different. It is expected that it will be senior managers who are more likely than not to be offenders for not disclosing information. Hence, the penalty is much higher.

This Clause domesticates Recommendations 29 and 31 of the FATF Standards.

Clause 79 provides for the power to require a reporting entity to produce certain information. Subclause (1) is a general provision that enables the FIU to require a reporting entity to provide information to the FIU relating to the reporting entity's obligations under the Bill.

Subclause (2) lists the type of information that this Clause applies to.

Subclause (3) provides that subject to subclause (4), the FIU must give the entity written notice of when it must provide information required which must be 14 working days after the date of the notice from FIU.

Subclause (4) provides that the FIU may require a reporting entity to report information under this section to the FIU on an annual or bi-annual basis and in such form as required by the FIU.

Subclause (5) provides that a reporting entity must not fail to comply with the requirements of this clause.

Subclause (6) provides that where the reporting entity does not comply, it commits an offence. Such offence is punishable for an individual to a fine not exceeding \$20,000 or an imprisonment term not exceeding 2 years. A body corporate is liable upon conviction to a fine not exceeding \$100,000.

This Clause domesticates Recommendations 29 and 31 of the FATF Standards.

Clause 80 provides for the power to require certain persons to produce information relating to business relationships, accounts and transactions. Subclause (1) provides that this Clause applies in relation to information relating to matters listed in this subclause.

Subclause (2) provides that the FIU may require any or all of the persons listed in this subclause to provide the information listed in subclause (1).

Subclause (3) provides that the FIU must give the person written notice of when the person is to provide the information and the person must provide the information within the period specified in the notice which must be at least 14 working days after the date of the notice.

Subclause (4) provides that a person must not fail to provide the information, provide relevant information that the person knows is false or misleading in a material particular or fail to comply with subclause (3).

Subclause (5) provides that where the person contravenes subclause (4), the person commits an offence. Such offence is punishable for an individual to a fine not exceeding \$20,000 or an imprisonment term not exceeding 2 years. A body corporate is liable upon conviction to a fine not exceeding \$100,000.

This Clause domesticates Recommendations 29 and 31 of the FATF Standards.

Subdivision 2 – Powers to enforce compliance

Clause 81 provides for performance orders. Subclause (1) provides that the FIU may apply to the Supreme Court for an order requiring a person to do an act to comply with the Bill, which shall be commenced by way of a civil proceeding.

Subclause (2) provides that the Supreme Court may grant an order requiring a person to do an act or thing where the Court is satisfied that a person has refused or failed to do an act or thing and the refusal or failure contravenes the Bill.

Subclause (3) provides that an order granted by the Supreme Court under subclause (2) may relate to an officer, employee or agent, or a group of officers, employees or agents, of the person.

Subclause (4) provides that an application under subclause may be made *ex parte* and the Court may grant an interim order under subclause (2).

Subclause (5) provides that for the purposes of this Clause, the *Civil Procedure Rules 1972* or any other rules of the Supreme Court shall apply.

This Clause domesticates Recommendations 29 and 35 of the FATF Standards.

Clause 82 provides for restraining injunctions. Subclause (1) provides that the FIU may apply to the Supreme Court for an injunction restraining a person from engaging in conduct that contravenes the Bill. The application is to be commenced by way of a civil proceeding.

Subclause (2) provides that the Supreme Court may grant an injunction restraining a person from engaging in conduct that contravenes the Bill if it is satisfied that the person has engaged in any conduct that contravenes of the Bill.

Subclause (3) provides that an injunction under subclause (2) may relate to a director, officer, employee or agent of the person.

Subclause (4) provides that an application made under subclause (1) may be made *ex parte* and the Supreme Court may grant an interim injunction under subclause (2).

Subclause (5) provides that for the purposes of this Clause, the *Civil Procedure Rules 1972* or any other rules of the Supreme Court shall apply.

This Clause domesticates Recommendations 29 and 35 of the FATF Standards.

Clause 83 provides for relationship between offences and other enforcement measures. This Clause provides that criminal proceedings for an offence under the Bill may be commenced against a person in relation to conduct, whether or not an action to impose a non-criminal enforcement measure under this Subdivision has been commenced against the person, in relation to the same or substantially the same conduct.

This Clause domesticates Recommendations 3, 5 and 30 of the FATF Standards.

Subdivision 3 – Duties of the Financial Intelligence Unit and other regulatory body

Clause 84 provides for statistics and records. Subclause (1) provides that the FIU must maintain all records relating to its activities for at least 7 years.

Subclause (2) provides that the FIU must maintain statistics on the effectiveness and efficiency of the Republic's framework for anti-money laundering and combatting the financing of terrorism and other financial crime. This includes statistics and records in relation to suspicious activity reports received and disseminated, financial crime investigations, prosecutions and convictions, property frozen, seized and confiscated and mutual legal assistance or other international requests for co-operation made and received.

This Clause domesticates Recommendations 33 of the FATF Standards. This is not a new provision. It is an expanded revision of Section 8(i) of the *Anti-Money Laundering Act 2008*.

Clause 85 provides for guidance and feedback. This Clause provides that the FIU must for the purpose of assisting reporting entities issue guidelines to reporting entities in relation to their obligations under the Bill.

Paragraph (a) provides for guidelines in relation to customer identification.

Paragraph (b) provides for guidelines relating to record keeping and reporting obligations.

Paragraph (c) provides for guidelines relating to identifying suspicious transactions or suspicious activities.

Paragraph (d) provides for guidelines relating to training programmes and training material to reporting entities in relation to their obligations under the Bill.

Paragraph (e) provides for guidelines relating to feedback to reporting entities and other relevant agencies relating to their compliance with this Bill.

Paragraph (f) provides for guidelines relating to ensuring that reporting entities, supervisory authorities and other relevant authorities are aware of financial crime trends, patterns and risks of relevance to the Republic, including in relation to new technologies, business practices and products.

Paragraph (g) provides for guidelines relating to new developments, including information on current techniques, methods and trends in financial crime.

Paragraph (h) provides for guidelines to inform reporting entities on the circumstances that would give rise to an obligation to conduct enhanced due diligence in accordance with Clause 43.

Paragraph (i) provides for guidelines detailing appropriate procedures and controls to prevent the misuse of technological developments for the purposes of financial crime,

Paragraph (j) provides for guidelines to inform reporting entities about weaknesses in the systems relating to anti-money laundering or combatting the financing of terrorism of other countries.

Paragraph (k) provides for guidelines to educate the public and create awareness on matters relating to financial crime, in particular in the context of the Republic.

This Clause domesticates Recommendations 34 of the FATF Standards. This is not a new provision. It is an expanded revision of Section 8(j) of the *Anti-Money Laundering Act 2008*.

Clause 86 provides for protection and dissemination of information. Subclause (1) provides that the FIU must establish rules and policies relating to the protection and dissemination of information.

Subclause (2) provides that any rules and policies established under subclause (1) must be published in the Gazette.

This Clause domesticates Recommendations 29 and 34 of the FATF Standards.

Clause 87 provides for non-disclosure. Subclause (1) provides that this Clause applies to a person while the person is, or after the person ceases to be, the Supervisor or an officer of the FIU.

Subclause (2) provides that a person to whom this Clause applies, must not disclose any knowledge, information or matter which has been obtained by him or her in the performance of his or her duties or functions or the exercise of his or her powers, under this Bill.

This Clause domesticates Recommendation 29 of the FATF Standards. This is not a new provision. It is an expanded revision of Section 15 of the *Anti-Money Laundering Act 2008*.

Clause 88 provides for fit and proper person controls. Subclause (1) provides that a supervisory authority must ensure that it verifies and maintains up to date records of the beneficial ownership and control and the source of funds used to pay the capital of the reporting entities it supervises. It must also ensure it makes beneficial ownership and control information of the reporting entities it regulates available to the FIU when requested.

Subclause (2) provides that a supervisory authority must also ensure that fit and proper persons hold those positions on an initial and ongoing basis. Such positions being the directors, chief executives, senior managers or persons in other equivalent positions in the regulated reporting entity and the beneficial owners of the regulated reporting entity.

Subclause (3) provides that the FIU or the supervisory authority may determine and publish fit and proper criteria for the purpose of persons appointed to positions referred in subclause (2).

This Clause domesticates Recommendation 18 of the FATF Standards.

Subdivision 4 – International cooperation

Clause 89 provides for international cooperation. Subclause (1) provides that the FIU may cooperate with foreign governments and international organisations on matters related to its functions or powers, including to request information, receive requests for information and receive or provide information.

Subclause (2) provides that the FIU must not refuse a request for assistance from a foreign government or international organisation on any of the grounds listed in this subclause.

Subclause (3) provides that the FIU may refuse a request for assistance if in the opinion of the FIU the requesting foreign government or international organisation is not adequately able to protect the confidentiality of any information that has been requested.

This Clause domesticates Recommendations 29, 37 and 40 of the FATF Standards. This is not a new provision. It is a revision of Section 10 of the *Anti-Money Laundering Act 2008*.

Clause 90 provides for disclosure of reports and information to certain foreign bodies. Subclause (1) provides that the FIU may disclose to a foreign financial intelligence body or a foreign law enforcement body certain information that are listed in this subclause.

Subclause (2) provides that a disclosure made under subclause (1) must be made on the basis of the FIU's assessment, it is satisfied there are reasonable grounds to suspect that the report, information or analysis would be relevant to any purpose under subclause (3).

Subclause (3) provides a list of the purposes that are to be considered for the implementation of subclause (2).

Subclause (4) provides that the FIU must disclose any such report, information or analysis on such terms and conditions as are set out in the relevant agreement or arrangement entered into under Clause 91 between the FIU and the foreign financial intelligence body or foreign law enforcement body.

Subclause (5) provides that if an agreement or arrangement under Clause 91 has not been entered into, the FIU may disclose any report, information or analysis on such terms and conditions as may be agreed upon by the FIU and the foreign financial intelligence body or foreign law enforcement body at the time of the disclosure.

Subclause (6) provides that the agreed terms and conditions referred to in subclause (4) must include restrictions on the use of the report, information or analysis to the purposes referred to in this clause. It must also include a stipulation that the report, information or analysis is to be treated in a confidential manner and not to be further disclosed without the express consent of the FIU. It must also include provisions concerning the uses to which the report, information or analysis may be put, and the other bodies with which the information may be shared.

This Clause domesticates Recommendations 29, 37 and 40 of the FATF Standards. This is not a new provision. It is a revision of Sections 8(m) and 10 of the *Anti-Money Laundering Act 2008*.

Clause 91 provides for the power to enter into agreements with certain foreign bodies. Subclause (1) provides that the FIU may, with the approval of the Minister, enter into a written agreement or arrangement with a foreign financial intelligence body or a foreign law enforcement body regarding the exchange of reports, information or analysis between the FIU and the foreign financial intelligence body or the foreign law enforcement body.

Subclause (2) provides that the report, information or analysis exchanged under subclause (1) must be a report, information or analysis that the FIU, the foreign financial intelligence body or the foreign law enforcement body has reasonable grounds to suspect would be relevant to any of the purposes set out in Clause 90(3).

Subclause (3) provides that agreements or arrangements entered into must include matters listed under subclause(3)(a) to (c).

This Clause domesticates Recommendations 29 and 40 of the FATF Standards. This is not a new provision. It is a revision of Section 10 of the *Anti-Money Laundering Act 2008*.

Clause 92 provides for application of confidentiality provisions. The confidentiality provisions referred to in clauses 90(6) and 91(3) apply to a request to the FIU for a report, information or analysis, a request by the FIU for a report, information or analysis and a report, information or analysis shared by the FIU with a foreign counterpart or shared with the FIU by a foreign counterpart, whether or not shared in response to a request referred to in this Clause.

This Clause domesticates Recommendations 29 and 40 of the FATF Standards. This is not a new provision. It is a revision of Section 10 of the *Anti-Money Laundering Act 2008*.

Clause 93 provides for use of powers for gathering information. This Clause provides that the FIU may use the powers granted to it under Subdivisions 1 and 2 of this Division for the purpose of gathering information to share with a foreign counterpart.

This Clause domesticates Recommendations 29 and 40 of the FATF Standards.

PART 6 – MUTUAL LEGAL ASSISTANCE IN RELATION TO MONEY LAUNDERING

Clause 94 provides for the cooperation with a Foreign State. Subclause (1) provides that a request for mutual assistance by a foreign State in relation to a financial crime, criminal conduct or targeted financial sanctions, must be made to the Minister for Justice and Border Control.

Subclause (2) provides that Subject to Clause 99, if a foreign State makes a request to the Minister, the Minister may direct the Secretary for Justice and Border Control to immediately execute the request or inform the foreign State of any reason the request is not made immediately, or for delaying the execution of the request.

This Clause domesticates Recommendations 29, 37 and 40 of the FATF Standards.

Clause 95 provides that the Republic may obtain a search warrant. Clause 104 provides that in executing the request as directed in the Warrant, the Republic can apply for a warrant to enter any premises belonging to, in the possession of or control of any person named in the warrant and search the premises and remove any document, material or other thing.

This Clause domesticates Recommendations 37, 38 and 40 of the FATF Standards.

Clause 96 provides for property tracking and monitoring orders. This clause provides that the Republic may apply to the Resident Magistrate for an order that a person in possession, control of or who owns any document the subject of the request, deliver to the Secretary a document that is relevant to identifying, locating or quantifying any property or identifying or locating any document necessary for the transfer of any property. Further an order may be sought from the Resident Magistrate requiring a reporting entity to immediately produce to the Secretary all information obtained by the reporting entity about any business transaction conducted by or for a person that is the subject of the request. That is, information that was with the reporting entity during any period before or after the date of the order as the Resident Magistrate directs.

This Clause domesticates Recommendations 37, 38 and 40 of the FATF Standards.

Clause 97 provides for restraining and forfeiture of property. This Clause provides that subject to Clause 99, the Republic can obtain an order for the following:

- (a) an order restraining the property of or in the possession or under the control of the person named in the request;
- (b) to give directions as to the disposal of that property for the purpose of determining any dispute as to ownership of the property or any part, its proper administration during the period of restraint, the payment of debts due to creditors prior to the request and the payment of monies to that person for the reasonable subsistence of that person and his or her family
or
- (c) to forfeit the property of any person named in the request.

This Clause domesticates Recommendations 38 and 40 of the FATF Standards.

Clause 98 provides for the request accompanied by an evidence order. Subclause (1) provides that subject to Clause 99 the Republic may, upon application the Supreme Court and for a request accompanied by an order referred to in subclause (2) obtain an order directed to that person in the same terms as in the order accompanying the request.

Subclause (2) provides that the order is an order issued by a court of the requesting State directed to any person within the jurisdiction of the Supreme Court to appear before or any provide any document or material in his or her possession, power or control to the court of the requesting State for the purpose of giving evidence in specified proceedings in that court.

Subclause (3) provides that a person served with an order appear before the Supreme Court or provide any document or material to the Supreme Court or appear before the court of a requesting State as directed by the order.

Subclause (4) provides that a person who chooses to appear before a court of the requesting State, who then does not make that appearance is automatically deemed as having appeared before the Supreme Court of Nauru under subclause (3)(a).

Subclause (5) provides that the Supreme Court is to conduct proceedings that are necessary to take evidence of any person appearing before it, under subclause (3)(a).

Subclause (6) provides that for the purposes of this Part, evidence is to be transmitted by the Secretary to the requesting State.

This Clause domesticates Recommendations 37, 38 and 40 of the FATF Standards.

Clause 99 provides for the limitations on compliance with a request. Subclause (1) provides that the Secretary may refuse to comply with a request where the action sought is inconsistent with the Constitution, the execution is likely to prejudice national interest and security or a document or material being requested is prohibited from disclosure according to any bilateral, multilateral or other obligation of Nauru to another country.

Subclause (2) provides that the Secretary must not refuse solely with a request on the ground that the request is with regard to an offence that relates to matters of tax or currency.

Subclause (3) provides that Clause 97 applies only to property coming into the possession or under the control of a person after the commencement of this Part.

This Clause domesticates Recommendations 40 of the FATF Standards.

Clause 100 provides for requests to other States. This Clause provides that the Minister may on behalf of Nauru issue to a foreign State a request accompanied by an order issued in accordance with Clause 101. This Clause domesticates Recommendations 37 and 40 of the FATF Standards.

Clause 101 provides for issuing an evidence order against a foreign resident. Subclause (1) provides that the Secretary may for proceedings for a money laundering offence apply to the Supreme Court for an order. That order is to direct any person resident in a foreign State to attend to or provide any document or material in his or her possession or under his or her power and control to the Supreme Court, the court foreign State (subject to the approval of the foreign State), to give evidence relating to the proceedings.

Subclause (2) provides that an order granted may be sent to the appropriate authorities in a foreign State, in a form of a request that the foreign State provide necessary assistance to give effect to the order. This Clause domesticates Recommendations 37 and 40 of the FATF Standards.

Clause 102 provides for evidence pursuant to a Request. This Clause provides that any evidence taken pursuant to a request made under Clause 101 in any proceedings in a court of a foreign State must be received by a court in Nauru as prima facie evidence in any proceedings to which that evidence relates. This Clause domesticates Recommendations 37, 38 and 40 of the FATF Standards.

Clause 103 provides for Requests. This Clause provides that a request must be in writing, including in electronic form dated and signed by or on behalf of the person making the request. It further provides that a request sent by other electronic form are considered as lapsed at the expiration of 14 days if the original request is not by then been received by the Secretary. This Clause domesticates Recommendations 37 and 38 of the FATF Standards.

Clause 104 provides for requirements for a Request. This Clause provides for the requirements that must be met when making a Request. A request must:

- (a) confirm that an investigation or prosecution is being conducted into a suspected criminal conduct, financial crime or money laundering offence or that a person has been convicted of that criminal conduct, financial crime or a money laundering offence;
- (b) state the grounds on which any person is being investigated or prosecuted for the suspected criminal conduct, financial crime or money laundering offence referred to in paragraph (a) or give details of the convictions of the person referred to in paragraph (a);
- (c) give particulars sufficient to identify any person referred to in paragraph (b);
- (d) give particulars sufficient to identify any financial institution or other person believed to have information, documents, or material of assistance to the investigation or prosecution referred to in paragraph (a);
- (e) request the person or entity to whom the request is addressed to obtain from a financial institution or other person referred to in paragraph (d) all and any information, documents or material of assistance to the investigation or prosecution referred to in paragraph (a);
- (f) specify the manner in which and to whom, any information, documents or material obtained pursuant to the request is to be produced;
- (g) state whether or not a restraining or forfeiture order is required; or
- (h) contain any other information that may assist the execution of the request.

This Clause domesticates Recommendations 37 of the FATF Standards.

Clause 105 provides for Requests for forfeiture. This clause provides that a request for forfeiture must have attached to it, a copy of the final forfeiture order of the Supreme Court and a statement signed by a Judge of that Court to the effect that no further appeal against the order can be made. This Clause domesticates Recommendation 38 of the FATF Standards.

Clause 106 provides for Requests not to be invalidated. Subclause (1) provides that a request received in the Nauru must not be invalidated for the purpose of commencing any legal proceedings by reason of any failure to comply with Clause 104, where the Secretary is satisfied that there is sufficient compliance to enable him or her to properly execute the request.

This Clause domesticates Recommendations 37, 38 and 40 of the FATF Standards.

PART 7 – TARGETED FINANCIAL SANCTIONS

Division 1 - Preliminary

Clause 107 provides for definitions for this Part. This Clause provides the definitions for the terms '*Administrator*,' '*asset*,' '*delist*,' '*designated person or entity*,' '*frozen asset*' or '*freezable asset*,' '*resolution*,' '*successor resolution*,' '*targeted financial sanctions*' and '*UNSC*'.

This Clause domesticates Recommendations 5, 6 and 7 of the FATF Standards.

Clause 108 provides for Responsibility of the Cabinet in relation to resolutions listed in Schedule 1. This Clause provides that regulations may be made in accordance with Clause 128 prescribing prohibited conduct that contravenes, or imposes obligations for complying with, resolutions listed in Schedule 1.

This Clause domesticates Recommendations 5, 6 and 7 of the FATF Standards.

Division 2 – Targeted financial sanctions

Clause 109 provides for UNSC designation and de-listing. Subclause (1) provides that the designation of a person or entity for targeted financial sanctions by the UNSC or its committees under a resolution listed in Schedule 1 has immediate effect.

Subclause (2) provides that the de-listing of a person or entity by the UNSC or its committees under a resolution listed in Schedule 1 has immediate effect.

This Clause domesticates Recommendations 5, 6 and 7 of the FATF Standards.

Clause 110 provides for the designation by the Minister. Subclause (1) provides that the Minister shall designate a person or entity for targeted financial sanctions if the Minister has reasonable grounds to believe that the criteria for designation prescribed by regulations has been met.

Subclause (2) provides that the designation of a person or entity by the Minister has immediate effect.

This Clause domesticates Recommendations 5, 6 and 7 of the FATF Standards.

Clause 111 provides for the appeal of designation made by the Minister. Subclause (1) provides that a person or entity designated by the Minister may apply to the Minister to be de-listed.

Subclause (2) provides that the application must be in writing and provide the information in the possession of the designated person or entity relevant to the Minister's consideration of the application.

Subclause (3) provides that the Minister is not required to consider another application by a designated person or entity if the person or entity had made a previous application under this Clause 12 months before the date of the other application. Therefore if 2 applications are made to the Minister within less than 12 months of each other, the Minister is not obligated to consider the second application.

This Clause domesticates Recommendations 5, 6 and 7 of the FATF Standards.

Clause 112 provides for the review of designation by the Minister. This clause provides that the Minister must review the grounds for a designation made by the Minister every 3 years after the date the designation was made.

This Clause domesticates Recommendations 5, 6 and 7 of the FATF Standards.

Clause 113 provides for the de-listing by the Minister. Subclause (1) provides that the Minister shall de-list a person or entity if, after consideration of an application under Clause 111 or a review under Clause 112, or at any other time, the Minister is satisfied that there are no longer reasonable grounds for a designation, the designated person is deceased or the designated entity no longer exists.

Subclause (2) provides that the de-listing of a person or entity by the Minister has immediate effect.

This Clause domesticates Recommendations 5, 6 and 7 of the FATF Standards.

Clause 114 provides for the proposal for designation to the UNSC. Subclause (1) provides that the Minister may submit a proposal to the UNSC or its committees to designate a person or entity for targeted financial sanctions if the Minister has reasonable grounds to believe that the criteria for designation under a resolution listed in Schedule 1 has been met.

Subclause (2) provides that the Minister may submit a proposal for designation, whether or not the Minister has designated the person or entity under Clause 110.

This Clause domesticates Recommendations 5, 6 and 7 of the FATF Standards.

Clause 115 provides for material on which designations may be based. Subclause (1) provides that in considering whether to designate or de-list a person or entity, or to propose a designation to the UNSC or its committees, the Minister may consider any relevant information from any

relevant source, either foreign or domestic, including information held by an intelligence agency or the police.

Subclause (2) provides that a foreign or domestic intelligence agency or the police may provide information, including security classified material, to the Minister for the purpose of enabling the Minister to carry out his or her functions under this Part.

This Clause domesticates Recommendations 5, 6 and 7 of the FATF Standards.

Clause 116 provides for notice of rights to a designated person or entity. Subclause (1) provides that the Minister must use his or her best endeavours to provide written notice to a designated person or entity if the person meets the requirements listed in this subclause.

Subclause (2) provides that the notice must be provided within a reasonable time after the date of the designation and after sufficient time has been allowed for targeted financial sanctions to be applied.

Subclause (3) provides that the notice must contain information necessary to inform the designated person or entity of their rights, including information listed in this subclause.

This Clause domesticates Recommendations 6 and 7 of the FATF Standards.

Clause 117 provides for the power to seize assets. Subclause (1) provides that the Court may grant an order for a police officer to search for and seize a frozen asset if there is a reasonable risk that the asset will dissipate.

Subclause (2) provides that the Court may grant the order only on application by or on behalf of the Minister.

Subclause (3) provides that if during the course of a search for frozen assets, an officer finds an asset that the officer reasonably believes could have been included in the Court order had its existence been known at the time the order was made, the officer may seize the asset and the order is deemed to have authorised such seizure.

This Clause domesticates Recommendations 4, 5, 6 and 7 of the FATF Standards.

Clause 118 provides for the management of seized assets. Subclause (1) provides that the Minister must use his or her best endeavours to maintain the value of an asset seized under Clause 117, and for this purpose the Minister may appoint the Administrator to manage a seized asset.

Subclause (2) provides that an Administrator appointed under this Clause has all the powers necessary to diligently, and in good faith, manage a seized asset.

Subclause (3) provides that an asset seized under Clause 117 can only be retained by the Minister or the administrator for as long as the asset remains a frozen asset or until a time required by the administrator to complete his or her functions in relation to the asset.

This Clause is provided for the purposes of Recommendations 4 of the FATF Standards.

Clause 119 provides for the destruction or disposal of seized assets. This Clause provides that the Minister or administrator may destroy or dispose of an asset seized under Clause 117 if the asset is a vessel seized pursuant to resolution 1718 or a successor resolution to that resolution or another asset prescribed by regulations, maintenance of the asset is not reasonably feasible and the UNSC or its committee has approved the destruction or disposal of the asset.

This Clause domesticates Recommendations 4 of the FATF Standards.

Division 3 - Supervision

Clause 120 provides for the supervisory responsibility. Subclause (1) provides that the FIU is responsible for supervising compliance with regulations made under Clause 128.

Subclause (2) provides that the FIU has the supervisory functions listed in this subclause.

This Clause domesticates Recommendations 6, 7 and 29 of the FATF Standards.

Clause 121 provides for the power to require information or documents to be given. Subclause (1) provides that the FIU may, issue a written notice requiring a person to provide information or documents of the kind, by the time and in the manner, specified in the notice.

Subclause (2) provides that a person may, before the time specified in the notice, request the FIU to vary a notice by extending the time specified or in any other manner.

Subclause (3) provides that the FIU may vary the notice if it considers it appropriate to do so.

Subclause (4) provides that a person shall comply with a notice despite any other law or contractual obligation, other than a law governing legal professional privilege.

This Clause is provided for the purposes of Recommendations 6, 7 and 29 of the FATF Standards.

Clause 122 provides for the power to conduct on-site inspection. Subclause (1) provides that the FIU may, with or without prior notice, request entry into real property used for a commercial purpose, for the purpose of conducting an on-site inspection to monitor compliance with regulations under this Part.

Subclause (2) provides that the FIU must produce official identification and a written notice of the on-site inspection no later than at the time that the request for entry is made.

Subclause (3) provides that during an on-site inspection, the FIU may require information or documents to be provided for inspection.

Subclause (4) provides that a person must comply with a request for information or documents despite any other law or contractual obligation, other than a law governing legal professional privilege.

This Clause is provided for the purposes of Recommendations 6, 7 and 29 of the FATF Standards.

Clause 123 provides that the Financial Intelligence Unit may copy documents. This Clause provides that if a person provides a document to the FIU under Clause 121 or 122, the FIU may make and keep a copy of the document and return the original document to the person within a reasonable time.

This Clause domesticates Recommendations 6, 7 and 29 of the FATF Standards.

Division 4 - Enforcement

Clause 124 provides for Offence for failure to comply with a requirement to provide information or documents. Subclause (1) provides that a person required to provide information or documents under Division 3 must not fail to provide the information or documents, provide false or misleading information or documents or destroy, deface or conceal documents with the intention of evading a requirement under Division 3 to provide documents.

Subclause (2) provides that a person who contravenes this provision commits an offence and is liable upon conviction for an individual, to a fine not exceeding \$20,000 or imprisonment for a term not exceeding 2 years, or both. A body corporate is liable upon conviction, to a fine not exceeding 100,000 or, where the contravention involves one or more transactions, an amount equivalent to the value of the transactions, whichever is greater.

This Clause domesticates Recommendations 5, 6, 7 and 35 of the FATF Standards.

Clause 125 provides for offence against regulations. This Clause provides that a person who engages in conduct that contravenes a regulation under this Part commits an offence. The person who commits an offence is liable upon conviction for an individual, to a fine not exceeding \$200,000 or imprisonment for a term not exceeding 20 years, or to both. A body corporate is liable upon conviction to a fine not exceeding \$1,000,000 or, if the contravention involved one or more transactions, an amount equivalent to the value of the transactions, whichever is greater.

This Clause domesticates Recommendations 5, 6, 7 and 35 of the FATF Standards.

Division 5 – Other matters

Clause 126 provides for disclosure of information. This Clause provides that the Minister or the FIU may only disclose information obtained under this Part or regulations, for the purpose of administering or supervising compliance with this Part or regulations or for a law enforcement or regulatory purpose, to certain agencies. Such agencies are, a relevant government Department, a foreign government agency, a public international organisation to which the Republic is a party, the UNSC or its committees or bodies operating under the authority of the UNSC as specified in a resolution.

This Clause domesticates Recommendations 2, 29 and 40 of the FATF Standards.

Clause 127 provides for the protection from liability. Subclause (1) provides that no civil or criminal proceedings can be made against a person if the person has, in good faith and with reasonable care, engaged in conduct in compliance or in purported compliance, with this Part or regulations.

Subclause (2) provides that no civil or criminal proceedings can be made against the Minister or the FIU for anything done or omitted to be done, in good faith, in the performance of the Minister's or the FIU's functions or the exercise of the Minister's or the FIU's powers under this Part or regulations.

Clause 128 provides for Regulations for this Part. This Clause provides that the Cabinet may make regulations as are necessary or expedient to give effect to this Part.

Subclause (2) provides that without limiting subclause (1), regulations may be made to prescribe matters listed in subclause (2)(a) to (i).

Subclause (3) provides that to avoid doubt, the validity or operation of another Act or regulations made under another Act, is not affected merely because the Act or regulations give effect to a resolution under Article 41 or any other Article of the Charter of the United Nations.

This Clause domesticates Recommendations 6 and 7 of the FATF Standards.

PART 8 - MISCELLANEOUS

Clause 129 provides for the application of the *Proceeds of Crime Act 2004*. Subclause (1) provides that process, procedure and enforcement of the confiscation, forfeiture, determination of competing interest of persons or disposal of criminal property as required under this Bill, are to be made in accordance with the *Proceeds of Crime Act 2004*.

Subclause (2) provides that the references to the offences and description of property which is the subject of proceeds of crime described under *Anti-Money Laundering and Targeted Financial Sanctions Act 2023* mutatis mutandis are to be treated as applying with reference to any tainted property under the *Proceeds of Crime Act 2004*.

The purpose of this provision is to ensure that any criminal property that is required to be seized, restrained, or forfeited, is to be done under the Proceeds of Crime Act 2004.

This Clause domesticates Recommendations 3 and 4 of the FATF Standards.

Clause 130 provides for Regulations. Subclause (1) provides that without limiting Clause 128, the Cabinet may make regulations to prescribe matters that are required or permitted by this Bill to be prescribed or are necessary or convenient to be prescribed, for carrying out or giving effect to this Bill and generally for achieving the purposes of this Bill.

PART 9 – REPEAL, SAVINGS AND TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS

Clause 131 provides for the definition of '*repealed Act*' which means the *Anti-Money Laundering Act 2008*.

Clause 132 provides for the repeal of the Act. This Clause repeals the *Anti-Money Laundering Act 2008*.

Clause 133 provides for the Financial Intelligence Unit agreements and arrangements. Subclause (1) provides that this Clause applies to an agreement or arrangement entered into by the Financial Intelligence Unit under Section 11 of the repealed Act if the agreement or arrangement was in force immediately before the commencement of the Bill.

Subclause (2) provides that the agreement or arrangement continues in force as if it had been entered into by the FIU under the Bill.

Clause 134 provides for the financial institution reports. Subclause (1) provides that this Clause applies to a report made by a financial institution under Section 17 of the repealed Act.

Subclause (2) provides that any report made continues to have effect as if it had been made by the financial institution under the Bill.

Clause 135 provides for legal proceedings under the repealed Act. Subclause (1) provides that this clause provides that it applies to a legal proceeding that had been instituted under the repealed Act but had not been finally determined immediately before the commencement of the Bill.

Subclause (2) provides that this Clause provides that the legal proceeding is to continue on and after the commencement of the Bill as if the *Anti-Money Laundering Act 2008* had not been repealed.

Clause 136 provides for the investigations under the repealed Act. Subclause (1) provides that this clause applies to an investigation that had been instituted under the repealed Act but had not been finally determined immediately before the commencement of the Bill.

Subclause (2) provides that the investigation is to continue on and after the commencement of the Bill as if the *Anti-Money Laundering Act 2008* had not been repealed.

Clause 137 provides for appointments under the repealed Act. Subclause (1) provides this Clause applies to an appointment made under the repealed Act that was in force immediately before the commencement of the Bill.

Subclause (2) provides that the appointment continues in force on and after the commencement of this Bill as if it had been made under the Bill.

Clause 138 provides for the saving provision for regulations made under the repealed Act. This Clause provides that any Regulations made under the *Anti-Money Laundering Act 2008* will continue to have force after the commencement of this Bill, as if they were made under this Bill, once enacted.

Clause 139 provides for other matters under the repealed Act. Subclause (1) provides that this Clause applies to any other matter done or made under the repealed Act that was in effect immediately before the commencement of the Bill.

Subclause (2) provides that the matter continues to have effect on and after the commencement of this Bill as if it had been done or made under the Bill.

Clause 140 provides for consequential amendments of other written laws. This Clause provides that all references under any written law to ‘*Anti Money Laundering Act 2008*’ shall be deleted and substituted with ‘*Anti-Money Laundering and Targeted Financial Sanctions Act 2023*.’