

Asset (Money) Laundering Prevention Act, 2008

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

Preamble: Whereas it is expedient to provide for the prevention of laundering of criminal proceeds, the Legislature-Parliament has enacted this Act.

Act No. 34 of the Year 2008

Chapter – 1 Preliminary

1. Short Title, Extent, and Commencement: (1) This Act shall be cited as " Asset (Money) Laundering Prevention Act, 2008".

(2) The Act shall apply all over Nepal and to any person or corporate body, irrespective of where they are residing, or located, who remits, transfers or sends assets generated from the offences under this act from Nepal to abroad or abroad to Nepal.

(3) The Act shall come into force immediately.

2. Definition: Unless the subject or context otherwise requires, in this Act, -

- a) "Investigation Officer" means a personnel so appointed or designated as per Section 15
- b) "Offence" means the offence so designated under chapter-2.
- c) "Transaction" means any act or agreement made in order to carry out any economic or business activities and the term also means the purchase, sale, distribution, transfer or investment and possession of any assets.
- d) "Non-Financial Institution" means the following institutions:-
 - (1) Any firm or company other than those stated in Clause (h), registered as per prevailing laws to carry out any trade or business including casino, precious metals.
 - (2) Any institution irrespective of whether or not organized or incorporated as per the laws,
 - (3) Any institution designated as "Non-Financial Institution" by the Government of Nepal through a notice in the Nepal Gazette.
- e) "Designated or as designated" means designated or as designated in this Act or Rules thereof.
- (E1)¹ "Professional" means notary public, auditor, insolvency practitioner, legal document drafting agents and other similar professionals.
- f) "Department" means the Asset Laundering Investigation Department pursuant to Section 11.
- g) "Bank" means a bank licensed under the prevailing bank and financial institution law by Nepal Rastra Bank to carry out 'A' class financial transactions.

¹ Added by the first amendment.

- h) "Financial Institution" means financial institution licensed under the prevailing bank and financial institution law by Nepal Rastra Bank to carry out 'B', 'C', and 'D' class financial transactions and the term also means the cooperatives, Or person, firm, company or institution licensed to carry out foreign exchange business or purchase and sell foreign currency, OR any company licensed for insurance business, insurance broker and also securities market or business operated as per prevailing laws.
- i) "Financial Information Unit" means the Financial Information Unit instituted pursuant to Section 9.
- j) "Rastra Bank" means Nepal Rastra Bank established under the prevailing Nepal Rastra Bank law.
- k) "Public Servant" means any individual supposed to be public servant as per prevailing laws.
- l) "Suspicious Transaction" means the transaction of such nature that is impossible in general economic, commercial and business practice **and the term also means similar other transactions the FIU declares from time to time as suspicious transaction.**²
- m) "**Asset**" means **physical, non-physical, movable, immovable, tangible or intangible asset or any object or equipment/instrument which has a monetary value and the term also means any document, records, evidence or any other instrument establishing ownership or rights over such asset.**
- n) "Government Office" means the Land Revenue Office, Office of the Company Registrar and the term also means any entity so designated by the Government of Nepal through publishing a notice in Nepal Gazette.³

Chapter-2

Provisions Relating to Offences

3. Asset not to Be Laundered: (1) No person shall launder or cause to launder assets.

(2) Any person committing acts pursuant to Sub-Section (1) shall be deemed to have committed offence as per this Act.

4.⁴ Offence of Money Laundering: For the purpose of this Act, one shall be deemed to have laundered asset, in case one or any third person acquires, holds, posses, uses, consumes, utilizes or earns or displays or transacts or deals with or causes to do so, in any manner, the asset obtained, held, possessed, directly or indirectly from commission of any or all of the following offence or act or the asset increased from any type of investment of such asset; or converts or disguises or transfers such asset

² Added by the first amendment.

³ Amended by the first amendment.

⁴ Amended by the first amendment.

or causes to do so with an intention to conceal, convert or disguise the source, nature, place, ownership, right, disposal of such assets; or obtains, purchases, holds, possesses, uses, consumes or utilizes such asset or causes to do so; or does or causes to do transaction in any form in spite of the knowledge of such asset or with the reasonable ground to believe so; or does or causes to do any kinds of assistance directly or indirectly to transform, change or transfer such asset or causes to do so .

- (a) Revenue evasion,
- (b) Organized crime,
- (c) Financing of terrorist activities,
- (d) Offence under existing law on arms and ammunition,
- (e) Offence under existing law on foreign exchange regulation,
- (f) Offence under existing law against homicide, theft, fraud, forging of document, counterfeiting, abduction or hostage taking,
- (g) Offence under existing law on narcotic drug control,
- (h) Offence under existing law on national park and wildlife conservation,
- (i) Offence under existing law against human trafficking and transportation,
- (j) Offence under existing law on cooperative institution,
- (k) Offence under existing law on forest
- (l) Offence under existing law against corruption,
- (m) Offence under existing law on bank and financial institution,
- (n) Offence under existing law on banking offences and penalty,
- (o) Offence under existing law on ancient monument conservation,
- (p) Offence under any other law or treaty which Nepal is a party to, as designated by the Government of Nepal through publishing a notice in Nepal Gazette.

4A. ⁵ **Prohibition on Financing of Terrorist Activities:** No one shall finance or causes to finance terrorist activities.

4B. ⁶ **Offence of Financing of Terrorist Activities:** Any person commits the offence of financing of terrorist activities if that person by any means collects or provides to any person any asset with the intention that they should be used or in knowledge that they are to be used in order to carry out any act which constitutes an offence within the scope of the following conventions or any other act intended to cause death or serious bodily injuries to an individual.

- (1) Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963,
- (2) Hague Convention for the Suppression of Unlawful Seizure of Aircraft, 1970,

⁵ Added by the first amendment.

⁶ Added by the first amendment.

- (3) Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, 1971,
- (4) Convention on the Prevention and Punishment of Crime Against Internationally Protected Persons Including Diplomatic Agents, 1973,
- (5) International convention Against the Taking of Hostages, 1979,
- (6) SAARC Regional Convention on Suppression of Terrorism, 1987,
- (7) Any Convention against Terrorist Activities which Nepal is a party to.

5. Not to Attempt, Abet or Provoke: No one shall attempt, abet or incite others to commit offences stipulated in this chapter.

5A.⁷ Penalty for the offence committed abroad: Notwithstanding anything contained in this Act, any act or offence mentioned in Section 3, 4, 4A, 4B of this Act committed abroad shall be dealt as an offence and may be liable to penalty as if they were committed in Nepal, provided that the act or offence are punishable offence in the foreign country where such offence were committed and such country has not imposed penalty for the offence.

Chapter -3

Provision Relating to Identity, Transactions and Details of the Customers

- 6. Customers to be Identified:** (1) Any bank, financial institution or non financial Institution shall maintain clear record of identity of a person while establishing any kind of business relationship with such person or while transacting the amount above the threshold, either in a single transaction or in series of transactions as prescribed by Rastra Bank from time to time by publishing a notice.
- (2) Bank, financial institution or non-financial institution, while identifying the customer as per Sub-Section (1), shall cause the person establishing business relationship or having transactions with it to submit the documents as follows:-
- (a) In case of a natural person his/her name, family surname, copy of citizenship or passport including other necessary documents that substantiate his/her permanent residential address and profession or business,
 - (b) In case of the person or firm except those provided in Clause (a), copy of the document certifying incorporation, establishment or registration of the institution, documents that mention name, surname, address, profession, business of board of directors and executive director or proprietor of firm or partners of partnership firm,
 - (c) In case of business relation or transactions to be established or made on behalf of someone else, documents relating to principal's identity, address including power of attorney clarifying the business of the principal,
 - (d) Name, surname, address of close relative, person or institution benefiting from business transaction,
 - (e) In case of transactions made through negotiable instruments, name, surname and address of the issuer and payee of such instrument,

⁷ Added by the first amendment.

- (f) Other documents as prescribed by the Financial Information Unit from time to time.
- (3) Bank, financial institution or non-financial institution shall maintain a separate record of documents and transactions of each customer, pursuant to Sub-Section (2), including date and nature of transactions, type of account and code number.

7. Liability of Government Entity, Bank, Financial Institution and Non-

Financial Institution:-(1) The government entity, bank, financial institution and non-financial institution shall fulfill the following responsibilities for the purpose of this Act:-

- (a) To maintain records of amount transacted beyond the threshold prescribed by Rastra Bank at a single or in a series of transactions by a person,
- (b) To investigate and inquire any transaction which appears to be suspicious or transacted with the motive of asset laundering or so laundered or there are reasonable grounds for suspicion,
- (c) To inform the Financial Information Unit about the transactions mentioned in Clause (a) within **fifteen**⁸ days of event and the transactions mentioned in clause (b) immediately after the event.

(2) In case, anything happens to be omitted in the information reported to the Financial Information Unit pursuant to Sub-Section (1) or anything different from original information or particulars received from the concerned person during the transaction is subsequently received, the concerned entity, bank, financial institution or non financial institution shall promptly report such details to the Financial Information Unit.

(3) Notwithstanding anything in Sub-Section (1), in case there is any suspicion on the transactions of persons having regular business relation or transactions, the concerned entity, bank, financial institution or non-financial institution shall inform the Financial Information Unit after making an inquiry.

(4) The bank, financial institution, or non-financial institution shall maintain a secured record of transaction referred to in this Section at least for a period of five years from the date of such transaction.

7A.⁹ Responsibility of Professionals: Notwithstanding anything contained in existing law, the professionals shall immediately report suspicious transaction to the Financial Information Unit if they know of any suspicious transaction in course of their professional performance.

⁸ Amended by the first amendment.

⁹ Added by the first amendment.

Chapter – 4
Provisions for Coordination Committee and Financial Information Unit

8. Formation of Coordination Committee: (1) There shall be a Coordination Committee constituted as follows to coordinate inter-related entities and to provide necessary suggestions to the Government of Nepal with regard to the prevention of offence¹⁰:-

- (a) Secretary, Ministry of Finance – Coordinator
 - (b) Secretary, Ministry of Law, Justice and Parliamentary System –Member
 - (c) Secretary, Ministry of Home –Member
 - (d) Secretary, Ministry of Foreign Affairs –Member
 - (D1)¹¹ Secretary, Office of Prime minister and council of Ministry-member
 - (D2)¹² Deputy Attorney General, office of the Attorney General – member
 - (e) Deputy Governor, Nepal Rastra Bank – Member
 - (E1)¹³ Inspector General of Police, Nepal Police – member
- (2) The chief of the Financial Information Unit shall act as a secretary of the Coordination Committee constituted pursuant to Sub-Section (1) and the Financial Information Unit shall work as Secretariat of the Coordination Committee.
- (3) The procedures of meeting of the Coordinate Committee pursuant to Sub-Section (1) shall be as determined by the committee itself.

8A.¹⁴ Function, Duty and Power of Coordination Committee: The coordination committee shall have following function, duty and power in addition to the function, duty and power mentioned elsewhere in this Act.

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

¹⁰ Amended by the first amendment.

¹¹ Added by the first amendment.

¹² Added by the first amendment.

¹³ Added by the first amendment.

¹⁴ Added by the first amendment.

- (f) **To perform or cause to perform other tasks in relation to prevention of offence, as prescribed by the Government of Nepal.**

9. **Financial Information Unit:** (1) There shall be a Financial Information Unit in Rastra Bank for collection and analysis of information relating to **the offence**¹⁵.
- (2) The Governor of Rastra Bank shall appoint the chief of the Financial Information Unit from among the officers of Nepal Rastra Bank, not lower in rank than a First Class Officer.
- (3) The Office of the Financial Information Unit shall be placed in Nepal Rastra Bank and the Rastra Bank shall provide the staff required for it.
10. **Functions, Powers and Duties of Financial Information Unit:** (1) In addition to the functions, powers and duties mentioned elsewhere in this Act, the functions, powers and duties of the Financial Information Unit shall be as follows:-
- (a) To regularly obtain details of transactions under Section 7 from government entities, bank, financial institution and non-financial institution and maintain records thereof upon conducting an analysis,
- (b) In case the notice, details and documents needs to be inquired and investigated¹⁶, conduct preliminary inquiry and send details thereof to the concerned Department, government entity, bank, financial institution and non-financial institution,
- (c) To communicate the Department with extensive details relating to the report received pursuant to Clause (a) or if upon inquiry pursuant to Clause (b) the transaction appears suspicious or arises any suspicion or any reasonable ground exists so as not to believe the transaction.
- (d) To share with the Financial Information Units of other country and international organization and institutions notice, details and documents regarding **offence**¹⁷ on the basis of reciprocity and receive such notice from concerned country and international organization and institution,
- (e) To inspect transactions and records of bank, financial institution and non financial institution, to obtain any information or clarification about such transactions and records and to obtain their copies where necessary,
- (f) To manage required training programs for the staffs of government entities, Departments and Financial Information Unit for prevention of asset laundering,
- (g) To carry out other functions as prescribed.

(2) ¹⁸**In course of performance of its mandate, the Financial Information Unit may request any government agency or regulatory institution or any organization or any investigating agency or official to provide to the FIU any information, particular or document that is in their possession and such agency or official may, in course of performance of duty, request the Financial**

¹⁵ Amended by the first amendment.

¹⁶ Amended by the first amendment.

¹⁷ Amended by the first amendment.

¹⁸ Amended by the first amendment.

Information Unit for information, particular or document that is in possession of the FIU.

(2a) ¹⁹It shall be the duty of the agency, organization, official and Financial Information Unit to provide the information requested as per Sub-Section (2).

(3) ²⁰The Financial Information Unit may, besides issuing directives on method, form, time and other procedures regarding the submission of details, statistics, notices and information pursuant to Clause (a) of Sub-Section (1), issue directives to government agency, bank, financial institution, non-financial institution or professional about the measures they are to adopt while establishing business relation with the customer/beneficiary, during transaction, for identification of suspicious transaction, for risk management, for prevention of terrorist financing or for conducting transaction with politically exposed persons or for overall monitoring of implementation of such measures and it shall be the duty of such government agency, bank, financial institution and non-financial institution and professional to abide by such directives.

Chapter -5

Provisions for Formation of the Department and its Functions, Duties and Powers

11. **Establishment of the Department:** (1) The Government of Nepal shall establish a Asset Laundering Investigation Department to investigate against and inquire into the offences under this Act.
- (2) The chief of the Department shall be **at least**²¹ a first class officer of civil service.
- (3) The organizational structure of the Department and required number of staff shall be as prescribed by the Government of Nepal.
- (4) The Government of Nepal may designate any entity to conduct investigation and inquiry of the offences pursuant to Sub-Section (1) until the Department is established.
12. **Powers of the Department regarding Investigation and Inquiry:** (1) The Department may exercise the following powers in course of investigation and inquiry of the offences under this Act: -
- a) To order any concern government entity, bank, financial institution or non-financial institution to submit to the Department within a particular time period the relevant document, evidence or other required matters that are in possession of such entity, bank, financial institution and non-financial institution,

¹⁹ Added by the first amendment.

²⁰ Amended by the first amendment.

²¹ Added by the first amendment.

- b) To conduct search of any concerned government entity, bank, financial institution or non-financial institution or any other places, to seize, take into possession the relevant document, deed, material evidence and other evidence by issuing to the concerned official an acknowledgement of such seizure and possession,
- c) To order the concerned official of the government entity, bank, financial institution or non-financial institution, other staff or a concerned person who, the Department believes, possesses information on relevant facts to appear to the Department to give statement,
- d) To release, upon interrogation, taking statement or clarification pursuant to Clause (c), the concerned person on the condition that s/he signs a document to appear to the Department whenever required or s/he appears on reporting dates given; Or release under obligation to appear on given dates by taking bail or guarantee where there exist reasonable grounds to believe that such person becomes fugitive or order the detention where s/he fails to post the bail or guarantee, subject to approval by the District Court,

Provided that the concerned person shall not be detained for a period longer than the period such person has to serve in prison upon conviction.

- e) ²²**To freeze, take under control or order the concerned entity or official to freeze, take under control any assets located in Nepal which is in ownership, possession or control of the concerned person or any other benefit generated from such asset or any other instruments used in the offence whether possessed by the concerned person or somebody else, if investigation and inquiry so requires or if a request to this effect is received from any nation where the offence under this Act is committed or from any country or other international organization in accordance with the provision of bilateral or multilateral treaty which Nepal is a party to or any similar provisions; or make a similar request to foreign nation or international organization through diplomatic channel on the basis of reciprocity to freeze or take under control such asset, instrument or goods.**
- f) ²³**To adopt or cause to adopt measures or method as designated to conduct investigation and inquiry of the offence under this Act and to adopt designated standards for identification and evaluation of the asset.**

(2) In case, in course of investigation and inquiry of the offence under this Act, any concerned official, staff or representative of any government entity, bank, financial institution or non financial institution disobeys the Department's order to submit any documents or any other matters, freeze assets or provide information about any matter, or in case any official or staff of such entity, bank, Financial institution disobeys the Department's order to appear before the

²² Amended by the first amendment.

²³ Amended by the first amendment.

Department, the Department may arrest and require such person to abide by the Department's order by imposing fine up to one thousand rupees on such person.

Chapter-6

Provisions on Investigation and Inquiry

- 13. Complaint:** (1) Any person, who has knowledge that somebody has committed, is going to commit or is committing any act constituting an offence under this Act, may submit a complaint, application, information or notice to the Department in writing or oral form.
(2) The Department shall register complaint, application, information or notice if it is received in writing pursuant to Sub Section (1) and the Department shall transcribe the oral complaint, application, information or notice it receives and then register it.
- 14. Investigation and Inquiry:** (1) The Department shall conduct necessary investigation and inquiry if it receives information through a complaint pursuant to Section 13 or through information pursuant to Section 10 (1) (c) or through any other means or source that any offence under this Act has been committed, is being committed or is going to be committed.
(2) Where the Department receives information that any offence under this Act has been committed, is being committed or is going to be committed and there is reasonable ground to believe that the person involved in the offence may abscond or destroy, hide or alter evidence or document, the Department may conduct immediate investigation activities including taking into custody any document or asset by conducting search of the place where the offence is taking place or has taken place or by arresting the person involved in the offence.
(3)²⁴
- 15. To Appoint or Designate Investigation Officer:** (1) The Department may appoint or designate any officer of the Department or other officer of the Government of Nepal or that of any public institution as an investigation officer to conduct investigation and inquiry of the offences under this Act.
(2) The Department, while appointing or designating any other officer of Government of Nepal or that of public institution as an investigation officer, shall consult the chief of the concerned entity or institution.
- 16. Functions, Duties and Powers of the Investigation Officer:** (1) The functions, powers and duties of the investigation officer appointed or designated pursuant to Section 15, shall be as follows:-
(a) To take necessary action by arresting the suspect promptly,

²⁴ Repealed by the first amendment.

(b) To conduct or cause to conduct search of any office, residence, building, warehouse, vehicles or any place in course of investigation and inquiry,

(c) To exercise other powers vested to the Department.

(2) The investigation officer may, while proceeding pursuant to Sub-Section (1), keep the suspect on obligation to appear before the department on given dates, release him/her by obtaining bail or guarantee or detain the suspect, subject to the approval of the court where the suspect fails to post the bail or guarantee.

17. To Keep Under Custody for Investigation and Inquiry: (1) The investigation officer may, by issuing detention letter, detain the person against whom proceedings have been initiated as per this Act if there exist sufficient grounds to believe that such person may demolish or destroy any evidence or create obstruction or adverse influence in investigation and inquiry proceedings.

(2) Where the investigation and inquiry against the arrestee requires more than twenty-four hours' time, the investigation officer shall produce the suspect before adjudicating officer and detain the suspect as remanded.

(3) The Department shall, while producing the suspect for remand as stipulated under Sub-Section (2), clearly mention the charges against the detainee, reasons and grounds thereon, description of suspect's statement, if any, and the reason to detain the suspect for investigation.

(4) If remand is requested for investigation and inquiry pursuant to Sub-Section (3), the adjudicating officer may, after reviewing the concerned documents and whether or not the investigation and inquiry has been satisfactory, remand the suspect for ninety days, not exceeding thirty days at a time.

(5) In case remand is requested as per Sub-Section (2), the detainee may petition before the adjudicating officer thereby stating reasons and grounds for him not to be remanded.

18. Order for Freezing Assets: (1) The Department or investigation officer may, where there exists reasonable ground during the investigation and inquiry conducted pursuant to this Act that any one is likely to transfer, sell or hide or disguise in any manner the property generated from offence, order the concerned entity to prevent any transfer, mortgage or sell of such assets for a fixed period of time.

(2) In case a written order is made to freeze assets pursuant to Sub-Section (1), the concerned entity shall freeze such assets, preventing it from being transferred or mortgaged or sold.

(3) The Department may, as per the report of the investigation officer, impose fine up to fifty thousand rupees to the chief of the concerned entity who does not freeze the assets in contravention to the order issued pursuant to Sub-Section (1).

19. Freezing of Account or Transactions: Notwithstanding anything mentioned in the prevailing laws, the Department may, if it receives information during investigation and inquiry of the offence under this Act that anyone has maintained account or has transaction with any bank, financial institution or non-financial institution, issue an order to the concerned bank, financial institution or non-financial institution to promptly freeze such transactions or bank account.

Provided that the Department shall make a request through diplomatic channel to freeze the transaction or account operated with a bank, financial institution, non-financial institution or person from abroad.

20. **Seized Assets and Documents to Be Kept Secured:** The investigation officer shall keep in secured manner the assets and documents seized in course of inquiry and investigation under this Act.
21. **Support of Other Entities May Be Obtained:** (1) The Department may, in course of investigation and inquiry under this Act, demand assistance from any entities or public institution and it shall be the duty of such entities and institutions to assist the Department at the time of demand.
(2) The Department may also demand assistance from Nepal police in course of inquiry and investigation of offence under this Act. It shall be the duty of the concerned police officer or the police personnel to assist the Department whenever demanded.
(3) The Department may, if it deems that the nature of offence under investigation and inquiry requires consultation with or participation of any expert working with any entity in investigation and inquiry, request the concerned entity to depute the expert to the Department for some time and such entity shall, notwithstanding anything contained in existing law, where it receives such a request from the Department, depute such expert to the Department.
22. **Filing a Case:** (1) If it is evident from investigation and inquiry that one has committed an offence under this Act, the Department shall write to the concerned government attorney for a decision on whether or not to file a case against such person.
(2) The Department shall, where in response to writing pursuant to Sub-Section (1) it receives concerned government attorney's decision to file a case, file the case before the court as prescribed by the Government of Nepal through a notice in Nepal Gazette.
23. **Limitation:** There shall be no limitation to file a case relating to the offence under this Act.
24. **Government to Be Plaintiff:** The Government of Nepal shall be the plaintiff in the case relating to an offence under this Act.
25. **No Obstacle to Sue Under Prevailing Laws:** (1) If any act constituting an offence under this Act is also punishable under any other existing law, one may also be charged under such law.
(2) If it is evident from investigation of an offence under any existing law that one has committed an offence under this Act, the entity or officer conducting investigation and inquiry of such offence shall inform the same to the Department.
26. **Confidentiality:** (1) No Investigation Officer or any staff or person involved in the investigation and inquiry shall, unless the prevailing law otherwise requires, breach confidentiality of any matter or document s/he encounters with during investigation and inquiry or while performing his/her duty.
27. **Automatic Suspension:** Any official or staff of any bank, financial institution or non-financial institution or civil servant shall be deemed to be automatically suspended for a period he/she is detained as per this Act or until the case filed against him/her pursuant to Section 22 is settled.

28. **Assets Deemed to be Gained from Asset Laundering:** If in comparison to the income source or financial condition one charged of an offence under this Act has larger assets, lives unnaturally higher standard of life, or is proved to have provided donation, grant, gift, loan, contribution or will of the value more than one's capacity, one shall prove the source of earnings and in case one fails to do so, such assets shall be deemed to have been generated from commission of offences under this Act.
29. ²⁵**Offence not Required to be Established:** Notwithstanding anything mentioned in this Act or in the existing laws, the commission of acts or offences mentioned in Section 4 or 4B shall not need to be established to punish one for the offence mentioned in Section 3 or 4A. And the mere fact that acts or offences mentioned in Section 4 were not prosecuted or such prosecutions were unsuccessful shall not bar the punishment of offence mentioned in Section 3 or 4A.

Chapter-7 Penalty

30. ²⁶**Penalty:** (1) Anyone who has committed the offence of financing of terrorist activities shall be liable to imprisonment from one year to five years and fine equivalent to the claimant value where claimant value is identified and upto five hundred thousand rupees where claimant value is not identified.
- (2) Any one who has committed the offence mentioned in Chapter-2, other than one mentioned in Sub-Section (1), shall be liable to fine equivalent to the claimant value and one year to four years of imprisonment.
- (3) In case any bank, financial institution or non-financial institution has committed offence, the official or staff of such bank, financial institution or non financial institution who is identified as perpetrator of the offence or in case such perpetrator is not identified, the official working as chief of the institution at the time of commission of the offence shall be liable to penalty.
- (4) If any civil servant or official, chief or staff of any bank, financial institution or non-financial institution has committed the offence , such person shall be liable to ten percent additional punishment to the punishment mentioned to Sub-Section (1) and (2).
- (5) Anyone who attempts, assists or incites the offence under this Act shall be liable to half of the punishment awarded to the commission of the offence.
- (6) If anyone commits or cause to commit offence under this Act by using any firm, company or institution, such firm, company or institution shall be liable to fine mentioned to this section.
- (7) If anyone violates this Act or the rules or directives under this Act in a manner other than those provided for in Sub- section (1) to (6), one shall be liable to fine equivalent to claimant value by confiscating such value and up to five hundred thousand rupees where such value is not identified.

²⁵ Amended by the first amendment.

²⁶ Amended by the first amendment.

31. Imposing Fines: (1)²⁷ The Financial Information Unit may award the following fine for following wrongs:-

- (a) From rupees one hundred thousand to rupees three hundred thousand to bank, financial or non-financial institution for not maintaining documents and records as per the provision of this Act.**
- (b) Rupees five hundred thousand to bank, financial institution or non-financial institution does not report particulars or information to the Financial Information Unit as per Section 7 and Section 10 (1) (a), at every time of the failure of the report.**
- (c) From rupees one hundred thousand to rupees three hundred thousand to professionals for not reporting information to the Financial Information Unit as per Section 7(a).**

(2) The person not satisfied with the penalty decided as per Sub-Section (1)²⁸ may make an appeal before the Appellate Court within thirty five days from the day fine is awarded.

32. Punishment for Concealing or Destroying Evidences: Any person who commits the offence of concealing or destroying evidence related to acts deemed to be an offence under this Act shall be liable to the imprisonment of one month to three months and/or fine of fifty thousand rupees to one hundred thousands rupees in accordance with the gravity of offence and the person assisting the commission of such act shall be liable to half of such punishment.

33. Punishment for Obstruction: If any person obstructs the proceedings of investigation and inquiry undertaken under this Act, the adjudicating officer may, on the basis of investigation officer's report, punish him/her with a maximum imprisonment of six months and/or a maximum fine of five thousand rupees.

34. Assets to be confiscated: (1) Any assets obtained from an offence under this Act and further assets generated from such asset and assets used for commission of such offence shall be confiscated.

(2) In case entitlement to assets pursuant to Sub-Section (1) has been transferred to someone else with a quoted value of such asset, the quoted value shall be treated as that mentioned in promissory deed.

(3)²⁹ Any assets, instrument or goods, irrespective of who possess it, used in the offence under this Act shall be confiscated.

Provided that such property, instrument or goods shall be returned to its owner if it is proved that such instrument or goods was used or purchased and sold without the consent of the owner or the owner has no knowledge of its use in the offence, by imposing the liability of payment or satisfaction of such things to the offender.

²⁷ Amended by the first amendment.

²⁸ Amended by the first amendment.

²⁹ Added by the first amendment.

Chapter –8

Miscellaneous

35. **Seizure of Passport:** Notwithstanding anything mentioned in prevailing laws, the Department may, where necessary, issue an order to the concerned office not to issue new passport or to seize already issued passport, depending upon the gravity of the offence.
36. **Assets to Be Released:** In case the asset frozen pursuant to Section 18 proves to have no criminal origin, the Department if case has not been filed, or the court hearing the case if the case has been filed, shall order the concerned authority which has frozen the asset to release such assets and the concerned entity shall release such assets upon such order.
37. **Not to be Liable for Providing Information:** In case any loss occurs to a person because of submission of information to the Financial Information Unit by a government entity, bank, financial institution or non-financial institution or by a staff, official or agent of such bank, financial institution or non-financial institution as per the provision mentioned in Section 7 and Clause (a) of Section 10, no such entity, bank, financial institution or non-financial institution or staff, official or agent of such entity, bank, financial institution or non-financial institution shall be liable to any action.
38. **Auction to be Made:** (1) Where, upon being stored for a long period, the goods seized in relation to offence punishable under this Act are likely to suffer any damage or breakage due to stain or any other cause; rot; depreciate in value or where it is not possible to maintain or preserve the goods due to lack of space for storage, the same may be auctioned by fulfilling the procedures as prescribed by the prevailing laws.
(2) The proceeds obtained from auction sale pursuant to Sub-Section (1) shall be balanced in the deposit account and if it is subsequently decided to give such goods back to the owner, the owner shall be entitled to the amount received from such auction.
39. **Departmental Sanction to the Staff involved in Investigation and Inquiry:** If any Investigation officer or staff of the Department acts with mala-fide intention to cause troubles or tension to anyone in course of investigation and inquiry of the offences under this Act, the secretary of the concerned ministry where the investigation officer is the chief of the department himself or the chief of the department shall award departmental sanction notwithstanding whatever is mentioned in prevailing laws.
40. **Provisions Relating to Delivery of Notice:** (1) Notwithstanding anything contained in the prevailing laws, a summon to be served to a foreign national in connection with an offense under this Act shall be served to the office or representative of such person in Nepal, if any, and the notice so served shall be deemed to have been duly served.
(2) In case no office or representative as stipulated under Sub-Section (1) exists, the notice shall be served to the main place of business of such person or his/her permanent residential address or the mailing address if provided by him/her in

course of business, through telex, tele-fax or other means of telecommunication or through registered mail and the summon so served shall be deemed to have been duly served.

(3) Notwithstanding anything mentioned in Sub-Section (1) or (2), this section shall not bar to serve the summon to the foreign national as per the specific provision contained in the treaty which Nepal or the Government of Nepal is a party to, if there is any.

- 41. Notice to be Published:** In case a notice or summon can not be served to any person as per this Act or any other prevailing law because the address of such a person is not identified or because of any other reason and a report thereof is received, a notice containing a brief detail of the case shall be published in national level newspaper (in English daily in case of foreign national) at least twice requiring the concerned person to appear within thirty days before investigating authority or adjudicating authority where charge has been filed. If such notice is so published, it shall be deemed to be duly served to such person, notwithstanding anything contained in prevailing laws.
- 42. Order to Freeze the Assets of a Foreigner:** (1) If any foreign person does not appear before the investigation officer as per the notice or even after summon is served pursuant to Section 40, the investigation officer may issue an order to be effective until such person appears before the investigation officer, to keep the assets, entitlement, interest or concern within Nepal in status quo or to prevent it from being taken out of Nepal if the person has any such assets, entitlement, interest or concern and it shall be the duty of all concerned to comply with such order.
(2) The investigation officer shall impose fine not exceeding Rupees one hundred thousand rupees on any person not complying with the order issued pursuant to Sub-Section (1). The losses or harm caused to the Government of Nepal or public institution, if any, due to such non compliance of the order, shall also be recovered from such person.
- 43. No Obstruction to Adjudication and Settlement Proceedings:** Notwithstanding anything mentioned in prevailing laws, no death of the suspect before or after the filing of charge shall bar the adjudication and settlement proceedings of a case under this Act.
- 44. Waiver of Penalty:** The investigation officer may present an accused person cooperating with the investigation and inquiry proceedings as a prosecutor's witness and may provide such person with full or partial waiver of penalty in the case initiated under this Act.
Provided that notwithstanding anything mentioned in this Act or in prevailing laws a lawsuit may be reregistered against such person if his cooperation could not be corroborated by other evidence or if such accused makes statement before the adjudicating officer against the cooperation extended to the investigation and inquiry officer.
- 44A.³⁰ Information or particulars not to be disclosed:** (1) **The Financial Information Unit, government agency, bank, financial institution, non-financial institution or any official or staff of such agency and institution or professionals shall not give or disclose information and particular received or**

³⁰ Added by the first amendment.

provided under this Act in any type of conditions by any ways to none, except to the agency, organization or official legally mandated to receive such information or particular.

(2) Any person, government agency, bank, financial institution, non-financial institution breaching the provision contained in Sub-Section (1) shall be liable to fine of up to rupees ten thousand and if the provision is breached by any official, such official shall be liable to additional fine of rupees five thousand; and if it is a staff, the staff shall be subject to departmental sanction as well.

44B.³¹ Responsibilities of Regulatory Institution: (2) For the purpose of this Act, the functions, duties and power of Regulator of any business shall be as follows:

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

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

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

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

44C.³² Report to be submitted: (1) Government agency, bank, financial institution, non-financial institution shall maintain a separate record of the tasks they have performed in relation to this Act and shall prepare a report thereof within two months from the end of fiscal year.

³¹ Added by the first amendment.

³² Added by the first amendment.

(2) A copy of the report prepared as per Sub-Section (1) shall be provided to the Financial Information Unit within seven days from the day the report is prepared.

(3) Financial information unit shall submit the report received as per sub section (2) to the meeting of coordination committee & this committee shall make the essential decision regarding to such report.

44D. ³³Nominal Expenses to be allowed: (1) Where all asset of an individual is frozen in course of investigation and inquiry of the offence or in course of the proceeding of the case and there is no other means or source of livelihood for the concerned person or his/her dependents, the court may order the department to release the portion of the asset required for basic condition of livelihood.

(2) The department shall act upon the order issued pursuant to Sub-Section (1).

44E³⁴ Processing records by computer can be taken as evidence : (1) Notwithstanding anything contained in any existing laws, except it is proved otherwise for the purpose of this Act, the record processed or developed by the electronic means can be taken as evidence.

(2)The essential provisions for the purpose of receiving, analyzing or processing record, particular and data shall be as prescribed.

45. Reward: (1) Any person who files complaint or provides information and cooperates with the inquiry and investigation or evidence collection shall be entitled to receive ten percent of the claimant value or rupees one million, whichever is lower, if allegation is established.

(2) In case the persons pursuant to Sub-Section (1) are more than one, such amount shall be distributed proportionately.

46. Rules May be formulated: The Government of Nepal may frame necessary Rules for implementation of the objectives of this Act.

³³ Added by the first amendment.

³⁴ Added by the first amendment.