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LEGAL NOTICE NO. 68 OF 2015

Money Laundering (Currency and Bearer Negotiable Instruments Declaration) Regulations, 2015

In exercise of the powers conferred upon me by section 111 of the Money Laundering and Proceeds of Crime Act 2008[1], I,

DR. 'MAMPHONO KHAKETLA

Minister of Finance make the following regulations:

Citation and commencement

1. These regulations may be cited as the Money Laundering (Currency and Bearer Negotiable Instruments Declaration) Regulations 2015 and shall come into operation on the date of publication in the Gazette.

Interpretation

2. In these regulations, unless the context otherwise requires -

(a) words and expressions have the same meaning assigned to them in the Money Laundering and Proceeds of Crime Act 2008 (to be called "the Act");

(b) "authorised officer" means an officer of a competent authority or a person designed as such, in writing, by the Commissioner General, the Commissioner of Police or the Director General, as the case may be;

(c) "bearer negotiable instruments" include monetary instruments in bearer form including traveler's cheques, negotiable instruments in the form of cheques, promissory notes and money orders that are either in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery, and incomplete instrument which includes cheques, promissory notes and money orders signed, but with the payee's name omitted and bearer negotiable instruments may also be referred to as "BNIs";

"competent authority" means

(a) the Directorate on Corruption and Economic Offences established by the Directorate on Corruption and Economic Offence Act 1999[2];

(b) the Lesotho Mounted Police Service established by the Lesotho Mounted Police Service Act 1998[3]; and

(c) the Lesotho Revenue Authority established by the Lesotho Revenue Act, 2001[4];

"false declaration" means misrepresentation of the value of currency or BNIs being carried, or misrepresentation of other relevant data or information which is required for submission in the declaration form or otherwise requested by an authorized officer and includes failure to make a declaration as required.

Declaration of currency

3. (1) A person who enters or leaves Lesotho shall, at the port of entry or departure, as the case may be, declare and disclose currency or bearer negotiable instruments in his possession if it exceeds a sum prescribed by the Commissioner[5].

(2) The Commissioner shall, by notice published in the Gazette, prescribe the amount of currency or bearer negotiable instruments to be declared and disclosed by a person who enters into, or departs from, Lesotho at the Port of entry or departure

(3) The declaration shall be made in writing by filling Form A in the Schedule to these regulations which shall contain the following information -

(a) particulars of the lawful owner of the currency or bearer negotiable instruments declared;

(b) particulars of the person making the declaration;

(c) the amount of currency or bearer negotiable instruments declared

(d) the origin of the currency or bearer negotiable instruments declared

(e) the destination of the currency or bearer negotiable instruments declared

(f) the transport route;

(g) the means of transport;

(h) the intended use of the currency or bearer negotiable instruments declared

(i) the intended recipient of the currency or bearer negotiable instruments declared;

(j) the date of declaration;

(k) the statement of oath or affirmation of correctness of the particulars provided;

(l) signature of the person making the declaration; and

(m) any other information as may be requested.

(4) The particulars referred to in subregulation (3)(a) and (b) shall include:

(a) in the case of a natural person

(i) the surname and other names;

(ii) nationality;

(iii) the date of birth;

(iv) nationality identification document number

(v) passport number

(vi) physical and postal addresses;

(vii) contact numbers

(b) in the case of a legal person

(i) full names;

(ii) status of the legal person or nature of enterprise;

(iii) registration or licence number;

(iv) place of business

(v) relationship with the person making the declaration; and

(vi) authorization for making the declaration.

(5) For the purposes of these regulations, a legal person includes a company, organization, partnership, society or an entity which has legal status and is able to have ownership of the currency or bearer negotiable instruments declared.

(6) The declaration of currency or bearer negotiable instruments shall be made regardless of whether the person carrying the currency or bearer negotiable instruments is the owner or not.

Protection declared information

4. (1) Subject to these regulations, confidentiality of information declared is guaranteed to protect the security of the person carrying the currency or bearer negotiable instrument.

(2) Information declared shall only be disclosed in accordance with these regulations.

(3) Information which is by nature confidential or which is provided on a confidential basis shall be covered by the duty of professional secrecy.

5. (1) An authorised officer may -

(a) exercise control measurers which include inspection or search or persons, luggage and means of transport to ensure compliance with these regulations;

(b) require production and declaration of the currency or bearer negotiable instruments carried by a person entering or leaving Lesotho at a point of entry or departure if the authorised officer has reasonable grounds to suspect that the currency or bearer negotiable intrustments on the person exceeds the prescribe amount to be declared; and

(c) request persons using the same or different modes of transport to declare the currency or bearer negotiable instruments if he has grounds to suspect that such persons are family members or close associates.

(2) An authorised officer may count the currency or inspect the bearer negotiable instruments declared to verify the correctness or otherwise of the declaration made

(3) Where a person fails to make a declaration in terms of these regulations, an authorised officer may detain the currency or bearer negotiable instruments and take other administrative action relevant to the implementation of these regulation.

False declaration

6. A person who makes a false currency or bearer negotiable instruments declaration commits an offence and is liable on conviction, to a fine of not less than M5,000.00 or to imprison for a period not exceeding 2 years.

Bulk cash

7. Bulk cash on a person's body may be inspected and counted by an au-

thorised officer at the port of entry or departure.

Discrepancies

8. (1) An authorised officer may impound currency or bearer negotiable instruments where there is a discrepancy on identification and travel documents pending the determination of the relationship of the person carrying the currency or bearer negotiable instruments with the currency or bearer negotiable instruments and the documents.

(2) The period within which the currency or bearer negotiable instruments is impounded shall, subject to these regulations, not exceed 14 days.

(3) A competent authority may apply before a competent court for extension of the impoundment period of the currency or bearer negotiable instruments if the competent authority has grounds to suspect that the discrepancy in the identity and traveling documents are related to the commission of a serious offence.

(4) A person from whom the currency or bearer negotiable instruments is impounded may make representatives concerning the extension of or continued impoundment.

(5) A competent court may make a determination as to whether the impoundment is to be continued or not, or may make such order as it deems appropriate.

Discrepancy between departure and arrival

9. A person who has more currency or bearer negotiable instruments on departure than he had on arrival shall provide a detailed account of the discrepancy.

Record keeping

10. (1) A competent authority mandated to administer the declaration pursuant to these regulations shall keep a record of the declaration and information obtained.

(2) where there are indications of illegal activities associated with

the movement of currency or bearer negotiable instruments prescribed, that information, which may include the full names, date and place of birth, nationality of the person involved and the means of transport used, may be recorded and processed.

(3) Records and information obtained under these regulations shall -

(a) be kept for at leat 5 years;

(b) be made accessible to the Financial Intelligence Unit.

Reporting of suspicious declarations

11. An authorised officer shall report, immediately and without delay upon being aware of, any suspicious declarations or indications of any activities related to the commission of a serious offence to the Finance Intelligence Unit and a relevant competent authority.

Sharing of Information

12. (1) Where information obtained under these regulations is related to any illegal activities associated with the movement of currency or bearer negotiable instruments in and out of Lesotho, the information shall be shared by and between the competent authorities.

(2) The Financial Intelligence Unit shall disseminate its analysis report arising from information derived under these regulations -

(a) if there are reasonable grounds to believe that a serious offence has been or is about to be committed to any relevant competent authority, for investigation ;

(b) to any administrative body or regulatory a authority for enhancing controls and measures against a serious offence.

(3) Information obtained under these regulations may be shared with counterparts in other jurisdiction on such terms and conditions as the Financial Intelligence Unit or the relevant competent authority may impose.

DR. 'MAMPHONO KHAKETLA
MINISTER OF FINANCE

NOTE

1. Act No. 4 of 2008
2. Act No. 5 of 1999
3. Act No. 7 of 1998
4 Act No. 14 of 2001
5. L.N. No. 34 of 2015(M25,000.00)