

# UNDCP MODEL MONEY LAUNDERING AND PROCEEDS OF CRIME BILL, 2000

Bill No ..... of 2000

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To be presented by the Minister of Justice

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## MEMORANDUM OF OBJECTS AND REASONS

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*The object of this bill is to provide for the confiscation of the proceeds of crime and to prevent the use of the financial system to launder the proceeds of serious crime.*

ATTORNEY-GENERAL

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An Act to enable the unlawful proceeds of all serious crime including drug trafficking to be identified, traced, frozen, seized and eventually confiscated, to establish an [Anti-Money Laundering Authority], and to require financial institutions and cash dealers to take prudential measures to help combat money laundering.

**ENACTED by the President and Parliament of [name of State]**

### PART I PRELIMINARY

#### 1. Short title, Extent and Commencement

- (1) This Act may be called the "Proceeds of Crime Act, 2000."
- (2) It shall extend throughout [name of State].
- (3) It shall come into force at once.

#### 2. Definitions

- (1) In this Act, unless the contrary intention appears:

(a) "account" means any facility or arrangement by which a financial institution or cash dealer does any one or

more of the following:

- (i) accepts deposits of currency;
  - (ii) allows withdrawals of currency or transfers into or out of the account;
  - (iii) pays cheques or payment orders drawn on a financial institution or cash dealer by, or collects cheques or payment orders on behalf of, a person;
  - (iv) supplies a facility or arrangement for a safety deposit box;
- (b) "appeal" includes proceedings by way of discharging or setting aside a judgement, and an application for a new trial or for a stay of execution;
- (c) "authorized officer" means a person or class of persons designated by the **[Minister of Justice]** pursuant to **section 110 of the Drug Abuse Act, 2000** as an authorized officer;
- (d) "cash dealer" means:
- (i) a person who carries on a business of an insurer, an insurance intermediary, a securities dealer or a futures broker;
  - (ii) a person who carries on a business of dealing in bullion, of issuing, selling or redeeming travellers' cheques money orders or similar instruments, or of collecting holding and delivering cash as part of a business of providing payroll services;
  - (iii) an operator of a gambling house, casino or lottery;
  - (iv) a trustee, or manager of a unit trust;
- (e) "currency" means the coin and paper money of **[name of State]** or of a foreign country that is designated as legal tender and which is customarily used and accepted as a medium of exchange in the country of issue;
- (f) "data" means representations, in any form, of information or concepts;
- (g) "defendant" means a person charged with a serious offence, whether or not he or she has been convicted of the offence, and includes in the case of proceedings for a restraining order under **section 56**, a person who is about to be charged with a serious offence;
- (h) "document" means any record of information, and includes;
- (i) anything on which there is writing;
  - (ii) anything on which there are marks, figures, symbols, or perforations having meaning for persons qualified to interpret them;
  - (iii) anything from which sounds, images or writings can be produced, with or without the aid of anything else;
  - (iv) a map, plan, drawing, photograph or similar thing;
- (i) "financial institution" means any person who carries on a business of:
- (i) acceptance of deposits and other repayable funds from the public;

- (ii) lending, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions;
  - (iii) financial leasing;
  - (iv) money transmission services;
  - (v) issuing and administering means of payment (such as credit cards, travellers' cheques and bankers' drafts);
  - (vi) guarantees and commitments;
  - (vii) trading for own account or for account of customers in money market instruments (such as cheques, bills, certificates of deposit), foreign exchange, financial futures and options, exchange and interest rate instruments, and transferable securities;
  - (viii) underwriting share issues and participation in such issues;
  - (ix) advice to undertakings on capital structure, industrial strategy and related questions, and advice and services relating to mergers and the purchase of undertakings;
  - (x) money-broking;
  - (xi) portfolio management and advice;
  - (xii) safekeeping and administration of securities;
  - (xiii) credit reference services;
  - (xiv) safe custody services;
- (j) "gift" includes any transfer of property by a person to another person directly or indirectly:
- (i) after the commission of a serious crime by the first person;
  - (ii) for a consideration the value of which is significantly less than the value of the consideration provided by the first person; and
  - (iii) to the extent of the difference between the market value of the property transferred and the consideration provided by the transferee;
- (k) "interest", in relation to property, means:
- (i) a legal or equitable estate or interest in the property;
  - (ii) a right, power or privilege in connection with the property;
- (l) "person" means any natural or legal person;
- (m) "proceedings" means any procedure conducted by or under the supervision of a judge or judicial officer however described in relation to any alleged or proven offence, or property derived from such offence, and includes an inquiry, investigation, or preliminary or final determination of facts;
- (n) "proceeds of crime" means any property derived or realized directly or indirectly from a serious offence and

includes, on a proportional basis, property into which any property derived or realized directly from the offence was later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived or realized from such property at any time since the offence;

- (o) "property" means currency and all other real or personal property of every description, whether situated in **[name of State]** or elsewhere and whether tangible or intangible, and includes an interest in any such property;
  - (p) "property of or in the possession or control of any person" includes any gift made by that person;
  - (q) "realizable property" means:
    - (i) any property held by a defendant;
    - (ii) any property held by a person to whom a defendant has directly or indirectly made a gift caught by this Act.
  - (r) "record" means any material on which data are recorded or marked and which is capable of being read or understood by a person, computer system or other device;
  - (s) "serious offence" means an offence against a provision of:
    - (i) any law in **[name of State]**, for which the maximum penalty is death, or imprisonment or other deprivation of liberty for a period of not less than **[12 months]**;
    - (ii) a law of a foreign State, in relation to acts or omissions, which had they occurred in **[name of State]**, would have constituted an offence for which the maximum penalty is death, or imprisonment or other deprivation of liberty for a period of not less than **[12 months]**;
  - (t) "unit trust" means any arrangement made for the purpose or having the effect of providing, for a person having funds available for investment, facilities for the participation by the person as a beneficiary under a trust, in any profits or income arising from the acquisition, holding, management or disposal of any property pursuant to the trust.
- (2) A reference in this Act to the law of:
- (a) **[name of State]**;
  - (b) any foreign State,

includes a reference to a written or unwritten law of, or in force in, any part of **[name of State]** or that foreign State, as the case may be.

### 3. Meaning of charge in relation to a serious offence

Any reference in this Act to a person being charged or about to be charged with a serious offence is a reference to a procedure, however described, in **[name of State]** or elsewhere, by which criminal proceedings may be commenced.

### 4. Meaning of conviction in relation to a serious offence

For the purposes of this Act, a person shall be taken to be convicted of a serious offence if:

- (a) the person is convicted, whether summarily or on indictment, of the offence;
- [(b) the person is charged with, and found guilty of, the offence but is discharged without any conviction being recorded;]**
- (c) **[name of Court]**, with the consent of the convicted person, takes the offence, of which the person has not been found guilty, into account in passing sentence on the person for another **[serious]** offence.

## 5. Meaning of quashing of convictions

For the purposes of this Act, a person's conviction for a serious offence shall be taken to be quashed in any case:

- (a) where **section 4 (a)** applies, if the conviction is quashed or set aside;
- [(b) where section 4 (b) applies, if the finding of guilt is quashed or set aside;]**
- (c) where **section 4(b)** applies, if either:
  - (i) the person's conviction for the other offence referred to in **that section**, is quashed or set aside;
  - (ii) the decision of **[name of Court]** to take the offence into account in passing sentence for that other offence is quashed or set aside;
- (d) where **[the President]** grants the person a pardon in respect of the person's conviction for the offence.

## 6. Meaning of value of property, etc

- (1) Subject to **subsection (2)**, for the purposes of this Act the value of property (other than cash) in relation to any person holding the property is:
  - (a) its market value; or
  - (b) where any other person holds an interest in the property:
    - (i) the market value of the first mentioned person's beneficial interest in the property; less
    - (ii) the amount required to discharge any charging order on that interest.
- (2) References in this Act to the value of a gift or of any payment or reward, are references to the value of the gift, payment or reward to the recipient when he or she received it, adjusted to take account of any subsequent changes in the value of money.

## 7. Meaning of dealing with property

For the purposes of this Act, dealing with property held by any person includes, without prejudice to the generality of the expression:

- (a) where the property is a debt owed to that person, making a payment to any person in reduction or full settlement of the amount of the debt;
- (b) making or receiving a gift of the property; or

- (c) removing the property from **[name of State]**.

**8. Meaning of gift caught by this Act**

- (1) A gift **[including a gift made before the commencement]** is caught by this Act if:
  - (a) it was made by the defendant at any time after the commission of the serious offence, or if more than one, the earliest of the offences, to which the proceedings for the time being relate; and
  - (b) the **[name of Court]** considers it appropriate in all the circumstances to take the gift into account.
- (2) For the purposes of this Act:
  - (a) the circumstances in which the defendant is to be treated as making a gift include those where he or she transfers property to another person directly or indirectly, for a consideration the value of which is significantly less than the value of the consideration provided by the defendant; and
  - (b) in those circumstances, **section 6(2)** shall apply, taking into account the difference between the value of the gift and the consideration, if any, provided to the defendant by the recipient.

**9. Meaning of deriving a benefit**

A reference to a benefit derived or obtained by or otherwise accruing to a person includes a reference to a benefit derived or obtained by, or otherwise accruing to, another person at the request or direction of the first person.

**10. Meaning of benefitting from the proceeds of a serious offence**

For the purposes of this Act:

- (a) a person has benefitted from an offence if the person has at any time **[whether before or after the commencement of this Act]** received any payment or other reward in connection with, or derived any pecuniary advantage from, the commission of a **[serious offence]**, whether committed by that person or another person;
- (b) a person's proceeds of a serious offence are:
  - (i) any payments or other rewards received by the person **[at any time]** in connection with; and
  - (ii) any pecuniary advantage derived by the person at any time from,
    - the commission of the offence **[,whether received or derived before or after the commencement of this Act];**
    - and
- (c) the value of a person's proceeds of a serious offence is the aggregate of the values of the payments, rewards or pecuniary advantages received by him in connection with, or derived by him from, the commission of the offence.

## 11. [Anti-Money Laundering Authority]

- (1) The [Minister of Finance] shall appoint a person or persons to be known as the [Anti-Money Laundering Authority].
- (2) The [Anti-Money Laundering Authority]:
  - (a) shall receive reports of suspicious transactions issued by financial institutions and cash dealers pursuant to **section 14(1)**;
  - (b) shall send any such report to the **appropriate law enforcement authorities**, if having considered the report, the [Anti-Money Laundering Authority] also has reasonable grounds to suspect that the transaction is suspicious;
  - (c) may enter the premises of any financial institution or cash dealer during ordinary business hours to inspect any record kept pursuant to **section 14(1)**, and ask any question relating to such record, make notes and take copies of the whole or any part of the record;
  - (d) shall send to the **appropriate law enforcement authorities**, any information derived from an inspection carried out pursuant to **subsection (2)(c)**, if it gives the [Anti-Money Laundering Authority] reasonable grounds to suspect that a transaction involves proceeds of crime;
  - (e) may instruct any financial institution or cash dealer to take such steps as may be appropriate to facilitate any investigation anticipated by the [Anti-Money Laundering Authority];
  - (f) may compile statistics and records, disseminate information within [name of State] or elsewhere, make recommendations arising out of any information received, issue guidelines to financial institutions and advise the [Minister of Finance];
  - (g) shall create training requirements and provide such training for any financial institution in respect of transaction record-keeping and reporting obligations provided for in **sections 13(1) and 14(1)**;
  - (h) may consult with any relevant person, institution or organization for the purpose of exercising its powers or duties under **subsections (2) (e), (f) or (g)**;
  - (i) shall not conduct any investigation into money laundering, other than for the purpose of ensuring compliance by a financial institution with the provisions of this Part.

## 12. Financial institutions and cash dealers to verify customers identity

- (1) A financial institution or cash dealer shall take reasonable measures to satisfy itself as to the true identity of any applicant seeking to enter into a business relationship with it, or to carry out a transaction or series of transactions with it, by requiring the applicant to produce an official record reasonably capable of establishing the true identity of the applicant, such as a birth certificate, passport or other official means of identification, and in the case of a body corporate, a certificate of incorporation **[together with the latest annual return to the [State Registry] of the body corporate]**;
- (2) Where an applicant requests a financial institution or cash dealer to enter into:
  - (a) a continuing business relationship;
  - (b) in the absence of such a relationship, any transaction,

the institution or cash dealer shall take reasonable measures to establish whether the person is acting on behalf of another person.

- (3) If it appears to a financial institution or cash dealer that an applicant requesting it to enter into any transaction, whether or not in the course of a continuing business relationship, is acting on behalf of another person, the institution or cash dealer shall take reasonable measures to establish the true identity of any person on whose behalf or for whose ultimate benefit the applicant may be acting in the proposed transaction, whether as trustee, nominee, agent or otherwise.
- (4) In determining what constitutes reasonable measures for the purposes of **subsection (1)** or **(3)**, regard shall be had to all the circumstances of the case, and in particular:
  - (a) to whether the applicant is a person based or incorporated in a country, in which there are in force provisions applicable to it to prevent the use of the financial system for the purpose of money-laundering; and
  - (b) to custom and practice as may from time to time be current in the relevant field of business.
- (5) Nothing in this section shall require the production of any evidence of identity where:
  - (a) the applicant is itself a financial institution or a cash dealer to which this Act applies; or
  - (b) there is a transaction or a series of transactions taking place in the course of a business relationship, in respect of which the applicant has already produced satisfactory evidence of identity.

### **13. Financial institutions and cash dealers to establish and maintain customer records**

- (1) A financial institution or cash dealer shall establish and maintain:
  - (a) records of all transactions exceeding [**amount of currency or its equivalent in foreign currency or**] [**such amount of currency or its equivalent in foreign currency as may be specified from time to time by the [Minister of Finance]**] carried out by it, in accordance with the requirements of **subsection (3)**;
  - (b) where evidence of a person's identity is obtained in accordance with **section 12**, a record that indicates the nature of the evidence obtained, and which comprises either a copy of the evidence or such information as would enable a copy of it to be obtained;
- (2) Customer accounts of a financial institution or cash dealer shall be kept in the true name of the account holder.
- (3) Records required under **subsection (1)(a)** shall contain particulars sufficient to identify the:
  - (a) the name, address and occupation (or where appropriate business or principal activity) of each person:
    - (i) conducting the transaction; or
    - (ii) if known, on whose behalf the transaction is being conducted,

as well as the method used by the financial institution or cash dealer to verify the identity of each such person;
  - (b) nature and date of the transaction;
  - (c) type and amount of currency involved;

- (d) the type and identifying number of any account with the financial institution or cash dealer involved in the transaction;
  - (e) if the transaction involves a negotiable instrument other than currency, the name of the drawer of the instrument, the name of the institution on which it was drawn, the name of the payee (if any), the amount and date of the instrument, the number (if any) of the instrument and details of any endorsements appearing on the instrument;
  - (f) the name and address of the financial institution or cash dealer, and of the officer, employee or agent of the financial institution or cash dealer who prepared the record.
- (4) Records required under **subsection (1)** shall be kept by the financial institution for a period of at least [**5 years**] from the date the relevant business or transaction was completed.

#### **14. Financial institutions and cash dealers to report suspicious transactions**

- (1) Whenever a financial institution or cash dealer is a party to a transaction and has reasonable grounds to suspect that information that it has concerning the transaction may be relevant to the investigation or prosecution of a person for a serious offence, it shall as soon as possible but no later than [**3 working days**] after forming that suspicion and wherever possible before the transaction is carried out:
- (a) take reasonable measures to ascertain the purpose of the transaction, the origin and ultimate destination of the funds involved, and the identity and address of any ultimate beneficiary;
  - (b) prepare a report of the transaction in accordance with **subsection (2)**;
  - (c) communicate the information contained therein to the [**Anti-Money Laundering Authority**] in writing or in such other form as the [**Minister of Finance**] may from time from time approve.
- (2) A report required by **subsection (1)** shall:
- (a) contain particulars of the matters specified in **subsection (1)(a) and in section 12(1)**;
  - (b) contain a statement of the grounds on which the financial institution or cash dealer holds the suspicion; and
  - (c) be signed or otherwise authenticated by the financial institution or cash dealer.
- (3) A financial institution or a cash dealer which has reported a suspicious transaction in accordance with this Part shall, if requested to do so by the [**Anti-Money Laundering Authority**], give such further information as it has in relation to the transaction.

#### **15. Financial institutions and cash dealers to establish and maintain internal reporting procedures**

A financial institution or cash dealer shall establish and maintain internal reporting procedures to:

- (a) identify persons to whom an employee is to report any information which comes to the employee's attention in the course of employment, and which gives rise to knowledge or suspicion by the employee that another person is engaged in money-laundering;
- (b) enable any person identified in accordance with **subsection (a)** to have reasonable access to information that

may be relevant to determining whether sufficient basis exists to report the matter pursuant to **section 14(1)**; and

- (c) require the identified person to report the matter pursuant to **section 14(1)**, in the event that he or she determines that sufficient basis exists.

#### 16. Further preventive measures by financial institutions and cash dealers

A financial institution or cash dealer shall establish and maintain internal reporting procedures to:

- (a) take appropriate measures for the purpose of making employees aware of domestic laws relating to money-laundering, and the procedures and related policies established and maintained by it pursuant to this Act;
- (b) provide its employees with appropriate training in the recognition and handling of money-laundering transactions.

#### 17. Money-laundering offences

A person commits the offence of money-laundering if the person:

- (a) acquires, possesses or uses property, knowing or having reason to believe that it is derived directly or indirectly from acts or omissions:
  - (i) in **[name of State]** which constitute an offence against any law of **[name of State]** punishable by imprisonment for not less than **[12 months]**;
  - (ii) outside **[name of State]** which, had they occurred in **[name of State]**, would have constituted an offence against the law of **[name of State]** punishable by imprisonment for not less than **[12 months]**.
- (b) renders assistance to another person for:
  - (i) the conversion or transfer of property derived directly or indirectly from those acts or omissions, with the aim of concealing or disguising the illicit origin of that property, or of aiding any person involved in the commission of the offence to evade the legal consequences thereof;
  - (ii) concealing or disguising the true nature, origin, location, disposition, movement or ownership of the property derived directly or indirectly from those acts or omissions.

**Penalty:** in the case of a natural person, imprisonment for a maximum of **[...]** years or a maximum fine of **[...]**, or both, and in the case of a body corporate **[five times]** such fine.

#### 18. Related offences

- (1) A person shall not open or operate an account with a financial institution or a cash dealer in a false name.

**Penalty:** In the case of a natural person, imprisonment not exceeding **....years**, or a fine of a maximum of **[amount]** or both, and in the case of a body corporate, **[five times]** such fine.

- (2) A financial institution or cash dealer who fails to comply with any requirement of this Part for which no penalty is specified commits an offence:

**Penalty:** In the case of a natural person, imprisonment not exceeding ....years, or a fine of a maximum of [amount] or both, and in the case of a body corporate, [five times] such fine.

- (3) In determining whether a person has complied with any requirement of **subsection (2)**, [name of Court] shall have regard to all the circumstances of the case, including such custom and practice as may from time to time be current in the relevant trade, business profession or employment, and may take account of any relevant guidance adopted, approved by a public authority exercising public interest supervisory functions in relation to the financial institution or cash dealer, or any other body that regulates or is representative of any trade, business or profession the trade, business, profession, employment carried on by that person.
- (4) Any person who:
- (a) knows or suspects that a report under **section 14(1)** is being prepared or has been sent to the [Anti-Money Laundering Authority]; and
  - (b) discloses to another person information or other matter which is likely to prejudice any investigation of an offence or possible offence of money-laundering under **section 17** commits an offence.

**Penalty:** Imprisonment not exceeding [... years], or a fine not exceeding [.....], or both.

- (5) In proceedings for an offence against **subsection (4)**, it is a defence to prove that the person did not know or have reasonable grounds to suspect that the disclosure was likely to prejudice any investigation of an offence or possible offence of money-laundering under **section 17**.

## 19. Seizure and detention of suspicious imports or exports of currency

- (1) An **authorized officer** may seize and, in accordance with this section detain, any currency which is being imported into or exported from [name of State], if:
- (a) the amount is not less than the **prescribed sum**; and
  - (b) he or she has reasonable grounds for suspecting that it is:
    - (i) property derived from a [serious offence]; or
    - (ii) intended by any person for use in the commission of a [serious offence].
- (2) Currency detained under **subsection (1)** shall not be detained for more than [24 hours] after seizure, unless a [magistrate] orders its continued detention for a period not exceeding [3 months] from the date of seizure, upon being satisfied that:
- (a) there are reasonable grounds for the suspicion referred to in **subsection (1)(b)**; and
  - (b) its continued detention is justified while:
    - (i) its origin or derivation is further investigated; or
    - (ii) consideration is given to the institution in [name of State] or elsewhere of criminal proceedings against any person for an offence with which the currency is connected.
- (3) A [magistrate] may subsequently order continued detention of the currency if satisfied of the matters mentioned in **subsection (2)**, but total period of detention shall not exceed [2 years] from the date of the order made under that **subsection**.

- (4) Subject to **subsection (5)**, currency detained under this **section** may be released in whole or in part to the person on whose behalf it was imported or exported:
- (a) by order of a **[magistrate]** that its continued detention is no longer justified, upon application by or on behalf of that person and after considering any views of the **[Director of Public Prosecutions]** to the contrary; or
  - (b) by **[an authorized officer]**, if satisfied that its continued detention is no longer justified.
- (5) No currency detained under this **section** shall be released where:
- (a) an application is made under **Part III** of this Act for the purpose of:
    - (i) the confiscation of the whole or any part of the currency; or
    - (ii) its restraint pending determination of its liability to confiscation; or
  - (b) proceedings are instituted in **[name of State]** or elsewhere against any person for an offence with which the currency is connected,

unless and until the proceedings relating to the relevant application or the proceedings for the offence as the case may be have been concluded.

## **20. [Anti-Money Laundering Authority's] power to obtain search warrant**

- (1) The **[Anti-Money Laundering Authority] [or a law enforcement agency]**, may apply to **[the Court]** for a warrant to enter any premises belonging to or in the possession or control of a financial institution, cash dealer, or any officer or employee thereof, and to search the premises and remove any document, material or other thing therein for the purposes of the **[Anti-Money Laundering Authority] [or law enforcement agency]**, as ordered by **[the Court]** and specified in the warrant.
- (2) **[The Court]** shall grant the application if it is satisfied that there are reasonable grounds to believe that:
- (a) the financial institution or cash dealer has failed to keep a transaction record, or report a suspicious transaction, as required by this Act;
  - (b) an officer or employee of a financial institution or cash dealer is committing, has committed or is about to commit an offence of money laundering.

## **21. Property tracking and monitoring orders**

For the purpose of determining whether any property belongs to or is in the possession or under the control of any person, the **[Anti-Money Laundering Authority] [or a law enforcement agency may]**, upon application to **[the Court]**, obtain an order:

- (a) that any document relevant to:
  - (i) identifying, locating or quantifying any such property; or
  - (ii) identifying or locating any document necessary for the transfer of any such property,
 belonging to, or in the possession or control of that person be delivered forthwith to the **[Anti-Money Laundering Authority] [or law enforcement agency]**;

- (b) that the financial institution or cash dealer forthwith produce to the **[Anti-Money Laundering Authority]** **[or law enforcement agency]** all information obtained about any transaction conducted by or for that person during such period before or after the order as **[the Court]** directs.

**22. Orders to enforce compliance with obligations under this Part**

- (1) The **[Anti-Money Laundering Authority]** may, upon application to **[the Court]**, after satisfying **[the Court]** that a financial institution or cash dealer has failed to comply with any obligation provided for under **sections 12, 13, 14, 15 or 16**, obtain an order against all or any officers or employees of the institution or dealer in such terms as **[the Court]** deems necessary, in order to enforce compliance with such obligation.
- (2) In granting the order pursuant to **subsection (1)**, **[the Court]** may order that should the financial institution or cash dealer fail without reasonable excuse to comply with all or any provisions of the order, such institution, dealer, officer or employee shall pay a financial penalty in the sum and in the manner directed by **[the Court]**.

**23. Secrecy obligations overridden**

The provisions of this Act shall have effect notwithstanding any obligation as to secrecy or other restriction on disclosure of information imposed by law or otherwise.

**24. Immunity where suspicious transaction reported**

No action, suit or other proceedings shall lie against any financial institution or cash dealer, or any officer, employee or other representative of the institution acting in the ordinary course of the person's employment or representation, in relation to any action taken in good faith by that institution or person pursuant to **section 14(1)**.

**25. Immunity where official powers or functions exercised in good faith**

No suit, prosecution or other legal proceedings shall lie against the Government, or any officer or other person in respect of anything done by or on behalf of that person, with due diligence and in good faith, in the exercise of any power or the performance of any function under this Act **[or any Rule or order made thereunder]**.

**26. Restitution of restrained property**

Where an investigation has begun against a person for a serious offence, property was restrained under this Act in relation to that offence, and any of the following occurs:

- (a) the person is not charged in **[name of State]** with the serious offence;
- (b) the person is charged with a serious offence in **[name of State]**, but not convicted of that offence;
- (c) a conviction for that serious offence in **[name of State]** is taken to be quashed and no conviction for such an offence substituted,

the **[name of Court]** shall order restitution of the restrained property.

**27. Damages**

Nothing in this Act affects the right of a person whose property has been restrained to seek the payment of damages, either actual or punitive, in cases where it is alleged that the action of **[name of State]** involved any abuse of process.

### **PART III - CONFISCATION**

#### *Division 1 - Confiscation and Pecuniary Penalty Orders*

#### **28. Application for confiscation order or pecuniary penalty order**

- (1) Where a person is convicted of a serious offence, the **[Attorney-General]** **[Director of Public Prosecutions]** may, not later than **[6 months]** after the conviction, apply to the **[name of Court]** for one or both of the following orders:
  - (a) a confiscation order against property that is tainted property in respect of the offence;
  - (b) a pecuniary penalty order against the person in respect of benefits derived by the person from the commission of the offence.
- (2) An application under **subsection (1)** may be made in respect of one or more than one offence.
- (3) Where an application under this section is finally determined, no further application for a confiscation order or a pecuniary penalty order may be made in respect of the offence for which the person was convicted without the leave of **[the Court]**. **[The Court]** shall not give such leave unless it is satisfied that:
  - (a) the property or benefit to which the new application relates was identified after the previous application was determined;
  - (b) necessary evidence became available after the previous application was determined; or
  - (c) it is in the interest of justice that the new application be made.

#### **29. Notice of Application**

- (1) Where the **[Attorney-General]** **[Director of Public Prosecutions]** applies for a confiscation order against property in respect of the person's conviction of a serious offence:
  - (a) the **[Attorney-General]** **[Director of Public Prosecutions]** must give no less than **[14 days]** written notice of the application to the person and to any other person who the **[Attorney-General]** **[Director of Public Prosecutions]** has reason to believe may have an interest in the property;
  - (b) the person and any other person who claims an interest in the property may appear and adduce evidence at the hearing of the application; and
  - (c) **[The Court]** may, at any time before the final determination of the application, direct the **[Attorney-General]** **[Director of Public Prosecutions]** to:
    - (i) give notice of the application to any person who, in the opinion of **[the Court]**, appears to have an

interest in the property;

- (ii) publish in [**the Gazette or**] a newspaper published and circulating in [**name of State**], a notice of the application.

- (2) Where the [**Attorney-General**] [**Director of Public Prosecutions**] applies for a pecuniary penalty order against a person:
  - (a) the [**Attorney-General**] [**Director of Public Prosecutions**] shall give the person no less than [**14 days**] notice of the application; and
  - (b) the person may appear and adduce evidence at the hearing of the application.

### **30. Amendment of Application**

- (1) [**The Court**] hearing the application under **section 28(1)** may, before the final determination of the application, and on the application of the [**Attorney-General**] [**Director of Public Prosecutions**], amend the application to include any other property or benefit, as the case may be, upon being satisfied that:
  - (a) the property or benefit was not reasonably capable of identification when the application was made;
  - (b) necessary evidence became available only after the application was originally made.
- (2) Where the [**Attorney-General**] [**Director of Public Prosecutions**] applies to amend an application for a confiscation order and the amendment would have the effect of including additional property in the application for confiscation, he or she must give no less than [**14 days**] written notice of the application to amend to any person who he or she has a reason to believe may have an interest in the property to be included in the application for a confiscation order.
- (3) Any person who claims an interest in the property to be included in the application of a confiscation order may appear and adduce evidence at the hearing of the application to amend.
- (4) Where the [**Attorney-General**] [**Director of Public Prosecutions**] applies to amend an application for a pecuniary penalty order against a person and the effect of the amendment would be to include an additional benefit in the application he or she must give the person no less than [**14 days**] written notice of the application to amend.

### **31. Procedure on Application**

- (1) Where an application is made to [**the Court**] for a confiscation order or a pecuniary penalty order in respect of a person's conviction of a serious offence, [**the Court**] may, in determining the application, have regard to the transcript of any proceedings against the person for the offence.
- (2) Where an application is made for a confiscation order or a pecuniary penalty order to [**the Court**] before which the person was convicted, and [**the Court**] has not, when the application is made, passed sentence on the person for the offence, [**the Court**] may, if it is satisfied that it is reasonable to do so in all the circumstances, defer passing sentence until it has determined the application for the order.

### **32. Procedure for *in rem* confiscation order where person dies or absconds**

- (1) Where:
  - (a) an information has been laid alleging the commission of the offence by a person; and

(b) a warrant for the arrest of the person has been issued in relation to that information,

the [Attorney-General] [Director of Public Prosecutions] may apply to [the Court] for a confiscation order in respect of any tainted property if the defendant has died or absconded.

- (2) For the purposes of subsection (1), the person is deemed to have absconded if reasonable attempts to arrest the person pursuant to the warrant have been unsuccessful during the period of [6 months] commencing on the day the warrant was issued, and the person shall be deemed to have so absconded on the last day of that period.
- (3) Where the [Attorney-General] [Director of Public Prosecutions] applies under this section for a confiscation order against any tainted property [the Court] shall, before hearing the application:
- (a) require notice of the application to be given to any person who, in the opinion of [the Court], appears to have an interest in the property;
- (b) direct notice of the application to be published in [the Gazette] and in a newspaper published and circulating in [name of State] containing such particulars and for so long as [the Court] may require.

### *Division 2 - Confiscation*

#### **33. Confiscation Order on Conviction**

- (1) Where, upon application by the [Attorney-General] [Director of Public Prosecutions], [the Court] is satisfied that property is tainted property in respect of a serious offence of which a person has been convicted, [the Court] may order that specified property be confiscated.
- (2) In determining whether property is tainted property [the Court] may infer, in the absence of evidence to the contrary:
- (a) that the property was used in or in connection with the commission of the offence if it was in the person's possession at the time of, or immediately after the commission of the offence for which the person was convicted;
- (b) that the property was derived, obtained or realized as a result of the commission of the offence if it was acquired by the person before, during or within a reasonable time after the period of the commission of the offence of which the person was convicted, and [the Court] is satisfied that the income of that person from sources unrelated to criminal activity of that person cannot reasonably account for the acquisition of that property;
- (3) Where [the Court] orders that property, other than money, be confiscated, [the Court] shall specify in the order the amount that it considers to be the value of the property at the time when the order is made.
- (4) In considering whether a confiscation order should be made under **subsection (1)** [the Court] shall have regard to:
- (a) the rights and interests, if any, of third parties in the property;
- (b) the gravity of the offence concerned;
- (c) any hardship that may reasonably be expected to be caused to any person by the operation of the order; and
- (d) the use that is ordinarily made of the property, or the use to which the property was intended to be put.
- (5) Where [the Court] makes a confiscation order, [the Court] may give such directions as are necessary or convenient

for giving effect to the order.

### 34. Effect of Confiscation Order

- (1) Subject to **subsection (2)**, where a Court makes a confiscation order against any property, the property vests absolutely in **[name of State]** by virtue of the order.
- (2) Where property ordered to be confiscated is registrable property -
  - (a) the property vests in **[name of State]** in equity but does not vest in **[name of State]** at law until the applicable registration requirements have been complied with;
  - (b) **[name of State]** is entitled to be registered as owner of the property;
  - (c) the **[Attorney-General]** **[Director of Public Prosecutions]** has power on behalf of **[name of State]** to do or authorise the doing of anything necessary or convenient to obtain the registration of **[name of State]** as owner, including the execution of any instrument to be executed by a person transferring an interest in property of that kind.
- (3) Where **[the Court]** makes a confiscation order against property:
  - (a) the property shall not, except with the leave of **[the Court]** and in accordance with any directions of **[the Court]**, be disposed of, or otherwise dealt with, by or on behalf of **[name of State]** before the relevant appeal date; and
  - (b) if, after the relevant appeal date, the order has not been discharged, the property may be disposed of and the proceeds applied or otherwise dealt with in accordance with the direction of the **[Attorney-General]** **[Director of Public Prosecutions]**.
- (4) In this section:

"registrable property" means property the title to which is passed by registration in accordance with the provisions of the **[Land Registration Act]**

"relevant appeal date" used in relation to a confiscation order made in consequence of a person's conviction of a serious offence means:

- (a) the date on which the period allowed by rules of court for the lodging of an appeal against a person's conviction or for the lodging of an appeal against the making of a confiscation order expires without an appeal having been lodged, whichever is the later; or
- (b) where an appeal against a person's conviction or against the making of a confiscation order is lodged, the date on which the appeal lapses in accordance with the rules of court or is finally determined, whichever is the later.

### 35. Voidable Transfers

**[The Court]** may:

- (a) before making a confiscation order; and
- (b) in the case of property in respect of which a restraining order was made, where the order was served in

accordance with **section 60**,

set aside any conveyance or transfer of the property that occurred after the seizure of the property or the service of the restraining order, unless the conveyance or transfer was made for valuable consideration to a person acting in good faith and without notice.

### **36. Protection of Third Parties**

- (1) Where an application is made for a confiscation order against property, a person who claims an interest in the property may apply to **[the Court]**, before the confiscation order is made, for an order under **subsection (2)**.
- (2) If a person applies to **[the Court]** for an order under this section in respect of property and **[the Court]** is satisfied on a balance of probabilities:
  - (a) that the person was not in any way involved in the commission of the offence; and
  - (b) where the person acquired the interest during or after the commission of the offence, that he or she acquired the interest:
    - (i) for sufficient consideration; and
    - (ii) without knowing, and in circumstance such as not to arouse a reasonable suspicion, that the property was, at the time he or she acquired it, property that was tainted property,

**[the Court]** shall make an order declaring the nature, extent and value (at the time the order is made) of the person's interest.

- (3) Subject to **subsection (4)**, where a confiscation order has already been made directing the confiscation of property, a person who claims an interest in the property may, before the end of the period of **[12 months]** commencing on the day on which the confiscation order is made, apply under this **subsection** to **[the Court]** for an order under **subsection (2)**.
- (4) A person who:
  - (a) had knowledge of the application for the confiscation order before the order was made; or
  - (b) appeared at the hearing of that application,
 shall not be permitted to make an application under **subsection (3)**, except with leave of **[the Court]**.
- (5) A person who makes an application under **subsection (1) or (3)** must give no less than **[14 days]** written notice of the making of the application to the **[Attorney-General] [Director of Public Prosecutions]**, who shall be a party to any proceedings in the application.
- (6) An applicant or the **[Attorney-General] [Director of Public Prosecutions]** may in accordance with the rules of court, appeal to the **[Court of Appeal]** from an order made under **subsection (2)**.
- (7) Any person appointed by **[the Court]** under **section 68** shall, on application by any person who has obtained an order under **subsection (2)**, and where the period allowed by the rules of court with respect to the making of appeals has expired and any appeal from that order has been determined:
  - (a) direct that the property or part thereof to which the interest of the applicant relates, be returned to the applicant; or

- (b) direct that an amount equal to the value of the interest of the applicant, as declared in the order, be paid to the applicant.

### 37. Discharge of Confiscation Order on appeal and quashing of conviction

- (1) Where **[the Court]** makes a confiscation order against property in reliance on a person's conviction of a serious offence and the conviction is subsequently quashed, the quashing of the conviction discharges the order.
- (2) Where a confiscation order against property is discharged as provided for in **subsection (1)** or by **[the Court]** hearing an appeal against the making of the order, any person who claims to have an interest in the property immediately before the making of the confiscation order may apply to the **[public trustee]** in writing for the transfer of the interest to the person.
- (3) On receipt of an application under **subsection (2)** the **[public trustee]** shall:
  - (a) if the interest is vested in **[name of State]** give directions that the property or part thereof to which the interest of the applicant relates be transferred to the person; or
  - (b) in any other case, direct that there be payable to the person an amount equal to the value of the interest as at the time the order is made.
- (4) In the exercise of his or her powers under this section and **section 36(7)**, the **[public trustee]** shall have the power to do or authorise the doing of any thing necessary or convenient to effect the transfer or return of the property, including the execution of any instrument and the making of any application for the registration of an interest in the property on any appropriate register.

### 38. Payment instead of a Confiscation Order

Where **[the Court]** is satisfied that a confiscation order should be made in respect of the property of a person convicted of a serious offence, but that the property or any part thereof or interest therein cannot be made subject to such an order and, in particular:

- (a) cannot, on the exercise of due diligence be located;
- (b) has been transferred to a third party in circumstances which do not give rise to a reasonable inference that the title or interest was transferred for the purpose of avoiding the confiscation of the property;
- (c) is located outside **[name of State]**;
- (d) has been substantially diminished in value or rendered worthless; or
- (e) has been commingled with other property that cannot be divided without difficulty,

**[the Court]** may, instead of ordering the property or part thereof or interest therein to be confiscated, order the person to pay to **[name of State]** an amount equal to the value of the property, part or interest.

### 39. Application of procedure for enforcing fines

Where **[the Court]** orders a person to pay an amount under **section 38**, that amount shall be treated as if it were a fine imposed upon him or her in respect of a conviction for a serious offence, and **[the Court]** shall -

- (a) notwithstanding anything contained in any other Act, impose in default of the payment of that amount, a term of imprisonment:
  - (i) of [..... years], where the amount does not exceed [x currency name];
  - (ii) of [..... years], where the amount exceeds [x currency name] but does not exceed [y currency name];
  - (iii) of [..... years], etc. (to whatever limits seem appropriate)
- (b) direct that the term of imprisonment imposed pursuant to **subsection (a)** be served consecutively to any other form of imprisonment imposed on that person, or that the person is then serving;
- (c) direct that [**the ..... Act or regulations**] regarding the remission of sentences of prisoners serving a term of imprisonment shall not apply in relation to a term of imprisonment imposed on a person pursuant to **subsection (a)**.

#### **40. Confiscation where a person dies or absconds**

- (1) Subject to **section 32 (3)**, where an application is made to [**the Court**] under **section 32 (1)** for a confiscation order against any tainted property in consequence of a person having died or absconded in connection with a serious offence and [**the Court**] is satisfied that:
  - (a) any property is tainted property in respect of the offence;
  - (b) proceedings in respect of a serious offence committed in relation to that property were commenced; and
  - (c) the accused charged with the offence referred to in **subsection (b)** has died or absconded;

[**the Court**] may order that the property or such property as is specified by [**the Court**] in the order be confiscated.
- (2) The provisions of **sections 33, 34, 35 and 36** shall apply with such modifications as are necessary to give effect to this section.

#### *Division 2 - Pecuniary Penalty Orders*

#### **41. Pecuniary Penalty Order on Conviction**

- (1) Subject to this section, where the [**Attorney-General**] [**Director of Public Prosecutions**] applies to [**the Court**] for a pecuniary penalty order against a person in respect of that person's conviction for a serious offence [**the Court**] shall, if it is satisfied that the person has benefitted from that offence, order him or her to pay to [**name of State**] an amount equal to the value of his or her benefit from the offence or such lesser amount as [**the Court**] certifies in accordance with section 44(2) to be the amount that might be realized at the time the pecuniary penalty order is made.
- (2) [**The Court**] shall assess the value of the benefits derived by a person from the commission of an offence in accordance with **sections 42, 43, 44, and 45**.
- (3) [**The Court**] shall not make a pecuniary penalty order under this section:
  - (a) until the period allowed by the rules of court for the lodging of an appeal against conviction has expired

without such appeal having been lodged; or

- (b) where an appeal against conviction has been lodged, until the appeal lapses in accordance with the rules of court or is finally determined, whichever is the later date.

#### 42. Rules of determining benefit and assessing value

- (1) Where a person obtains property as the result of, or in connection with the commission of a serious offence, his or her benefit is the value of the property so obtained.
- (2) Where a person derived an advantage as a result of or in connection with the commission of a serious offence, his or her advantage shall be deemed to be a sum of money equal to the value of the advantage so derived.
- (3) **[The Court]**, in determining whether a person has benefitted from the commission of a serious offence or from that offence taken together with other serious offences shall, unless the contrary is proved, deem:
- (a) all property appearing to **[the Court]** to be:
- (i) held by the person on the day on which the application is made; and
- (ii) all property appearing to **[the Court]** to be held by the person at any time:
- (A) within the period between the day the serious offence, or the earliest serious offence, was committed and the day on which the application is made; or
- (B) within the period of **[6 years]** immediately before the day on which the application is made, whichever is the longer,
- to be property that came into the possession or under the control of the person by reason of the commission of that serious offence or those serious offences for which the person was convicted;
- (b) any expenditure by the person since the beginning of that period to be expenditure met out of payments received by him or her as a result of, or in connection with, the commission of that serious offence or those serious offences; and
- (c) any property received or deemed to have been received by the person at any time as a result of, or in connection with the commission by him or her of that serious offence or those serious offences as property received by him or her free of any interest therein.
- (4) Where a pecuniary penalty order has been previously made against a person, in assessing the value of any benefit derived by him or her from the commission of the serious offence, **[the Court]** shall leave out of account any benefits that are shown to **[the Court]** to have been taken into account in determining the amount to be recovered under that order.
- (5) If evidence is given at the hearing of the application that the value of the person's property at any time after the commission of the serious offence exceeded the value of the person's property before the commission of the offence, then **[the Court]** shall, subject to **subsection (6)** treat the value of the benefit as being not less than the amount of that excess.
- (6) If, after evidence of the kind referred to in **subsection (5)** is given, the person satisfies **[the Court]** that the whole or part of the excess was due to causes unrelated to the commission of the serious offence, **subsection (5)** does not apply to the excess or, as the case may be, that part.

**43. Statements relating to benefits from commission of serious offences**

(1) Where:

- (a) a person has been convicted of a serious offence and the **[Attorney-General] [Director of Public Prosecutions]** tenders to **[the Court]** a statement as to any matters relevant to:
  - (i) determining whether the person has benefitted from the offence or from any other serious offence of which he or she is convicted in the same proceedings or which is taken into account in determining his or her sentence; or
  - (ii) an assessment of the value of the person's benefit from the offence or any other serious offence of which he or she is convicted in the same proceedings or which is taken into account; and
- (b) the person accepts to any extent an allegation in the statement,

**[the Court]** may, for the purposes of so determining or making that assessment, treat his or her acceptance as conclusive of the matters to which it relates.

(2) Where:

- (a) a statement is tendered under **subsection (1)(a)**; and
- (b) **[the Court]** is satisfied that a copy of that statement has been served on the person,

**[the Court]** may require the person to indicate to what extent he or she accepts each allegation in the statement and, so far as the person does not accept any allegation, to indicate any matters he or she proposes to reply on.

(3) Where the person fails in any respect to comply with a requirement under **subsection (2)**, he or she may be treated for the purposes of this section as having accepted every allegation in the statement other than:

- (a) an allegation in respect of which he or she complied with the requirement; and
- (b) an allegation that he or she has benefitted from the serious offence or that any property or advantage was obtained by him or her as a result of or in connection with the commission of the offence.

(4) Where:

- (a) the person tenders to **[the Court]** a statement as to any matters relevant to determining the amount that might be realized at the time the pecuniary penalty order is made; and
- (b) the **[Attorney-General] [Director of Public Prosecutions]** accepts to any extent any allegation in the statement,

**[the Court]** may, for the purposes of that determination, treat the acceptance of the **[Attorney-General] [Director of Public Prosecutions]** as conclusive of the matters to which it relates.

(5) An allegation may be accepted or a matter indicated for the purposes of this section, either:

- (a) orally before **[the Court]**; or
- (b) in writing, in accordance with rules of court.

(6) An acceptance by a person under this section that he or she received any benefits from the commission of a serious

offence is admissible in any proceedings for any offence.

#### **44. Amount recovered under Pecuniary Penalty Order**

- (1) Subject to **subsection (2)**, the amount to be recovered in the person's case under a pecuniary penalty order shall be the amount which **[the Court]** assesses to be the value of the person's benefit from the serious offence, or if more than one, all the offences in respect of which the order may be made.
- (2) Where **[the Court]** is satisfied as to any matter relevant for determining the amount which might be realized at the time the pecuniary penalty order is made (whether by acceptance under **section 43** or otherwise), **[the Court]** may issue a certificate giving **[the Court's]** opinion as to the matters concerned, and shall do so if satisfied that the amount that might be realized at the time the pecuniary penalty order is made is less than the amount that **[the Court]** assesses to be the value of the person's benefit from the offence, or if more than one, all the offences in respect of which the pecuniary penalty order may be made.

#### **45. Variation of Pecuniary Penalty Order**

Where:

- (a) **[the Court]** makes a pecuniary penalty order against a person in relation to a serious offence;
- (b) in calculating the amount of the pecuniary penalty order, **[the Court]** took into account a confiscation order of the property or a proposed confiscation order in respect of property; and
- (c) an appeal against confiscation or a confiscation order is allowed, or the proceedings from the proposed confiscation order terminate without the proposed confiscation order being made,

the **[Attorney-General]** **[Director of Public Prosecutions]** may apply to **[the Court]** for a variation of the pecuniary penalty order to increase the amount of the order by the value of the property not so confiscated and **[the Court]** may, if it considers it appropriate to do so, vary the order accordingly.

#### **46. Lifting the corporate veil**

- (1) In assessing the value of benefits derived by a person from the commission of a serious offence, **[the Court]** may treat as property of the person any property that, in the opinion of **[the Court]**, is subject to the effective control of the person, whether or not he or she has:
  - (a) any legal or equitable interest in the property; or
  - (b) any right, power or privilege in connection with the property.
- (2) Without prejudice to the generality of **subsection (1)**, **[the Court]** may have regard to:
  - (a) shareholdings in, debentures over or directorships in any company that has an interest, whether direct or indirect, in the property, and for this purpose **[the Court]** may order the investigation and inspection of the books of a named company;
  - (b) any trust that has any relationship to the property;
  - (c) any relationship whatsoever between the persons having an interest in the property or in companies of the kind referred to in **subsection (a)** or trust of the kind referred to in **subsection (b)**, and any other persons.

- (3) Where **[the Court]**, for the purposes of making a pecuniary penalty order against a person, treats particular property as the person's property pursuant to **subsection (1)**, **[the Court]** may, on application by the **[Attorney-General]** **[Director of Public Prosecutions]** make an order declaring that the property is available to satisfy the order.
- (4) Where **[the Court]** declares that property is available to satisfy a pecuniary penalty order:
- (a) the order may be enforced against the property as if the property were the property of the person against whom the order is made; and
  - (b) a restraining order may be made in respect of the property as if the property were property of the person against whom the order is made.
- (4) Where the **[Attorney-General]** **[Director of Public Prosecutions]** makes an application for an order under **subsection (3)** that property is available to satisfy a pecuniary penalty order against a person:
- (a) the **[Attorney-General]** **[Director of Public Prosecutions]** shall give written notice of the application to the person and to any person who the **[Attorney-General]** **[Director of Public Prosecutions]** has reason to believe may have an interest in the property; and
  - (b) the person and any person who claims an interest in the property may appear and adduce evidence at the hearing.

#### **47. Enforcement of Pecuniary Penalty Orders**

Where **[the Court]** orders a person to pay an amount under a pecuniary penalty order, the provisions of **section 39** shall apply with such modifications as **[the Court]** may determine for the purpose of empowering **[the Court]** to impose a term of imprisonment on a person in default of compliance by him or her with a pecuniary penalty order.

#### **48. Discharge of Pecuniary Penalty Orders**

A pecuniary penalty order is discharged:

- (a) if the conviction of the serious offence or offences in reliance on which the order was made is or is taken to be quashed and no conviction for the offence or offences is substituted;
- (b) if the order is quashed; or
- (c) on the satisfaction of the order by payment of the amount due under the order.

### *Division 3 - Control of Property*

#### **49. Powers to search for and seize tainted property**

- (1) A police officer may:
- (a) search a person for tainted property;
  - (b) enter upon land or upon or into premises and search the land or premises for tainted property; and

- (c) in either case, seize any property found in the course of the search that the police officer believes, on reasonable grounds to be tainted property,

provided that the search or seizure is made:

- (d) with the consent of the person or the occupier of the land or premises as the case may be;
- (e) under warrant issued under **section 50**; or
- (f) under **section 52**.

- (2) Where a police officer may search a person under this Division, he or she may also search:

- (a) the clothing that is being worn by the person; and
- (b) any property in, or apparently in, the person's immediate control.

#### **50. Search Warrants in relation to tainted property**

- (1) Where a police officer has reasonable grounds for suspecting that there is, or may be within the next **[72 hours]**, tainted property of a particular kind:

- (a) on a person;
- (b) in the clothing that is being worn by a person;
- (c) otherwise in a person's immediate control;
- (d) upon land or upon or in any premises,

the police officer may lay before a magistrate an information **[on oath]** setting out those grounds and apply for the issue of a warrant to search the person, the land or the premises as the case may be, for tainted property of that kind.

- (2) Where an application is made under **subsection (1)** for a warrant to search a person, land or premises, the magistrate may, subject to **subsection (4)** issue a warrant authorising a police officer (whether or not named in the warrant) with such assistance any by such force as is necessary and reasonable:

- (a) to search the person for tainted property of that kind;
- (b) to enter upon the land or in or upon any premises and to search the land or premises for tainted property of that kind; and
- (c) to seize property found in the course of the search that the police officer believes on reasonable grounds to be tainted property of that kind.

- (3) A warrant may be issued under **subsection (2)** in relation to tainted property, whether or not an information has been laid in respect of the relevant offence.

- (4) A magistrate shall not issue a warrant under **subsection (2)** unless, where an information has not been laid in respect of the relevant offence at the time when the application for the warrant is made, the magistrate is satisfied that:

- (a) an information will be laid in respect of the relevant offence within **[48 hours]**; and

(b) the property is tainted property.

(5) A warrant issued under this section shall state:

(a) the purpose for which it is issued, including a reference to the nature of the relevant offence;

(b) a description of the kind of property authorised to be seized;

(c) a time at which the warrant ceases to be in force; and

(d) whether entry is authorised to be made at any time of the day or night or during specified hours.

(6) If during the course of searching under a warrant issued under this section, a police officer finds:

(a) property that the police officer believes on reasonable grounds to be tainted property either of a type not specified in the warrant or tainted property in relation to another serious offence; or

(b) any thing the police officer believes on reasonable grounds will afford evidence as to the commission of a serious offence

the police officer may seize that property or thing and the warrant shall be deemed to authorise such seizure.

#### **51. Search Warrants may be granted by telephone, etc**

(1) Where by reason of urgency a police officer considers it necessary to do so, he or she may make application for a search warrant under **section 50** by telephone or by other means of communication.

(2) A magistrate, to whom an application for the issue of a warrant is made by telephone or other means of communication, may sign a warrant if he or she is satisfied that it is necessary to do so, and shall inform the police officer of the terms of the warrant so signed. The police officer shall complete a form of warrant in the terms furnished by the magistrate.

(3) The police officer to whom a warrant is granted by telephone or other means of communication shall, not later than **[the next working day]** following the execution of the warrant, give the magistrate a duly sworn information and the form of warrant completed by him or her.

#### **52. Searches in emergencies**

(1) Where a police officer suspects on reasonable grounds that:

(a) particular property is tainted property;

(b) it is necessary to exercise the power of search and seizure in order to prevent the concealment, loss or destruction of the property; and

(c) the circumstances are so urgent that they require immediate exercise of the power without the authority of a warrant or the order of a court,

the police officer may:

- (i) search a person;
- (ii) enter upon land, or upon or into premises and search for the property; and
- (iii) if property is found, seize the property.

(2) If during the course of a search conducted under this section, a police officer finds:

- (a) property that the police officer believes on reasonable grounds to be tainted property; or
- (b) any thing the police officer believes on reasonable grounds will afford evidence as to the commission of a criminal offence,

the police officer may seize that property or thing.

### **53. Record of Property Seized**

A police officer who seizes property under **section 50** or **section 52** shall detain the property seized, make a written record thereof, and take reasonable care to ensure that the property is preserved.

### **54. Return of Seized Property**

- (1) Where property has been seized under **section 50** or **section 52** (otherwise than because it may afford evidence of the commission of an offence), a person who claims an interest in the property may apply to **[the Court]** for an order that the property be returned to the person.
- (2) Where a person makes an application under **subsection (1)** and **[the Court]** is satisfied that:
  - (a) the person is entitled to possession of the property;
  - (b) the property is not tainted property; and
  - (c) the person in respect of whose conviction, charging or proposed charging the seizure of the property was made has no interest in the property, **[the Court]** shall order the return of the property to the person.

### **55. Search for and Seizure of tainted property in relation to foreign offences**

Where a foreign State requests assistance to locate or seize property suspected to be tainted property in respect of an offence within its jurisdiction, the provisions of **sections 50, 51 and 52** apply *mutatis mutandis* provided that the **[Attorney-General]** has, under **section 4 of the Mutual Assistance in Criminal Matters Act, 2000**, authorised the giving of assistance to the foreign State.

## *Division 4 - Restraining Orders*

### **56. Application for Restraining Order**

- (1) The **[Attorney-General]** **[Director of Public Prosecutions]** may apply to **[the Court]** for a restraining order against any realizable property held by the defendant or specified realizable property held by a person other than the defendant.

- (2) An application for a restraining order may be made *ex parte* and shall be in writing and be accompanied by an affidavit stating:
- (a) where the defendant has been convicted of a serious offence, the serious offence for which he or she was convicted, the date of the conviction, **[the Court]** before which the conviction was obtained and whether an appeal has been lodged against the conviction;
  - (b) where the defendant has not been convicted of a serious offence, the serious offence for which he or she is charged or about to be charged and the grounds for believing that the defendant committed the offence;
  - (c) a description of the property in respect of which the restraining order is sought;
  - (d) the name and address of the person who is believed to be in possession of the property;
  - (e) the grounds for the belief that the property is tainted property in relation to the offence or that the defendant derived a benefit directly or indirectly from the commission of the offence;
  - (f) where the application seeks a restraining order against property of a person other than the defendant, the grounds for the belief that the property is tainted property in relation to the offence and is subject to the effective control of the defendant; and
  - (g) the grounds for the belief that a confiscation order or a pecuniary penalty order may be or is likely to be made under this Part in respect of the property.

## 57. Restraining Orders

- (1) Subject to this section, where the **[Attorney-General]** **[Director of Public Prosecutions]** applies to **[the Court]** for a restraining order against property and **[the Court]** is satisfied that:
- (a) the defendant has been convicted of a serious offence, or has been charged or is about to be charged with a serious offence;
  - (b) where the defendant has not been convicted of a serious offence, there are reasonable grounds for believing that the defendant committed the offence;
  - (c) there is reasonable cause to believe that the property is tainted property in relation to an offence, or that the defendant derived a benefit directly or indirectly from the commission of the offence;
  - (d) where the application seeks a restraining order against property of a person other than the defendant, there are reasonable grounds for believing that the property is tainted property in relation to an offence and that the property is subject to the effective control of the defendant; and
  - (e) there are reasonable grounds for believing that a confiscation order or a pecuniary penalty order is likely to be made under this Part in respect of the property;
- [the Court]** may make an order:
- (f) prohibiting the defendant or any person from disposing of, or otherwise dealing with, the property or such part thereof or interest therein as is specified in the order, except in such manner as may be specified in the order; and
  - (g) at the request of the **[Attorney-General]** **[Director of Public Prosecutions]**, where **[the Court]** is satisfied that the circumstances so require:

- (i) directing the **[public trustee]** or such other person as **[the Court]** may appoint, to take custody of the property or such part thereof as is specified in the order and to manage or otherwise deal with all or any part of the property in accordance with the directions of **[the Court]**; and
  - (ii) requiring any person having possession of the property to give possession thereof to the **[public trustee]** or to the person appointed under **subsection (i)** to take custody and control of the property.
- (2) An order under **subsection (1)** may be made subject to such conditions as **[the Court]** thinks fit and, without limiting the generality of this, may make provision for meeting out of the property or a specified part of the property, any or all of the following :
- (a) the person's reasonable living expenses (including the reasonable living expenses of the person's dependants, if any) and reasonable business expenses;
  - (b) the person's reasonable expenses in defending the criminal charge and any proceedings under this Division; and
  - (c) any specified debt incurred by the person in good faith.
- (3) In determining whether there are reasonable grounds for believing property is subject to the effective control of the defendant, **[the Court]** may have regard to the matters referred to in **section 46**.
- (4) Where the **[public trustee]** or other person appointed under **subsection (1)(g)(i)** is given a direction in relation to any property, he or she may apply to **[the Court]** for directions on any question respecting the management or preservation of the property under his or her control.
- (5) An application under **section 56** shall be served on all persons interested in the application or such of them as **[the Court]** thinks expedient and all such person shall have the right to appear at the hearing and be heard.
- (6) When the application is made under **section 56 (1)** on the basis that a person is about to be charged, any order made by **[the Court]** shall lapse if the person is not charged:
- (a) where the offence is an offence against the law of **[name of State]**, within **[...hrs/days]**; and
  - (b) where the offence is an offence against the law of a foreign State, within **[...10 times that number of days]**

**[58. Undertaking by [name of State]**

- (1) Before making an order under **section 57(1)**, **[the Court]** may require **[name of State]** to give such undertakings as **[the Court]** considers appropriate with respect to the payment of damages or costs, or both, in relation to the making and execution of the order.
- (2) For the purposes of this section, the **[Attorney-General]** **[Director of Public Prosecutions]** may give such undertakings with respect to the payment of damages or costs or both as are required by **[the Court].**

**59. Notice of Application for Restraining Order**

Before making a restraining order **[the Court]** may require notice to be given to, and may hear, any person who, in the opinion of **[the Court]**, appears to have an interest in the property, unless **[the Court]** is of the opinion that giving such notice before making the order would result in the disappearance, dissipation or reduction in value of the property.

**60. Service of Restraining Order**

A copy of a restraining order shall be served on a person affected by the order in such manner as **[the Court]** directs or as may be prescribed by rules of court.

**61. Registration of Restraining Order**

- (1) A copy of a restraining order which affects lands in **[name of State]** shall be registered with the **[Registrar of Lands]**.
- (2) A restraining order is of no effect with respect to registered land unless it is registered as a charge under the **[Registration Of Land Act]**.
- (3) Where particulars of a restraining order are registered under the **[Registration Of Land Act]**, a person who subsequently deals with the property shall, for the purposes of **section 62** be deemed to have notice of the order at the time of the dealing.

**62. Contravention of Restraining Order**

- (1) A person who knowingly contravenes a restraining order by disposing of or otherwise dealing with property that is subject to the restraining order commits an offence punishable upon conviction by:
  - (a) a fine of **[.....]** or imprisonment for a period of **[.... years]** or both, in the case of a natural person; or
  - (b) a fine of **[5 times above figure]** in the case of a body corporate.
- (2) Where a restraining order is made against property and the property is disposed of, or otherwise dealt with, in contravention of the restraining order, and the disposition or dealing was not for sufficient consideration or not in favour of a person who acted in good faith and without notice, the **[Attorney-General] [Director of Public Prosecutions]** may apply to **[the Court]** that made the restraining order for an order that the disposition or dealing be set aside.
- (3) Where the **[Attorney-General] [Director of Public Prosecutions]** makes an application under **subsection (2)** in relation to a disposition or dealing, **[the Court]** may:
  - (a) set aside the disposition or dealing as from the day on which the disposition or dealing took place; or
  - (b) set aside the disposition or dealing as from the day of the order under this **subsection** and declare the respective rights of any persons who acquired interests in the property on, or after the day on which the disposition or dealing took place, and before the day of the order under this **subsection**.

**63. Duration of Restraining Order**

A restraining order remains in force until:

- (a) it is discharged, revoked or varied;
- (b) the period of **[6 months]** from the date on which it is made or such later time as **[the Court]** may determine; or
- (c) a confiscation order or a pecuniary penalty order, as the case may be, is made in respect of property which is the subject of the order.

**64. Review of Restraining Orders**

- (1) A person who has an interest in property in respect of which a restraining order was made may, at any time, apply to **[the Court]** for an order under **subsection (4)**.
- (2) An application under **subsection (1)** shall not be heard by **[the Court]** unless the applicant has given to the **[Attorney-General] [Director of Public Prosecutions]** at least **[3 working days]** notice in writing of the application.
- (3) **[The Court]** may require notice of the application to be given to, and may hear, any person who in the opinion of **[the Court]** appears to have an interest in the property.
- (4) On an application under **subsection (1)** **[the Court]** may revoke or vary the order or make the order subject to such conditions as **[the Court]** thinks fit. For the purposes of this **subsection [the Court]** may:
  - (a) require the applicant to enter into recognizances;
  - (b) vary the order to permit the payment of reasonable living expenses of the applicant, including his or her dependents, if any, and reasonable legal or business expenses of the applicant.
- (5) An order under **subsection (4)** may only be made if **[the Court]** is satisfied that the:
  - (a) applicant is the lawful owner of the property or is entitled to lawful possession thereof, and appears to be innocent of any complicity in the commission of a serious offence or of any collusion in relation to such offence; and
  - (b) that the property will no longer be required for the purposes of any investigation or as evidence in any proceedings.

**65. Extension of Restraining Orders**

- (1) The **[Attorney-General] [Director of Public Prosecutions]** may apply to **[the Court]** that made a restraining order for an extension of the period of the operation of the order.
- (2) Where the **[Attorney-General] [Director of Public Prosecutions]** makes an application under **subsection (1)**, **[the Court]** may extend the operation of a restraining order for a specified period, if it is satisfied that a confiscation order may be made in respect of the property or part thereof or that a pecuniary penalty order may be made against the person.

*Division 5 - Realization of Property***66. Realization of property**

- (1) Where:
  - (a) a pecuniary penalty order is made;
  - (b) the order is not subject to appeal; and

(c) the order is not discharged,

the [name of Court] may, on an application by the [Attorney General], exercise the powers conferred upon [the Court] by this section.

- (2) The [name of Court] may appoint a receiver in respect of realizable property.
- (3) The [name of Court] may empower a receiver appointed under **subsection (2)** to take possession of any realizable property subject to such conditions or exceptions as may be specified by [the Court].
- (4) The [name of Court] may order any person having possession of realizable property to give possession of it to any such receiver.
- (5) The [name of Court] may empower any such receiver to realize any realizable property in such manner as [the Court] may direct.
- (6) The [name of Court] may order any person holding an interest in realizable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Act as [the Court] may direct, and [the Court] may, on the payment being made, by order transfer, grant or extinguish any interest in the property.
- (7) The [name of Court] shall not, in respect of any property, exercise the powers conferred by **subsection (3), (4), (5) or (6)**, unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to [the Court].

#### **67. Application of proceeds of realization and other sums**

(1) Subject to **subsection (2)**, the following property in the hands of a receiver appointed under **sections 57 or 66**, that is to say:

- (a) the proceeds of the realization of any property under **section 66**; and
- (b) any other sums, being property held by the defendant,

shall, after such payments, if any, as the [name of Court] may direct have been made out of those sums, be payable to the [Registrar] of the [name of Court] and be applied on the defendant's behalf towards the satisfaction of the pecuniary penalty order in the manner provided by **subsection (3)**.

(2) If, after the amount payable under the confiscation order [pecuniary penalty order] has been fully paid, any such sums remain in the hands of such a receiver, the receiver shall distribute those sums:

- (a) among such of those persons who held property which has been realized under this Part; and
- (b) in such proportions,

as the [name of Court] may direct, after giving a reasonable opportunity for those persons to make representations to [the Court].

(3) Property received by the [Registrar] of the [name of Court] on account of an amount payable under a confiscation order shall be applied as follows:

- (a) if received by him from a receiver under **subsection (1)**, it shall first be applied in payment of the receiver's remuneration and expenses; and

- (b) the balance shall be paid or, as the case may be, transferred, to **[the [name of State] Fund For Drug Abuse Prevention And Control]**, established by **section 121** of the **[Drug Abuse Act, 2000]**.

**68. Exercise of powers of [public trustee]**

- (1) The following provisions of **this section** apply to the powers conferred on the **[name of Court]** by **sections 57, 64, 65 and 66**, or on a receiver appointed under **section 57(1)(g) or section 66(2)**.
- (2) Subject to the following provisions of **this section**, the powers shall be exercised with a view to making available for satisfying the pecuniary penalty order or, as the case may be, any pecuniary penalty order that may be made in the defendant's case, the value for the time being of realizable property held by any person by the realization of such property.
- (3) In the case of realizable property held by a person to whom the defendant has directly or indirectly made a gift caught by this Act, the powers shall be exercised with a view to realizing no more than the value for the time being of the gift.
- (4) The powers shall be exercised with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him or her.
- (5) An order may be made or other action taken in respect of a debt owed by **[name of State]**.
- (6) In exercising those powers, no account shall be taken of any obligations of the defendant or of the recipient of any such gift which conflict with the obligation to satisfy the confiscation order.

**69. Paramountcy of this Part in bankruptcy or winding up**

- (1) Where a person who holds realizable property is **[adjudged]** bankrupt:
- (a) property for the time being subject to a restraining order made before the order adjudging him bankrupt; and
- (b) any proceeds of property realized by virtue of **sections 66(5) or (6)** for the time being in the hands of a person appointed under **section 57(1)(g) or 66(2)**,

is excluded from the property of the bankrupt for the purposes of the **[Bankruptcy Act]**.

- (2) Where a person has been **[adjudged]** bankrupt, the powers conferred on **[the Court]** by **sections 57 and 66** or on a person appointed under **section 57(1)(g) or 66(2)** shall not be exercised in relation to property for the time being comprised in the property of the bankrupt for the purposes of the **[Bankruptcy Act]**.
- [(3) Where, in the case of a debtor, a receiver stands appointed under section [ ] of the [Bankruptcy Act] and any property of the debtor is subject to [a restraint order under or for the purposes of that Act], the powers conferred on the receiver by virtue of that Act do not apply to property for the time being subject to such restraint order.]**
- [(4) Where a person is adjudged bankrupt and has directly or indirectly made a gift caught by this Part:**
- (a) no order shall be made by virtue of sections [ ] of the **[Bankruptcy Act]** in respect of the making of the gift at any time when the person has been charged with a serious offence and the proceedings have not been concluded by the acquittal of the defendant or discontinuance of the proceedings, or when property of the person to whom the gift was made is subject to [a restraint order or a charging order made under or for the purposes of that Act]; and
- (b) any order made by virtue of those sections after the conclusion of the proceedings shall take into account

**any realisation under this Part of property held by the person to whom the gift was made].**

**70. Winding up of company holding realizable property**

- (1) Where realizable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for its voluntary winding up, the functions of the liquidator **[or any provisional liquidator]** shall not be exercisable in relation to:
- (a) property for the time being subject to a restraining order made before the relevant time; or
  - (b) any proceeds of property realized by virtue of **sections 66(5) or (6)** for the time being in the hands of a person appointed under **section 57(1)(g) or 66(2)**,
- but there shall be payable out of such property any expenses (including the remuneration of the liquidator **[or provisional liquidator]**) properly incurred in the winding up in respect of the property.
- (2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the **[name of Court]** by **section 57 or 66** shall not be exercised in relation to any realizable property held by the company in relation to which the functions of the liquidator are exercisable:
- (a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or
  - (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator **[or any provisional liquidator]**) properly incurred in the winding up in respect of the property.
- (3) **Subsection (2)** does not affect the enforcement of a charging order:
- (a) made before the relevant time; or
  - (b) on property which was subject to a restraint order at the relevant time.
- (4) Nothing in the **[Companies Act]** shall be taken as restricting, or enabling the restriction of, the exercise of the powers conferred on the **[name of Court]** by **section 57 or 66**.
- (5) In this section -
- (a) "company" means any company which may be wound up under the **[Companies Act]**,
  - (b) "liquidator" includes any person appointed to the office of liquidator (whether provisionally or otherwise) under the **[Companies Act]**; and
  - (c) "the relevant time" means:
    - (i) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
    - (ii) where such an order has been made and, before the presentation of the petition for the winding up of the company by **[the Court]**, such a resolution had been passed by the company, the time of the passing of the resolution; and
    - (iii) in any other case where such an order has been made, the time of the making of the order.

*Division 6 - Production Orders and other Information Gathering Powers*

**71. Production Orders**

- (1) Where a person has been charged with or convicted of a serious offence, and a police officer has reasonable grounds for suspecting that any person has possession or control of:
- (a) a document relevant to identifying, locating or quantifying property of the person, or to identifying or locating a document necessary for the transfer of property of such person; or
  - (b) a document relevant to identifying, locating or quantifying tainted property in relation to the offence, or to identifying or locating a document necessary for the transfer of tainted property in relation to the offence,
- the police officer may apply *ex parte* and in writing to a **[judge in chambers]** for an order against the person suspected of having possession or control of a document of the kind referred. The application shall be supported by an affidavit.
- (2) The judge may, if he or she considers there are reasonable grounds for so doing, make an order that the person produce to a police officer, at a time and place specified in the order, any documents of the kind referred to in **subsection (1)**, provided that an order under this **subsection** may not require the production of **[bankers books]**.
- (3) A police officer to whom documents are produced may:
- (a) inspect the documents;
  - (b) make copies of the documents; or
  - (c) retain the documents for so long as is reasonably necessary for the purposes of this Act.
- (4) Where a police officer retains documents produced to him or her, he or she shall make a copy of the documents available to the person who produced them.
- (5) A person is not entitled to refuse to produce documents ordered to be produced under this section on the ground that:
- (a) the document might tend to incriminate the person or make the person liable to a penalty; or
  - (b) the production of the document would be in breach of an obligation (whether imposed by enactment or otherwise) of the person not to disclose either the existence or contents, or both, of the document.

**72. Evidential value of information**

- (1) Where a person produces a document pursuant to an order under this Division, the production of the document, or any information document or things obtained as a direct or indirect consequence of the production of the document, is not admissible against the person in any criminal proceedings except proceedings under **section 73**.
- (2) For the purposes of **subsection (1)**, proceedings on an application for a restraining order, a confiscation order or a pecuniary penalty order are not criminal proceedings.

**73. Failure to comply with a production order**

Where a person is required by a production order to produce a document to a police officer, the person is guilty of an offence against this section if he or she:

- (a) contravenes the order without reasonable cause; or
- (b) in purported compliance with the order, produces or makes available a document known to the person to be false or misleading in a material particular and does not so indicate to the police officer and provide to the police officer any correct information of which the person is in possession.

**Penalty:** in the case of a natural person, imprisonment for a maximum of [...] years or a maximum fine of [...], or both, and in the case of a body corporate [five times] such fine.

**74. Production Orders in relation to foreign offences**

Where a foreign State requests assistance to locate or seize property suspected to be tainted property in respect of an offence within its jurisdiction, the provisions of **section 70** apply *mutatis mutandis*, provided that the [Attorney-General] [Director of Public Prosecutions] has, under **section 4(2) of the Mutual Assistance in Criminal Matters Act, 2000**, authorised the giving of assistance to the foreign State.

**75. Power to search for and seize documents relevant to locating property**

A police officer may:

- (a) enter upon land or upon or into premises;
- (b) search the land or premises for any document of the type described in **section 71(1)**; and
- (c) seize any document found in the course of that search that the police officer believes, on reasonable grounds, to be a relevant document in relation to a serious offence,

provided that the entry, search and seizure is made:

- (d) with the consent of the occupier of the land or the premises; or
- (e) under warrant issued under **section 76**.

**76. Search Warrant for location of documents relevant to locating property**

(1) Where:

- (a) a person has been charged or convicted of a serious offence; or
- (b) the police officer has reasonable grounds for suspecting that there is, or may be within the [next 72 hours], upon any land or upon or in any premises, a document of the type described in **section 71(1)** in relation to the offence,

the police officer may make an application supported by information on oath to a [magistrate/judge] for a search warrant in respect of that land or those premises.

- (2) Where an application is made under **subsection (1)** for a warrant to search land or premises, the **[magistrate/judge]** may, subject to **subsection (4)** issue a warrant authorising a police officer (whether or not named in the warrant), with such assistance and by such force as is necessary and reasonable:
- (a) to enter upon the land or in or upon any premises and to search the land or premises for property of that kind; and
  - (b) to seize property found in the course of the search that the police officer believes on reasonable grounds to be property of that kind.
- (3) A **[magistrate/judge]** shall not issue a warrant under **subsection (2)** unless he or she is satisfied that:
- (a) a production order has been given in respect of the document and has not been complied with;
  - (b) a production order in respect of the document would be unlikely to be effective;
  - (c) the investigation for the purposes of which the search warrant is being sought might be seriously prejudiced if the police officer does not gain immediate access to the document without any notice to any person; or
  - (d) the document involved cannot be identified or described with sufficient particularity to enable a production order to be obtained.
- (4) A warrant issued under this section shall state:
- (a) the purpose for which it is issued, including a reference to the nature of the relevant offence;
  - (b) a description of the kind of documents authorised to be seized;
  - (c) a time at which the warrant ceases to be in force; and
  - (d) whether entry is authorised to be made at any time of the day or night or during specified hours.
- (5) If during the course of searching under a warrant issued under this section, a police officer finds:
- (a) a document of the type described in **section 71(1)** that the police officer believes on reasonable grounds to relate to the relevant offence, or to another serious offence; or
  - (b) any thing the police officer believes on reasonable grounds will afford evidence as to the commission of a serious offence

the police officer may seize that property or thing and the warrant shall be deemed to authorise such seizure.

## **77. Search Warrants in relation to foreign offences**

Where a foreign State requests assistance to locate or seize property suspected to be tainted property in respect of an offence within its jurisdiction, the provisions of **section 76** apply *mutatis mutandis*, provided that the **[Attorney-General]** has, under **section 4(2) of the Mutual Assistance in Criminal Matters Act, 2000**, authorised the giving of assistance to the foreign State.

## **78. Monitoring Orders**

- (1) **[The Director of Public Prosecutions]** **[A police officer]** may apply, *ex parte* and in writing to a **[judge in chambers]**

for an order (in this section called a monitoring order) directing a financial institution to give information to a police officer. An application under this **subsection** shall be supported by an affidavit.

- (2) A monitoring order shall:
- (a) direct a financial institution to disclose information obtained by the institution about transactions conducted through an account held by a particular person with the institution;
  - (b) not have retrospective effect; and
  - (c) only apply for a period of a maximum of **[3 months]** from the date of making.
- (3) **[A judge]** shall not issue a monitoring order unless he or she is satisfied that there are reasonable grounds for suspecting that the person in respect of whose account the order is sought:
- (a) has committed or was involved in the commission, or is about to commit or be involved in the commission of, a serious offence; or
  - (b) has benefitted directly or indirectly, or is about to benefit directly or indirectly from the commission of a serious offence.
- (4) A monitoring order shall specify:
- (a) the name or names in which the account is believed to be held; and
  - (b) the class of information that the institution is required to give.
- (5) Where a financial institution, which has been given notice of a monitoring order, knowingly:
- (a) contravenes the order; or
  - (b) provides false or misleading information in purported compliance with the order,
- the institution commits an offence against this **subsection**.

**Penalty:** in the case of a natural person, imprisonment for a maximum of **[...] years** or a maximum fine of **[.....]**, or both, and in the case of a body corporate **[five times]** such fine.

## **79. Monitoring Orders not to be disclosed**

- (1) A financial institution that is, or has been subject to a monitoring order shall not disclose the existence or operation of the order to any person except:
- (a) an officer or agent of the institution for the purpose of ensuring compliance with the order;
  - (b) a legal adviser for the purpose of obtaining legal advice or representation in respect of the order; or
  - (c) a police officer authorised in writing to receive the information.

**Penalty:** in the case of a natural person, imprisonment for a maximum of **[...] years** or a maximum fine of **[.....]**, or both, and in the case of a body corporate **[five times]** such fine.

- (2) A person described in **subsection (1)(a), (b) or (c)** shall not disclose the existence or operation of a monitoring order except to another such person, and may do so only for the purposes of the performance of the person's duties or functions.

**Penalty:** imprisonment for a maximum of [...] years or a maximum fine of [...], or both.

- (3) Nothing in this section prevents the disclosure of information concerning a monitoring order for the purposes of or in connection with legal proceedings or in the course of proceedings before a court, provided that nothing in this section shall be construed as requiring a legal adviser to disclose to any court the existence or operation of a monitoring order.



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## UNDCP MODEL MONEY-LAUNDERING AND PROCEEDS OF CRIME BILL 2000

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