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## UNODC MODEL PROCEEDS OF CRIME AND UNLAWFUL ACTIVITIES, MONEY-LAUNDERING, AND TERRORIST FINANCING BILL 2004

### INDEX

<b>PART I - PRELIMINARY</b> .....	<b>4</b>
1. Short title, Extent and Commencement .....	4
2. Definitions .....	4
3. Meaning of charge in relation to a serious offence .....	9
4. Meaning of conviction in relation to a serious offence .....	9
5. Meaning of quashing of convictions .....	9
6. Meaning of value of property, etc.....	9
7. Meaning of dealing with property.....	10
8. Meaning of gift caught by this Act .....	10
9. Meaning of deriving a benefit.....	10
10. Meaning of benefiting from the proceeds of a serious offence .....	10
11. Effect of a person's death .....	11
<b>PART II - MONEY LAUNDERING AND TERRORIST FINANCING</b> .....	<b>11</b>
12. [Financial Intelligence Unit] .....	11
13. Financial institutions to verify customers identity .....	12
14. Financial institutions to establish and maintain customer records .....	12
15. Financial institutions to report suspicious transactions.....	13
16. Financial institutions to establish and maintain internal reporting procedures .....	14
17. Further preventive measures by financial institutions.....	14
18. Money-laundering offences .....	14
19. Related offence .....	15
20. Seizure and detention of suspicious imports or exports of currency.....	15
21. [FIU's] power to obtain search warrant.....	16
22. Property tracking and monitoring orders .....	17
23. Orders to enforce compliance with obligations under this Part .....	17
24. Secrecy obligations overridden.....	17
25. Immunity where suspicious transaction reported.....	17
26. Immunity where official powers or functions exercised in good faith .....	17
27. Damages .....	18
<b>PART III - CONFISCATION ON CONVICTION</b> .....	<b>18</b>
Division 1 - Confiscation and Pecuniary Penalty Orders .....	18
28. Application for confiscation order or pecuniary penalty order .....	18
29. Notice of Application .....	18
30. Amendment of Application.....	19

31.	Procedure on Application .....	19
32.	Procedure for in rem confiscation order where person dies or absconds.....	19
Division 2 - Confiscation .....		20
33.	Confiscation Order on Conviction.....	20
34.	Effect of Confiscation Order .....	21
35.	Voidable Transfers .....	22
36.	Protection of Third Parties.....	22
37.	Discharge of Confiscation Order on appeal and quashing of conviction.....	23
38.	Payment instead of a Confiscation Order .....	23
39.	Application of procedure for enforcing fines.....	24
40.	Confiscation where a person dies or absconds.....	24
Division 3 - Pecuniary Penalty Orders .....		24
41.	Pecuniary Penalty Order on Conviction .....	24
42.	Rules of determining benefit and assessing value.....	25
43.	Statements relating to benefits from commission of serious offences.....	26
44.	Amount recovered under Pecuniary Penalty Order .....	27
45.	Variation of Pecuniary Penalty Order.....	27
46.	Enforcement of Pecuniary Penalty Orders.....	27
47.	Discharge of Pecuniary Penalty Orders .....	27
Division 4 - Realization of Property.....		28
48.	Realization of property .....	28
49.	Application of proceeds of realization and other sums .....	28
50.	Exercise of powers of [public trustee] .....	29
51.	Paramourty of this Part in bankruptcy or winding up.....	29
52.	Winding up of company holding realizable property .....	30
<b>PART IV - CONFISCATION OF TERRORIST PROPERTY .....</b>		<b>31</b>
53.	Application for confiscation order.....	31
54.	Notice of Application .....	31
55.	Confiscation Order .....	32
56.	Effect of Confiscation Order .....	32
57.	Voidable Transfers .....	32
58.	Protection of Third Parties.....	33
59.	Appeal .....	33
<b>PART V - FORFEITURE OF PROPERTY .....</b>		<b>33</b>
Division 1 - Interpretation.....		33
60.	Relationships Between Different Applications and Orders .....	33
Division 2 - Restraining Orders.....		34
61.	Restraining Order .....	34
62.	Ancillary orders - Receivers .....	34
63.	Ancillary orders – Persons Affected by Restraining Orders .....	35
64.	Notice to be given.....	35
65.	Duration of Restraining Order .....	36
66.	Registration of Restraining Order, etc. ....	36
67.	Contravention of Restraining Order, etc. ....	36
Division 3 - Forfeiture Orders.....		36
68.	Application for forfeiture order .....	36
69.	Forfeiture Order.....	37
70.	Ancillary orders - receivers .....	37
71.	Orders - Responsible Owner and Legitimate Owner .....	38
72.	Effect – Other Court Orders, etc.....	38
73.	Application to Set Aside Dealings With Property .....	38
74.	Forfeiture Order – Effective Ownership .....	39
75.	Application to Set Aside Forfeiture Order.....	39
76.	Limit on Purchase of Forfeited Property .....	39

77.	Contravention of Forfeiture Order .....	39
Division 4 - Compensation .....		39
78.	Compensation Order .....	39
Division 5 - Information Gathering .....		40
79.	Examination Order .....	40
80.	Examination Notice .....	40
81.	Examination .....	40
82.	Admissibility of Answers .....	41
83.	Offences .....	41
84.	Production Orders .....	41
85.	Evidential value of information .....	42
86.	Failure to comply with a production order .....	42
87.	Power to search for and seize documents relevant to locating property .....	43
88.	Search Warrant for documents relevant to locating property and unlawful activity .....	43
89.	Notice to Financial Institutions .....	44
90.	Offences .....	44
Division 6 - Evidentiary Provision .....		45
91.	Conviction Evidence of Unlawful Activity .....	45
<b>PART VI - CONTROL OF PROPERTY .....</b>		<b>45</b>
Division 1 - Control of Property .....		45
92.	Powers to search for and seize tainted property or terrorist property .....	45
93.	Search Warrants in relation to tainted property or terrorist property .....	46
94.	Search Warrants may be granted by telephone, etc .....	47
95.	Searches in emergencies .....	47
96.	Record of Property Seized .....	47
97.	Return of Seized Property .....	47
98.	Search for and Seizure of property in relation to foreign offences .....	48
Division 2 - Restraining Orders .....		48
99.	Application for Restraining Order .....	48
100.	Restraining Orders .....	49
101.	Compensation Order .....	50
102.	Notice of Application for Restraining Order .....	51
103.	Service of Restraining Order .....	51
104.	Registration of Restraining Order .....	51
105.	Contravention of Restraining Order .....	51
106.	Duration of Restraining Order .....	52
107.	Review of Restraining Orders .....	52
108.	Extension of Restraining Orders .....	52
Division 3 - Production Orders and other Information Gathering Powers .....		52
109.	Production Orders .....	52
110.	Evidential value of information .....	53
111.	Failure to comply with a production order .....	53
112.	Production Orders in relation to foreign offences .....	54
113.	Power to search for and seize documents relevant to locating property .....	54
114.	Search Warrant for location of documents relevant to locating property .....	54
115.	Search Warrants in relation to foreign offences .....	55
116.	Monitoring Orders .....	55
117.	Monitoring Orders not to be disclosed .....	56
Division 4 - Confiscated and Forfeited Assets Fund .....		57
118.	Establishment of the Fund .....	57
119.	Receipts and Disbursements .....	57
120.	Annual Report to Parliament .....	57

## Bill No ..... of 20--

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To be presented by the Minister of Justice

*The object of this bill is to provide for the confiscation of the proceeds of crime and property for the financing of terrorist acts, to prevent the use of the financial system to launder the proceeds of serious crime or to finance terrorism, to provide civil remedies that will assist in preventing persons who engage in unlawful activities and others from keeping property that was acquired as a result of unlawful activities, and to prevent property from being used to finance or engage in unlawful activities.*

ATTORNEY-GENERAL

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An Act to enable the unlawful proceeds of all serious crime including drug trafficking, and property for the financing of terrorist acts, to be identified, traced, frozen, seized and eventually confiscated, to enable the proceeds and instrumentalities of unlawful activities to be identified, traced frozen, frozen, seized and eventually forfeited, to establish a Financial Intelligence Unit (FIU) and to require financial institutions to take prudential measures to help combat money laundering and terrorist financing.

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

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### PART I - PRELIMINARY

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

- (1) This Act may be called the "Proceeds of Crime and Unlawful Activities, Money Laundering and Terrorist Financing Act, 20--."
- (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 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 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) "Attorney General" includes a person authorised under the law of [name of State] to carry out the functions of Attorney General for the purposes of a provision of this Act;
- (d) "authorized officer" means a person or class of persons designated by the [Minister of Justice] pursuant to this Act as an authorized officer;
- (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, monetary instruments that may be exchanged for money (such as cheques, travellers' cheques, money orders, negotiable instruments in a form in which title thereto passes on delivery), jewellery, precious metals and precious stones; where the context permits, currency includes currency in electronic form;
- (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 67**, a person who is about to be charged with a serious offence;
- [(h) "Director of Public Prosecutions " includes a person authorised under the law of [name of State] to carry out the functions of Director of Public Prosecutions for the purposes of a provision of this Act;]
- (i) "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;
- (j) "financial institution" means any person who conducts as a business one or more of the following activities for or on behalf of a customer or client:
  - (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) transferring money or value;
  - (v) issuing and managing means of payment (such as credit and debit cards, cheques, travellers' cheques, money orders, bankers' drafts, and electronic money);
  - (vi) financial guarantees and commitments;
  - (vii) trading for own account or for account of customers in money market instruments (such as cheques, bills, certificates of deposit, derivatives), foreign exchange, interest rate and index instruments, commodity futures trading, and transferable securities;

- (viii) participating in securities issues and providing financial services related to such issues;
  - (ix) underwriting and placement of life insurance and other investment related insurance; money and currency changing;
  - (x) money and currency changing;
  - (xi) individual and collective portfolio management and advice;
  - (xii) safekeeping and administration of cash or liquid securities;
  - (xiii) otherwise investing, administering or managing funds, money or value;
  - (xiii) safe custody services;
  - (xv) casinos, including internet casinos;
  - (xvi) real estate agents;
  - (xvii) dealers in precious metals or precious stones;
  - (xviii) lawyers, notaries, accountants and other independent legal and accounting professionals who are sole practitioners, partners, or employed professionals within a legal or accounting firm;
  - (xix) providers of trust and company services (such as formation of a legal entity - acting or arranging for another to act as a partner, director, company secretary, or like position – or providing an address or registered office for a legal entity;
  - (xx) acting or arranging for another to act as a trustee;
  - (xxi) acting or arranging for another to act as a nominee shareholder;
  - (xxii) any other activity prescribed from time to time by regulation made by the [Minister of Finance]
- (k) "[FIU]" means the [**Financial Intelligence Unit**] appointed under section 12;
- (l) "gift" includes any transfer of property by a person to another person directly or indirectly:
- (i) after the commission of a serious offence 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;
- (m) "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;

- (n) "instrumentality of unlawful activity" means property:
- (i) used in or in connection with unlawful activity;
  - (ii) that facilitates or is otherwise concerned in unlawful activity;
- (o) "legitimate owner" means, with respect to property that is proceeds of unlawful activity, a person who did not, directly or indirectly, acquire the property as a result of unlawful activity carried out by the person and who:
- (i) was the rightful owner of the property before the unlawful activity occurred and was deprived of the possession or control of the property by means of the unlawful activity; or
  - (ii) acquired the property for fair value after the unlawful activity occurred and did not know and could not reasonably have known at the time of the acquisition that the property was proceeds of unlawful activity;
- (p) "person" means any natural or legal person;
- (q) "proceedings" means any procedure conducted by or under the supervision of a judge or judicial officer, however described, in relation to:
- (i) any alleged or proven offence, or property derived from such an offence; or
  - (ii) terrorist property,
- and includes an inquiry, investigation, or preliminary or final determination of facts;
- (r) "proceeds of crime" means any property or economic advantage derived or realized, directly or indirectly, as a result of or in connection with an offence, irrespective of whether committed before or after the commencement of this Act, and includes, on a proportional basis, property into which any property derived or realized directly or indirectly 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;
- (s) "proceeds of unlawful activity" means any property or economic advantage derived or realized, directly or indirectly, as a result of or in connection with a serious offence, irrespective of the identity of the offender and irrespective of whether committed before or after the commencement of this Act; it includes, on a proportional basis, property into which any property derived or realized directly or indirectly 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;
- (t) "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;
- (u) "property of or in the possession or control of any person" includes any gift made by that person;
- (v) "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.
- (w) "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;

- (x) "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**];
- (y) "responsible owner" means, with respect to property that is an instrumentality of unlawful activity, a person with an interest in the property who has done all that can reasonably be done to prevent the property from being used to carry out unlawful activity, including:
  - (i) promptly notifying appropriate law enforcement agencies whenever the person knows or ought to know that the property has been or is likely to be used to carry out unlawful activity, and
  - (ii) refusing or withdrawing any permission that the person has authority to give and that the person knows or ought to know has facilitated or is likely to facilitate the property being used to carry out unlawful activity;
- (z) "tainted property" means property:
  - (i) used in or in connection with the commission of a serious offence;
  - (ii) derived, obtained or realized as a result of the commission of a serious offence;
- (aa) "terrorist act" has the same meaning as in **section 2** of the *Terrorist Financing Act*;
- (bb) "terrorist act financing offence" means an offence against any of **sections 3, 4, 5 and 7** of the *Terrorist Financing Act* or an offence arising out of a contravention of **section 6(1)** of that Act;
- (cc) "terrorist group" has the same meaning as in **section 2** of the *Terrorist Financing Act*;
- (dd) "terrorist property" has the same meaning as in **section 2** of the *Terrorist Financing Act*;
- (ee) "unlawful activity" means an act or omission that, whether it occurred before or after this Act comes into force:
  - (i) would constitute an offence under a law of [**name of State**]; or
  - (iii) would constitute an offence under a law of a foreign State which, had it occurred in [**name of State**] would also have been an offence under a law of [**name of State**]

(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, or found not criminally responsible;
- (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.

(3) In determining the value of property for the purposes of this Act, property held by a body corporate or in trust may be treated as though the effective owner were the legal owner of the property.

**7. Meaning of dealing with property**

For the purposes of this Act, dealing with property held by any person includes:

- (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) where the property is an interest in a partnership, doing anything to diminish the value of the partnership;
- (c) making or receiving a gift of the property; or
- (d) 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 of this Act]** 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 benefiting from the proceeds of a serious offence**

For the purposes of this Act:

- (a) a person has benefited 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 the commission of the offence; 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. Effect of a person's death**

- (1) Any notice authorised or required to be given to a person under this Act is, if the person has died, sufficiently given if given to the person's legal personal representative.
- (2) A reference in this Act to a person's interest in property is, if the person has died, a reference to an interest in the property that the person had immediately before his or her death.
- (3) An order can be applied for and made under this Act:
  - (a) in respect of a person's interest in property even if the person has died, and
  - (b) on the basis of the activities of a person who has died.

**PART II - MONEY LAUNDERING AND TERRORIST FINANCING**

**12. [Financial Intelligence Unit]**

- (1) The **[Minister of Finance]** shall appoint a person or persons to be known as the **[Financial Intelligence Unit]**.
- (2) The **[FIU]**:
  - (a) shall receive reports of suspicious transactions issued by financial institutions pursuant to **section 15(1)**;
  - (b) shall send any such report to the **appropriate law enforcement authorities**, if having considered the report, the **[FIU]** also has reasonable grounds to suspect that the transaction is suspicious;
  - (c) may enter the premises of any financial institution during ordinary business hours to inspect any record kept pursuant to **section 15(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 (c)**, if it gives the **[FIU]** reasonable grounds to suspect that a transaction involves proceeds of crime or terrorist property;

- (e) may instruct any financial institution to take such steps as may be appropriate to facilitate any investigation anticipated by the **[FIU]**;
- (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 14(1) and 15(1)**;
- (h) may consult with any relevant person, institution or organization for the purpose of exercising its powers or duties under **subsection (e), (f) or (g)**;
- (i) shall not conduct any investigation into money laundering or terrorist financing, other than for the purpose of ensuring compliance by a financial institution with the provisions of this Part].

### **13. Financial institutions to verify customers identity**

- (1) A financial institution 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 to enter into:
  - (a) a continuing business relationship;
  - (b) in the absence of such a relationship, any transaction,
 the institution shall take reasonable measures to establish whether the person is acting on behalf of another person.
- (3) If it appears to a financial institution 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 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 or terrorist financing; 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 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.

### **14. Financial institutions to establish and maintain customer records**

- (1) A financial institution 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)**; and
  - (b) where evidence of a person's identity is obtained in accordance with **section 13**, 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 shall be kept in the true name of the account holder.
- (3) Records required under **subsection (1)(a)** shall contain particulars sufficient to identify:
  - (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 to verify the identity of each such person;
  - (b) the nature and date of the transaction;
  - (c) the type and amount of currency involved;
  - (d) the type and identifying number of any account with the financial institution 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; and
  - (f) the name and address of the financial institution, and of the officer, employee or agent of the financial institution 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.

## **15. Financial institutions to report suspicious transactions**

- (1) Whenever a financial institution has reasonable grounds to suspect that information that it has concerning a transaction or proposed 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 any transaction is carried out:
  - (a) take reasonable measures to ascertain the purpose of the transaction or proposed 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 or proposed transaction in accordance with **subsection (2)**; and
  - (c) communicate the information contained therein to the **[FIU]** in writing or in such other form as the **[Minister of Finance]** may from time to time approve.

- (2) A report required by **subsection (1)** shall:
- (a) contain particulars of the matters specified in **subsection (1)(a) and in section 13(1)**;
  - (b) contain a statement of the grounds on which the financial institution holds the suspicion; and
  - (c) be signed or otherwise authenticated by the financial institution.
- (3) A financial institution which has reported a suspicious transaction or proposed transaction in accordance with this Part shall, if requested to do so by the [FIU], give such further information as it has in relation to the transaction.

#### **16. Financial institutions to establish and maintain internal reporting procedures**

A financial institution 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 or terrorist financing ;
- (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 15(1)**; and
- (c) require the identified person to report the matter pursuant to **section 15(1)**, in the event that he or she determines that sufficient basis exists.

#### **17. Further preventive measures by financial institutions**

A financial institution 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 terrorist financing , and the procedures and related policies established and maintained by it pursuant to this Act; and
- (b) provide its employees with appropriate training in the recognition and handling of transactions relating to money-laundering and terrorist financing.

#### **18. 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]; or
  - (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]; or
- (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; or
- (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.

## 19. Related offences

- (1) A person shall not open or operate an account with a financial institution 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 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 or approved by a public authority exercising public interest supervisory functions in relation to the financial institution, or by any other body that regulates or is representative of the trade, business, profession or employment carried on by that person.

- (4) Every person commits an offence who discloses to another person

- (a) that a report under **section 15(1)** is being prepared or has been sent to the [FIU]; or
- (b) any other information or matter,

where the disclosure is likely to prejudice any investigation of money laundering or terrorist financing.

**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 money laundering or terrorist financing.

[(6) In proceedings for an offence against **subsection (4)**, it is a defence to prove that the person was obliged by law to make the disclosure, even if the disclosure was likely to prejudice any investigation of money laundering or terrorist financing.]

## 20. 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 he or she has reasonable grounds for suspecting that it is:

- (a) terrorist property or property derived from a [serious offence]; or

(b) proceeds of unlawful activity or an instrumentality of unlawful activity; or

(c) intended by any person for use, directly or indirectly, 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 the 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, IV or V** of this Act for the purpose of:

(i) the confiscation or forfeiture of the whole or any part of the currency; or

(ii) its restraint pending determination of its liability to confiscation or forfeiture; 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.

## 21. [FIU's] power to obtain search warrant

(1) The [FIU], may apply to [the Court] for a warrant to enter any premises belonging to or in the possession or control of a financial institution, 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 [FIU] [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 has failed to keep a transaction record, or report a suspicious transaction, as required by this Act; or



- (b) an officer or employee of a financial institution is committing, has committed or is about to commit an offence of money laundering or an offence arising out of a contravention of **section 6(1)** of the *Terrorist Financing Act*.

**22. 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 **[FIU] [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 **[FIU] [or law enforcement agency]**;
- (b) that the financial institution forthwith produce to the **[FIU] [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.

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

- (1) The **[FIU]** may, upon application to **[the Court]**, after satisfying **[the Court]** that a financial institution has failed to comply with any obligation provided for under **section 13, 14, 15, 16 or 17**, 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 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]**.

**24. 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.

**25. Immunity where suspicious transaction reported**

No action, suit or other proceedings shall lie against any financial institution, 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 15(1) of this Act**.

**26. 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]**.

**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 ON CONVICTION**

*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 **[28 days]** 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 under **section 28(1)** 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 in respect of whom the application is being made 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 under **section 28(1)** 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 [,on a balance of probabilities,] that property is tainted property in respect of a serious offence of which a person has been convicted, [the Court] shall 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:
  - (a) "registrable property" means property the title to which is passed by registration in accordance with the provisions of the **[Land Registration Act]**;
  - (b) "relevant appeal date" used in relation to a confiscation order made in consequence of a person's conviction of a serious offence means:
    - (i) 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
    - (ii) 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 103**,

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 order that the interest shall not be affected by the confiscation order, and [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 48(2) or 100(1)(g)** 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, effective [28 days] after the quashing of the conviction.
- ~~(2) Despite subsection (1), if within the [28 days], an application for a forfeiture order is made under **section 68**, then the property is deemed to be the subject of a restraining order under **section 61** as of the date of the application.~~
- (3) Where a confiscation order against property is discharged as provided for in **subsections (1) and (2)**, 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.
- (4) On receipt of an application under **subsection (3)** 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.
- (2) 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 3 - 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 benefited 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 43(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 benefited 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,
      - (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 benefited 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 benefited 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 42** 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. 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.

#### **47. 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 4 - Realization of Property*

#### **48. 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].

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

(1) Subject to **subsection (2)**, the following property in the hands of a receiver appointed under **section 48(2) or 100(1)(g)**, that is to say:

- (a) the proceeds of the realization of any property under **section 48**; 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 Confiscated and Forfeited Assets Fund established by section 118 of this Act]**.

#### **50. 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 48, 100, 107 and 108**, or on a **receiver** appointed under **section 48(2) or 100(1)(g)**.
- (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.

#### **51. Paramourcy 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 **section 48(5) or (6)** for the time being in the hands of a person appointed under **section 48(2) or 100(1)(g)**,

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 **section 48 or 100** or on a person appointed under **section 48(2) or 100(1)(g)** 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].

**52. 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 **section 48(5) or (6)** for the time being in the hands of a person appointed under **section 48(2) or 100(1)(g)**,

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 48 or 100** 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 48 or 100**.
- (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.

#### **PART IV- CONFISCATION OF TERRORIST PROPERTY**

##### **53. Application for confiscation order**

The **[Attorney-General]** **[Director of Public Prosecutions]** may apply to **[the Court]** for a confiscation order against terrorist property.

##### **54. Notice of Application**

Where the **[Attorney-General]** **[Director of Public Prosecutions]** applies under **section 53** for a confiscation order

- (a) the **[Attorney-General]** **[Director of Public Prosecutions]** must give no less than **[14 days]** written notice of the application only to any person who is known to own or control [or have an interest in] the terrorist property in respect of which the application is being made;
- (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.

**55. Confiscation Order**

- (1) Where, upon application by the [Attorney-General] [Director of Public Prosecutions], [the Court] is satisfied [,on a balance of probabilities,] that property to which the application relates is terrorist property, [the Court] shall order that specified property be confiscated.
- (2) Despite subsection (1), if a person claiming an interest in property to which an application relates satisfies [the Court] that he or she
  - (a) has an interest in the property;
  - (b) has, in the circumstances, exercised reasonable care to ensure that the property is not terrorist property; and
  - (c) is not a member of a terrorist group,

[the Court] shall order that the interest shall not be affected by the confiscation order, and [the Court] shall declare the nature and extent of the interest in question.

- (3) If a person obtains an interest in property after it becomes terrorist property, no order shall be made under subsection (2) in respect of that interest unless the person is a *bona fide* purchaser for value, without reason to suspect that the property is terrorist property.
- (4) Where [the Court] makes a confiscation order, [the Court] may give such directions as are necessary or convenient for giving effect to the order.

**56. 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) 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].

**57. 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 103**,



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.

#### **58. Protection of Third Parties**

- (1) Subject to **subsection (2)**, 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 **section 55(2)**.
- (2) 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 (1)**, except with leave of **[the Court]**.
- (3) A person who makes an application under **subsection (1)** 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.
- (4) Any person appointed by **[the Court]** under **section 100(2)(b)** shall, on application by any person who has obtained an order under **section 55(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.

#### **59. Appeal**

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 this Part.

### **PART V - FORFEITURE OF PROPERTY**

#### *Division 1 - Interpretation*

#### **60. Relationships Between Different Applications and Orders**

- (1) The **[Attorney-General] [Director of Public Prosecutions]** may apply under **section 61** for a restraining order with respect to proceeds of unlawful activity or with respect to an instrumentality of unlawful activity, in accordance with that section. The **[Attorney General] [ Director of Public Prosecutions]** may also apply, under **section 68**, for a forfeiture order with respect to proceeds of unlawful activity or with respect to an instrumentality of unlawful activity, in accordance with that section, whether or not an application has been made under **section 61** for a restraining order.

- (2) An application under **section 61** for a restraining order or under **section 68** for a forfeiture order. may be brought whether or not a person has been charged or convicted of a serious offence, and whether or not an application has been brought for a confiscation or pecuniary penalty order under **Part III**, confiscation order under **Part IV**, or restraining order under **Part V**. Similarly, an application may be brought for a confiscation or pecuniary penalty order under **Part III**, confiscation order under **Part IV**, or restraining order under **Part VI** whether or not an application has been brought an application under **section 59.2** or under **section 68**.
- (3) **[The Court]** may, on application of the **[Attorney General]** **[Director of Public Prosecutions]** order that proceedings on applications **under section 61 or 68** be postponed pending the outcome of proceedings under another Part of this Act or otherwise in relation to the unlawful activity if **[the Court]** is satisfied that to do so would clearly be in the interests of justice.
- (4) The result of an application under **section 61 or 68**, or of an application for a confiscation or pecuniary penalty order under **Part III**, confiscation order under **Part IV**, or restraining order under **Part VI** does not finally decide an issue between the parties for the purposes of any proceedings other than those for which the issue was decided.

### *Division 2 - Restraining Orders*

#### **61. Restraining Order**

- (1) The **[Attorney-General]** **[Director of Public Prosecutions]** may apply to **[the Court]** for a restraining order against property located inside or outside **[name of State]** that is:
  - (a) proceeds of unlawful activity; or
  - (b) an instrumentality of unlawful activity.
- (2) An application for a restraining order under **subsection (1)** may be made *ex parte* and shall be in writing and be accompanied by an affidavit in support of the application.
- (3) **[The Court]** shall make a restraining order against the property if **[the Court]** is satisfied that there are reasonable grounds to suspect that the property is proceeds of unlawful activity or an instrumentality of unlawful activity.
- (4) The hearing of an application for a restraining order may be held *in camera*.

#### **62. Ancillary orders - Receivers**

- (1) **[The Court]** may make ancillary orders, either concurrently with or after the making of the restraining order, that **[the Court]** considers necessary or expedient, including
  - (a) directing the **[public trustee]** or another person that **[the Court]** may appoint, to take custody of the property or a part of the property that is specified in the restraining order and to manage or otherwise deal with the whole or any a part of the property in accordance with any directions of **[the Court]**;
  - (b) requiring any person having possession of the property to give possession of it to the **[public trustee]** or to the person appointed under **subsection (a)** to take custody of the property; and
  - (c) permitting the person appointed under **subsection (a)** to liquidate any perishable property, or any other property that the person considers, on reasonable grounds, may rapidly decline in value or cost more to preserve than its realizable value.
- (2) An application for an order under **subsection (1)** may be made *ex parte*.

**63. Ancillary orders – Persons Affected by Restraining Orders**

- (1) **[The Court]** shall, if satisfied that to do so is would clearly be in the interests of justice, make ancillary orders, either concurrently with or after making the restraining order, to make provision for meeting out of the property or part of it,
  - (a) the reasonable living expenses of any person affected by the order (including the reasonable living expenses of the person's dependants, if any) and reasonable business expenses; and
  - (b) a person’s reasonable legal expenses in any proceedings under this Part;
- (2) An order under **subsection (1)** may be made subject to any conditions that **[the Court]** considers necessary or expedient. For the purposes of this **subsection [the Court]** may vary the restraining order to permit the payment of amounts such as those mentioned in **subsection (1)**, if the court is satisfied that
  - (a) the applicant could not otherwise meet the expenses; and
  - (b) the applicant has disclosed [under oath] all interests in the property and submitted to **[the Court]** a [sworn] statement of all assets and liabilities.
- (3) An order under subsection (1)(b) is subject to the following conditions:
  - (a) **[the Court]** must be satisfied that all other means, including the **[legal aid system]**, have been used by the person in order to limit the legal expenses;
  - (b) the amount ordered must not exceed the amount that would be paid for the legal work according to the **[tariff of legal aid]**;
  - (c) the amount ordered must not, in any event, exceed [----]; and
  - (d) if so ordered by **[the Court]**, the amounts must first be taxed by the **[taxing authority]** of **[the Court]**.

**64. Notice to be given**

- (1) When **[the Court]** makes a restraining order, it shall, as soon as possible, order that the **[Attorney General]** **[Director of Public Prosecutions]**
  - (a) give notice of the order to all persons known to the **[Attorney General]** **[Director of Public Prosecutions]** to have an interest in property that is affected by the order, and any other person **[the Court]** directs; and
  - (b) publish in **[the Gazette or]** a newspaper published and circulating in **[name of State]** a notice of the order.
- (2) **[The Court]** may also order service of the supporting affidavit if **[the Court]** is satisfied that to do so would clearly be in the interests of justice and that there is no over-riding public interest in it not being served at that time.
- (3) **[The Court]** may order that notice not be given, or that notice be given at a later time, if **[the Court]** is satisfied that there is an over-riding public interest against notice being given at that time, such as
  - (a) endangering the life or physical safety of any person;
  - (b) flight from prosecution;
  - (c) destruction, dissipation or removal from the jurisdiction of property affected by the order;

- (d) destruction of or tampering with evidence;
- (e) intimidation of potential witnesses; or
- (f) otherwise seriously jeopardizing an investigation or unduly delaying a proceeding under this Act.

**65. Duration of Restraining Order**

A restraining order expires [21] [90] days after the date on which notice of the order is given under **section 64** unless

- (a) an application for a forfeiture order has been made in respect of the property that is affected by the restraining order; or
- (b) the restraining order is revoked before the expiry of the [21] [90] days.

**66. Registration of Restraining Order, etc.**

- (1) A copy of a restraining order - and of any relevant ancillary order made under **section 63 or 64** - that affects lands in [name of State] shall be registered with the [Registrar of Lands].
- (2) An 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 an order are registered under the [Registration Of Land Act], a person who subsequently deals with the property is deemed to have notice of the order at the time of the dealing.

**67. Contravention of Restraining Order, etc.**

- (1) A person who knowingly contravenes a restraining order or ancillary 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) The [Attorney-General] [Director of Public Prosecutions] may apply to [the Court] that made the restraining order for an order that a dealing with property be set aside if
  - (a) the property is dealt with in contravention of the restraining order; and
  - (b) the dealing was not for sufficient consideration or not in favour of a person who acted in good faith and without notice of the order.

*Division 3 - Forfeiture Orders*

**68. Application for forfeiture order**

- (1) The [Attorney-General] [Director of Public Prosecutions] may apply to [the Court] for a forfeiture order against property located inside or outside [name of State] that is:
  - (a) proceeds of unlawful activity; or

- (b) an instrumentality of unlawful activity.
- (2) The **[Attorney-General]** **[Director of Public Prosecutions]** shall
  - (a) give **[14]** days notice of an application under **subsection (1)** to all persons known to the **[Attorney General]** **[Director of Public Prosecutions]** to have an interest in property affected by the application; and
  - (b) publish in **[the Gazette or]** a newspaper published and circulating in **[name of State]** a notice of the application at least **[14]** days before the application is scheduled to be decided .
- (3) A person who wishes to oppose the making of a forfeiture order with respect to property in which the person has an interest - or who wishes to exclude the person's interest from a forfeiture order - shall file an appearance within the **[14]** days mentioned in **subsection (2)**, although **[the Court]** may agree to accept an appearance at a later time.
- (4) An application for a forfeiture order shall be in writing and be accompanied by an affidavit supporting it.
- (5) **[The Court]** must set the matter down for hearing as soon as possible after expiry of the **[14]** days' notice of the date of the application.
- (6) **[The Court]** must postpone the hearing of an application until the earlier of
  - (a) the completion of an investigative examination held under **section 79**; and
  - (b) **[30 days]**, unless **[the Court]** orders otherwise.

**69. Forfeiture Order**

- (1) **[The Court]** shall make an order declaring that the property is forfeited to **[name of State]** if **[the Court]** is satisfied on a balance of probabilities that the property is proceeds of unlawful activity or an instrumentality of unlawful activity.
- (2) For greater certainty, the validity of an order under subsection (1) is not affected by the outcome of criminal proceedings, or of an investigation with a view to institute such proceedings in respect of an offence with which the property concerned was in some way associated.
- (3) For greater certainty, **[the Court]** need not be satisfied that the property was used or acquired in connection to any particular unlawful activity.
- (4) If **[the Court]** does not grant an application to make a forfeiture order, it may revoke any restraining order that affects the same property.
- (5) An order under **subsection (1)** takes effect on the later of
  - (a) the expiry of the period during which an appeal of the order may be taken **[under the general law of civil procedure]**; and
  - (b) the final disposition of the appeal.

**70. Ancillary orders - receivers**

- (1) **[The Court]** may make ancillary orders, either concurrently with or after the making of the forfeiture order, that **[the Court]** considers necessary or expedient, including
  - (a) directing the **[public trustee]** or another person that **[the Court]** may appoint, to take custody of the property or a part of the property that is specified in the forfeiture order and to manage or otherwise deal with the

whole or any part of the property in accordance with any directions of **[the Court]**;

- (b) requiring any person having possession of the property to give possession of it to the **[public trustee]** or to the person appointed under **subsection (a)** to take custody of the property; and
- (c) permitting the person appointed under **subsection (a)** to liquidate any perishable property.

(2) An application for an order under **subsection (1)** may be made *ex parte*.

#### **71. Orders - Responsible Owner and Legitimate Owner**

- (1) Except where it would clearly not be in the interests of justice, if **[the Court]** is satisfied on a balance of probabilities that the property is proceeds of unlawful activity and that a person is a legitimate owner, **[the Court]** shall make any order it considers necessary to protect the person's interest in the property.
- (2) Except where it would clearly not be in the interests of justice, if **[the Court]** is satisfied on a balance of probabilities that the property is an instrumentality of unlawful activity and that a person is a responsible owner, **[the Court]** shall make any order it considers necessary to protect the person's interest in the property.
- (3) No order may be made under subsection (1) or (2) if
  - (a) the person is a fugitive from justice in **[name of State]** at the time the forfeiture order is made;
  - (b) the property is property that it is unlawful for the person to possess in **[name of State]**; or
  - (c) the interest that the person has in the property is in the nature of a general unsecured interest or claim against someone else's property, or is the interest of a bailee or nominee.
- (4) For greater certainty, the burden of satisfying **[the Court]** on a balance of probabilities that a person is a legitimate owner or a responsible owner lies on the person claiming it.

#### **72. Effect – Other Court Orders, etc.**

- (1) The forfeiture of property pursuant to an order made under **section 69** is effective despite any law of **[name of State]** relating to bankruptcy of a person or to the winding up of a company in relation to the property - as long as the order is made before the date the person was adjudged bankrupt or the company ordered wound up, or a restraining order was made under section 59.2 in relation to the property before that date and remains in force.
- (2) The forfeiture of property pursuant to an order made under **section 69** is effective despite any other court order affecting the property.

#### **73. Application to Set Aside Dealings With Property**

- (1) The **[Attorney General]** **[Director of Public Prosecutions]** may apply to **[the Court]** to set aside a dealing with property that contravenes an order made under **section 69**.
- (2) **[The Court]** shall set aside the dealing with the property from the day it occurred except if **[the Court]** is satisfied that to do so would clearly not be in the interests of justice, in which case it shall set aside the dealing as of the day on which the order is made and declare the rights of any persons who acquired interests in the property pursuant to the dealing.

**74. Forfeiture Order – Effective Ownership**

An order made under **section 69** may also contain provisions respecting who is the effective owner of property held by a body corporate or in trust.

**75. Application to Set Aside Forfeiture Order**

- (1) A person who wishes to apply for an order to protect the person’s interest in property and who meets the conditions of **section 71** may, not later than **[two]** years after the forfeiture order is made under **section 69**, apply to set aside the order even if the person did not appear **under subsection 68 (3)**.
- (2) **[The Court]** shall grant the application under **subsection (1)** only if **[the Court]** is satisfied that to do so would clearly be in the interests of justice, that the person did not receive notice under section 68(2), and that after first learning that the order had been applied for or made the person did not unreasonably delay applying to set it aside.
- (3) For greater certainty, the order for the protection of a person’s property under **subsection (2)** has no effect on the other parts of the forfeiture order made under **section 69**.

**76. Limit on Purchase of Forfeited Property**

No person who had possession of property or was entitled to possession of property that is affected by a forfeiture order under **section 69** immediately prior to the making of the order - and no person acting on behalf of such a person - shall purchase the property.

**77. Contravention of Forfeiture Order**

A person who knowingly contravenes a forfeiture order or ancillary 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.

*Division 4 - Compensation*

**78. Compensation Order**

- (1) **[The Court]** may, if satisfied that to do so would clearly be in the interests of justice, make a compensation order, on application to it by a person if
  - (a) a restraining order was made under **section 61**;
  - (b) an application for a forfeiture order under **section 68** was not granted and the restraining order was revoked;  
and
  - (c) the person suffered loss as a result of the operation of the restraining order.
- (2) **[The Court]** may, if satisfied that to do so would clearly be in the interests of justice, make a compensation order, on application to it by a person if

- (a) a forfeiture order was made under **section 69** that affects property in which the person had an interest immediately prior to the making of the order;
  - (b) in the opinion of [**the Court**], the value of the person's forfeited interest in the property far outweighs its value to the unlawful activity in question; and
  - (c) the person suffered loss because of the operation of the forfeiture order.
- (3) An application under **subsection (1) or (2)** must be made no later than six months after the date of the order under **section 61 or 69** and notice of the application must be given to the [**Attorney General**] [**Director of Public Prosecutions**].

### *Division 5 - Information Gathering*

#### **79. Examination Order**

- (1) The [**Attorney-General**] [**Director of Public Prosecutions**] may apply to [**the Court**] for an order for the examination of any person - and the production by the person of any document about:
- (a) the nature, location and value of property that there are reasonable grounds to suspect is proceeds of unlawful activity or an instrumentality of unlawful activity;
  - (b) the affairs of that person or any other person, to the extent relevant to determining the manner and circumstances in any person acquired, used, or disposed of the property.
- (2) [**The Court**] shall make the order unless [**the Court**] is satisfied that to do so would clearly not be in the interests of justice and shall appoint an examiner to carry out the examination.

#### **80. Examination Notice**

- (1) The examiner shall, as soon as possible after appointment, give to the person to be examined pursuant to an order under **section 79**, an examination notice requiring the person to attend at the appointed time and place to be examined by the examiner and to produce any document specified.
- (2) The notice must be given no less than [**7 days**] before the time of the examination.

#### **81. Examination**

- (1) The examination shall take place in private, with the only persons in attendance being the person being examined, his or her counsel, the [**Attorney General**] [**Director of Public Prosecutions**], the examiner and any other person that [**the Court**] orders to be present.
- (2) The person being examined shall answer all questions put to him or her after having [taken an oath] to tell the truth.
- (3) For greater certainty, a person may not refuse to answer a question or produce a document on the grounds that it might incriminate him or her or make the person liable to a penalty.



**82. Admissibility of Answers**

An answer given or a document produced in an examination is not admissible in evidence in civil or criminal proceedings against the person examined except

- (a) in criminal proceedings for false or misleading information;
- (b) in proceedings on an application under this Act;
- (c) in proceedings ancillary to an application under this Act;
- (d) in proceedings for enforcement of a restraining order or forfeiture order; or
- (e) in the case of a document, in civil proceedings in respect of a right or liability conferred or imposed by the document.

**83. Offences**

- (1) A person who fails to attend an examination at the time and place specified in an examination notice that he or she has received commits an offence punishable upon conviction by a fine of [...] or imprisonment for [ **years**] or both.
- (3) A person attending an examination who does any of the following things commits an offence punishable upon conviction by a fine of [.....] or imprisonment for a period of [..... **years**] or both:
  - (a) refusing or failing to [be sworn];
  - (b) refusing or failing to answer a question that the examiner requires the person to answer;
  - (c) refusing or failing to produce at the examination a document specified in the examination notice or otherwise required by the examiner; or
  - (d) leaving the examination before being excused by the examiner.
- (3) No offence is committed under **subsection (2)(b) or (c)** if the person could not, in proceedings before a court in [**name of State**] be compelled to answer the question or produce the document, except if the person could not be compelled for one or more of the following reasons:
  - (a) the person is a [member of a legal profession] and the answer would therefore be privileged from being disclosed, or the document would be privileged from being produced, in legal proceedings on the ground of legal professional privilege; or
  - [(b) the answer or document would, under a law of [**name of State**] relating to the law of evidence, be inadmissible in legal proceedings for a reason other than because:
    - (i) the answer would be privileged from being disclosed; or
    - (ii) the document would be privileged from being produced.]

**84. Production Orders**

- (1) A [**police officer**] may apply *ex parte* and in writing to a [**judge in chambers**], for an order for the production of a

document, where there are reasonable grounds to believe that the document exists at a particular place that is relevant to

- (a) identifying, locating or quantifying property that [there are reasonable grounds to suspect] are proceeds of unlawful activity or an instrumentality of unlawful activity; or
  - (b) identifying or locating a document necessary for the transfer of such property.
- (2) An application under this section shall be supported by an affidavit.
- (3) **[The judge]** may, if he or she considers there are reasonable grounds for so doing, make an order that the document be produced to a **[police officer]**, at a time and place specified in the order.
- (4) 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 Part.
- (5) 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.
- (6) 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 a law of **[name of State]** or otherwise) of the person not to disclose either the existence or contents, or both, of the document.

#### **85. Evidential value of information**

- (1) The production of a document pursuant to an order under **[section 84]** - or any information, document or thing obtained as a direct or indirect consequence of the production of the document, - is not admissible against the person producing it in any criminal proceedings except proceedings under **[section 86]**.
- (2) For the purposes of **subsection (1)**, proceedings on an application for a restraining order, a confiscation order, a forfeiture order or a pecuniary penalty order are not criminal proceedings.

#### **86. 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]** the fine.

**87. 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 84** 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 unlawful activity,

provided that the entry, search and seizure is made:

- (i) with the consent of the occupier of the land or the premises; or
- (ii) under warrant issued under **section 88**

**88. Search Warrant for documents relevant to locating property and unlawful activity**

- (1) A [police officer] may make an application supported by information [on oath] to a [magistrate/judge] for a search warrant in respect of land or premises if
  - (a) there are reasonable grounds to believe that a document relevant to identifying, locating or quantifying an instrumentality of unlawful activity or a document necessary for the transfer of an instrumentality of unlawful activity exists on the land or at the premises; and
  - (b) a [police officer] has reasonable grounds for suspecting that there is, or may be within the [next 72 hours], upon the land or premises, a document of the type described in **section 84**.
- (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 any document of that kind; and
  - (b) to seize any document found in the course of the search that the [police officer] believes on reasonable grounds to be a document 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 unlawful activity;
  - (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) A **[police officer]** may seize property or a thing of a kind mentioned in subsection 2 (a) or (b) – and the warrant shall be deemed to authorise the seizure of the property of thing – if the **[police officer]**, during the course of searching under a warrant issued under this section, finds:
- (a) a document of the type described in **section 28.1** that the **[police officer]** believes on reasonable grounds to relate to unlawful activity; or
  - (b) any thing the **[police officer]** believes on reasonable grounds will afford evidence as to the carrying out of unlawful activity.

## **89. Notice to Financial Institutions**

- (1) **[A police officer]** who believes on reasonable grounds that a financial institution may have information or documents of a type listed below that would be relevant to deciding whether proceedings ought to be taken under this Part may give written notice to a financial institution directing it to give such information or documents to him or her, namely documents that would be relevant to determining
- (a) whether an account is held by a specified person with the financial institution;
  - (b) whether a particular person is a signatory to an account; and
  - (c) if a person holds an account with the institution, the current balance of the account.
- (2) Despite any other law, a financial institution that has been given a notice under **this section** shall comply with the notice and shall produce the information and documents not later than **[14 days]** after receiving the notice.

## **90. Offences**

- (1) Where a financial institution that has been given a notice **under section 89**, knowingly:
- (a) fails to comply with the notice; or
  - (b) provides false or misleading information in purported compliance with the notice,
- 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]** the fine.

- (2) A financial institution that has been given a notice under **section 89** shall not disclose the existence or operation of the notice to any person except:
- (a) an officer or agent of the institution for the purpose of complying with the notice;
  - (b) a legal adviser for the purpose of obtaining legal advice or representation in respect of the notice; 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**] the fine.

(3) A person described in **subsection (2)(a), (b) or (c)** shall not disclose the existence or operation of the notice 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.

### *Division 6 - Evidentiary Provision*

#### **91. Conviction Evidence of Unlawful Activity**

For greater certainty, the fact that a person has been convicted of an offence is proof, in the absence of evidence to the contrary, that there was unlawful activity.

## **PART VI - CONTROL OF PROPERTY**

### *Division 1 - Control of Property*

#### **92. Powers to search for and seize tainted property or terrorist property**

(1) A police officer may:

- (a) search a person for tainted property or terrorist property;
- (b) enter upon land or upon or into premises and search the land or premises for tainted property or terrorist 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 or terrorist property;

provided that the search or seizure is made:

- (i) with the consent of the person or the occupier of the land or premises as the case may be;
- (ii) under warrant issued under **section 93**; or
- (iii) under **section 95**.

(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.

**93. Search Warrants in relation to tainted property or terrorist property**

(1) Where a police officer has reasonable grounds for suspecting that there is, or may be within the next **[72 hours]**, tainted property or terrorist 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; or
- (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 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 and by such force as is necessary and reasonable:

- (a) to search the person for property of that kind;
- (b) to enter upon the land or in or upon any premises and to search the land or premises for 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 property of that kind.

(3) A magistrate shall not issue a warrant under **subsection (2)** in respect of tainted property or terrorist property unless the magistrate is satisfied that there are reasonable grounds to believe that a confiscation order may be made under this Act in respect of the property.

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

- (a) the purpose for which it is issued including, in respect of tainted property, 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.

(5) 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 or terrorist property 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.

**94. 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 93** 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.

**95. Searches in emergencies**

- (1) Where a police officer suspects on reasonable grounds that:
  - (a) particular property is tainted property or terrorist 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:
  - (d) search a person;
  - (e) enter upon land, or upon or into premises and search for the property; and
  - (f) 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 terrorist 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.

**96. Record of Property Seized**

A police officer who seizes property under **section 93** or **section 95** shall detain the property seized, make a written record thereof, and take reasonable care to ensure that the property is preserved.

**97. Return of Seized Property**

- (1) Where property has been seized under **section 93** or **section 95** (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 or terrorist property; and
  - (c) in the case of tainted property, 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.

#### **98. Search for and Seizure of 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 or property suspected to be terrorist property, the provisions of **sections 93, 94 and 95** apply *mutatis mutandis* provided that the **[Attorney-General]** has, under **section 4 of the Mutual Assistance in Criminal Matters Act, 2004**, authorised the giving of assistance to the foreign State.

### *Division 2 - Restraining Orders*

#### **99. Application for Restraining Order**

- (1) The **[Attorney-General]** **[Director of Public Prosecutions]** may apply to **[the Court]** for a restraining order against:
- (a) any realizable property held by the defendant;
  - (b) specified realizable property held by a person other than the defendant; or
  - (c) any terrorist property .
- (2) An application for a restraining order under **subsection (1)(a) or (b)** 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



- (f) the grounds for the belief that a confiscation order may be or is likely to be made under this Act in respect of the property.
- (3) An application for a restraining order under **subsection (1)(c)** may be made *ex parte* and shall be in writing and be accompanied by an affidavit stating:
- (a) a description of the property in respect of which the restraining order is sought;
  - (b) the name and address of the person who is believed to be in possession of the property;
  - (c) that the property is terrorist property; and
  - (d) the grounds for the belief that a confiscation order may be or is likely to be made under this Act in respect of the property.

## 100. Restraining Orders

- (1) Subject to this section, where the **[Attorney-General] [Director of Public Prosecutions]** applies to **[the Court]** under **section 99(1)(a) or (b)** 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 are reasonable grounds 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 may be or is likely to be made under this Act 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) Subject to this section, where the **[Attorney-General] [Director of Public Prosecutions]** applies to **[the Court]** under **section 99(1)(c)** for a restraining order against property and **[the Court]** is satisfied that there are reasonable grounds for believing that a confiscation order may be or is likely to be made under this Act in respect of the property,

[the Court] may make an order:

- (a) prohibiting 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
- (b) 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.
- (3) An order under this **section** 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 reasonable living expenses of any person affected by the order (including the reasonable living expenses of the person's dependants, if any) and reasonable business expenses;
  - (b) a person's reasonable expenses in defending a criminal charge and any proceedings under this Act; and
  - (c) any specified debt incurred in good faith by any person affected by the order.
- (4) For the purposes of **subsection (1)(d)**, 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 45**.
- (5) Where the [public trustee] or other person appointed under **subsection (1)(g)(i) or (2)(b)(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.
- (6) An application under **section 99** shall be served on all persons interested in the application or such of them as [the Court] thinks expedient and all such persons shall have the right to appear at the hearing and be heard.
- (7) When the application is made under **section 99** 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].

## **101. Compensation Order**

- (1) [The Court] may, if satisfied that to do so would clearly be in the interests of justice, make a compensation order, on application to it by a person if
  - (a) a restraining order was made under **subsection 100 (1) or (2)**;
  - (b) an application for a confiscation order under **section 33** was not granted and the restraining order was revoked; and
  - (c) the person suffered loss as a result of the operation of the confiscation order.

- (2) [The Court] may, if satisfied that to do so would clearly be in the interests of justice, make a compensation order, on application to it by a person if
  - (a) a confiscation order was made under **section 32** that affects property in which the person had an interest immediately prior to the making of the order;
  - (b) in the opinion of the Court, the value of the person's interest in the confiscated property far outweighs its value to the serious offence in question; and
  - (c) the person suffered loss because of the operation of the confiscation order.
- (3) An application under **subsection (1) or (2)** must be made no later than six months after the date of the order under **subsection 68(1) or (2) or section 32** and notice of the application must be given to the [Attorney General] [Director of Public Prosecutions].

### 102. 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.

### 103. 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.

### 104. 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 105**, be deemed to have notice of the order at the time of the dealing.

### 105. 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**.

**106. Duration of Restraining Order**

A restraining order remains in force until it is discharged, revoked or varied.

**107. 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, or
  - (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,

but no such order shall be made unless the property will no longer be required for the purposes of any investigation or as evidence in any proceedings.

**108. 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 3 - Production Orders and other Information Gathering Powers*

**109. Production Orders**

- (1) Where there are reasonable grounds to believe that a person has been, is or will be involved in the commission 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.

- (2) A 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 relevant to identifying, locating or quantifying terrorist property or to identifying or locating a document necessary for the transfer of terrorist property, where there are reasonable grounds to believe that the person has possession or control of such a document.
- (3) An application under this section shall be supported by an affidavit.
- (4) 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) or (2)**.
- (5) 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.
- (6) 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.
- (7) 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 a law of **[name of State]** or otherwise) of the person not to disclose either the existence or contents, or both, of the document.

#### **110. 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 111**.
- (2) For the purposes of **subsection (1)**, proceedings on an application for a restraining order, a confiscation order, a forfeiture order or a pecuniary penalty order are not criminal proceedings.

#### **111. 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.

## 112. 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 or property suspected to be terrorist property, the provisions of **section 109** 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.

## 113. 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 109 (1) or (2)**; 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 or terrorist property,

provided that the entry, search and seizure is made:

- (i) with the consent of the occupier of the land or the premises; or
- (ii) under warrant issued under **section 114**.

## 114. Search Warrant for location of documents relevant to locating property

(1) Where:

- (a) there are reasonable grounds to believe that the person has been, is or will be involved in the commission of a serious offence or has or will have possession or control of a document relevant to identifying, locating or quantifying terrorist property or to identifying or locating a document necessary for the transfer of terrorist property; and
- (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 109 (1) or (2)** in relation to the offence or terrorist property,

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, if any;
  - (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 109 (1) or (2)** that the police officer believes on reasonable grounds to relate to the relevant offence or to another serious offence, or to terrorist property; 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.

#### **115. 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, property suspected to be an instrumentality of unlawful activity in respect of unlawful activity within its jurisdiction, or property suspected to be terrorist property, the provisions of **section 114** 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.

#### **116. 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:
- (a) the person in respect of whose account the order is sought
    - (i) has committed or was involved in the commission, or is about to commit or be involved in the commission of, a serious offence;
    - (ii) has benefited directly or indirectly, or is about to benefit directly or indirectly from the commission of a serious offence; or
  - (b) the account is relevant to identifying, locating or quantifying terrorist property.
- (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.

#### **117. 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.

#### *Division 4 - Confiscated and Forfeited Assets Fund*

##### **118. Establishment of the Fund**

- (1) There is hereby established in the accounts of [name of State] an account to be known as the [name of State] [Confiscated and Forfeited Assets Fund.]

##### **119. Receipts and Disbursements**

- (1) There shall be credited to the Fund :
- (a) all moneys derived from the fulfilment of confiscation and forfeiture orders contemplated in **Parts III, IV and V**;
  - (b) any sums of money allocated to the Fund from time to time by parliamentary appropriation;
  - (c) any voluntary payment, grant or gift made by any person for the purposes of the Fund; and
  - (d) any income derived from the investment of any amount standing to the credit of the Fund.
- (2) [The Minister of Justice] [Cabinet] may authorise payments out of the Fund to
- (a) compensate victims who suffered losses as a result of serious offences, terrorism or unlawful activity;
  - (b) satisfy a compensation order under **section 78 or 101**;
  - (c) enable the appropriate law enforcement agencies to continue their fight against serious offences, terrorism and unlawful activities and
  - (d) share confiscated property with foreign States pursuant to **section 16** of the **Mutual Assistance in Criminal Matters Act**.

##### **120. Annual Report to Parliament**

The [Minister of Justice] shall table a report in Parliament, not later than the first sitting day after the expiry of 90 days from the [end of the fiscal year] detailing

- (a) the amounts credited to the Fund;
- (b) the investments made with the amounts credited to the Fund; and
- (c) the payments made from the Fund, including the specific purpose for which each payment was made and to whom it was made.