



ANTI-MONEY LAUNDERING ACT 2008

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REPUBLIC OF NAURU

(No.13 of 2008)

AN ACT

For the purpose of renewing the Anti Money Laundering Legislation to prevent money laundering, to establish a Financial Intelligence Unit and a regime for financial transactions reporting, customer due diligence, record keeping and other obligations of financial institutions, to strengthen law enforcement and enable cooperation with foreign States, and for related purposes.

[Certified: 26th November 2008]

Enacted by the Parliament of Nauru as follows–

PART 1 - INTRODUCTORY

Citation

1. This Act may be cited as the *Anti Money Laundering Act 2008*.

Definitions

2. In this Act –

“**alternative remittance**” means a system or transaction carried out by a person whether or not that person is an authorized financial institution whereby that person accepts from a second person at any place cash, cheques or other instruments of payment or stores of value and pays an equivalent in any form and by any means directly or indirectly at another place or places to the second person or to a third person;

“**authorized person**” means any person appointed by the Supervisor of the Financial Intelligence Unit or a police officer or a person appointed by the Director of Public Prosecutions.

“**business transaction**” means any arrangement, including opening an account, between two or more persons where the purpose of the arrangement is to facilitate a transaction between the persons concerned and includes any related transaction between any of the persons concerned and another person.

“**business transaction record**” includes where relevant to a business transaction;

- (a) the identification records of all the persons party to that transaction;
- (b) a description of that transaction sufficient to identify its purpose and method of execution;
- (c) the details of any account used for that transaction, including Bank, Branch and Sort Code (if any); and
- (d) the total value of that transaction.

“**Court**” means the Supreme Court

“**financial institution**” means any person or group of persons or company whose regular occupation or business is the carrying out of;

- (a) any activity listed in the Schedule to this Act;
- (b) any other activity defined by Cabinet as such by an order published in the Gazette that may add to the list of activities in the Schedule to this Act whether or not that person also carries on any business outside Nauru, and whether or not that person is a corporation incorporated in Nauru.

“**Financial Intelligence Unit**” or “**Unit**” means the authority established by section 7.

“**financing of terrorism**” has the same meaning as in the *Counter Terrorism and Transnational Organised Crime Act 2004*.

“**identification record**” means information relating to the identification of a person and the verification of the person’s identity, including;

- (a) where the person is a natural person, the details;
 - (i) of the person’s name, address and occupation; and
 - (ii) the national identity card or passport or other applicable official identifying document;
- (b) where the person is a body corporate, the details;
 - (i) of the person’s name, legal form, registration number and registered address;
 - (ii) of the person’s directors, principal owners and beneficiaries and ownership structure; and
 - (iii) of the provisions regulating the power to bind the person and to verify that any person purporting to act on behalf of the person is so authorised and identified, such information to consist of sufficient documentary evidence to prove to the satisfaction of a financial institution that the person is who that person claims to be, and for these purposes “person” shall include any person who is a nominee, agent, beneficiary or principal in relation to a business transaction.

“**Minister**” means Minister of Justice.

“**money laundering**” means;

- (a) acquiring, possessing or using property knowing or having reasonable grounds to believe that it is or represents proceeds of crime;
- (b) concealing, disguising, converting, transferring, removing or bringing into Nauru property knowing or having reasonable grounds to believe that it is or represents proceeds of crime; or
- (c) entering into or becoming concerned in an arrangement knowing or having reasonable grounds to believe that it facilitates (by whatever means) the acquisition, retention, use or control of proceeds of crime by or on behalf of another person.

“**politically exposed persons**” means individuals who are or have been entrusted with prominent public functions in a foreign country, for example heads of state or governments, senior politicians, senior government, judicial or military officials, senior executives of state-owned corporations, important political party officials, including the family members and close associates of these persons.

“**proceeds of crime**” means any property derived from or obtained directly or indirectly through the commission of any unlawful activity, including:

- (a) any property which is mingled with such property or traceable thereto;
- (b) any payments or rewards received by a person at any time in connection with any unlawful activity carried on by that person or another person;
- (c) any property derived or realized directly or indirectly by the person from any of such payments or other rewards; and

(d) any pecuniary advantage obtained in connection with any unlawful activity carried on by the person or by another person.

“**property**” includes money and all other property real or personal, including things in action and other intangible or incorporeal property wherever situate, including any interest in such property.

“**realizable property**” means –

- (a) any property held by a defendant; and
- (b) any property held by a person to whom a defendant has directly or indirectly made a gift.

“**Request**” has the meaning given by Part 8.

“**requesting State**” means any State the government of which is recognised by Nauru as a sovereign State which makes a Request of Nauru.

“**Supervisor**” means the person appointed under subsection 7(3);

“**tainted property**” means property that is intended for use in, or used in, or in connection with the commission of any unlawful activity;

“**terrorist property**” has the same meaning as stated in the *Counter Terrorism and Transnational Organised Crime Act 2004*.

“**unlawful activity**” means any activity which under any law anywhere is a crime, other than a law relating to the non-payment or avoidance of any form of taxation, and is punishable by more than twelve months imprisonment, except where in the opinion of the Court such law or the punishment thereof is unconscionable or excessive and ought not be enforced, and includes in relation to any such activity, conspiracy, incitement, attempting to commit, and aiding, abetting, counselling, or procuring the commission thereof.

PART 2 - MONEY LAUNDERING PROHIBITED

Offence of money laundering

3(1). A person who, after the commencement of this Act, engages in money laundering is guilty of an offence.

- Penalty: (a) Imprisonment for 15 years; and
 (b) \$50,000 fine.

Note: under the *Interpretation Act* s. 62(2) where the word “and” is used the court has a discretion to impose either or both a fine and imprisonment

(2) If the person is a body corporate or an unincorporated body of persons, the person shall be liable to a maximum fine not exceeding five times that of the fine for a natural person.

Offence committed by a body corporate or unincorporated body of persons

4(1). In any offence under this Act is committed by a body corporate or an unincorporated body of persons, every person who, at the time of the commission of the offence, acted in an official capacity for or on behalf of such body, whether as a director, manager, secretary or other similar officer, or was purporting to act in such capacity, shall if such person is shown to have knowledge of, or should reasonably have had knowledge of, the commission of the offence, be guilty of that offence.

- Penalty: (a) Imprisonment for 15 years; and
 (b) \$50,000 fine.

Note: under the *Interpretation Act* s. 62(2) where the word “and” is used the court has a discretion to impose either or both a fine and imprisonment

(2) If the person is a body corporate or an unincorporated body of persons, the person shall be liable to a maximum fine not exceeding \$500,000.

Attempts; Aiding and Abetting; Conspiracy

5. A person who —

- (a) Attempts;
- (b) aids, abets, counsels, or procures the commission of;
- (c) or conspires to commit,

the offence of, money laundering is guilty of an offence.

Penalty: (a) Imprisonment for 15 years; and
 (b) \$50,000 fine.

Note: under the *Interpretation Act* s. 62(2) where the word “and” is used the court has a discretion to impose either or both a fine and imprisonment

(2) If the person is a body corporate or an unincorporated body of persons, the person shall be liable to a maximum fine not exceeding \$500,000.

Jurisdiction

6. Any act —

- (a) by a citizen of Nauru anywhere;
- (b) by a corporation established or incorporated in Nauru, or any officer of such corporation, anywhere;
- (c) by a person on a ship or aircraft registered in Nauru; or
- (d) by a person outside Nauru with intent to do that act within Nauru

shall, if it would be an offence by that person in Nauru under the provisions of this Act be an offence under those provisions.

PART 3 - THE FINANCIAL INTELLIGENCE UNIT

Establishment of the Financial Intelligence Unit

7(1). The Financial Intelligence Unit is hereby established.

(2). There shall be a Financial Intelligence Unit Supervisor, appointed by Cabinet who shall be the head of the Financial Intelligence Unit.

(3). Until such time as the Cabinet makes an appointment pursuant to subsection (3), the person for the time being holding the position of Secretary of Finance shall be the Supervisor.

(4). The Supervisor shall appoint officers for the financial intelligence unit on such terms as the Supervisor may determine and in consultation with the Chief Secretary.

(5). The officers shall exercise all of the powers, duties and functions of the financial intelligence unit under this Part.

(6). The officers shall report to the Supervisor on the exercise of their powers and the performance of his or her duties and functions under this Act and advise the Supervisor on any matter relating to money laundering and the financing of terrorism.

(7). Except as provided in this Act, the Supervisor or an officer of the Financial Intelligence Unit must not disclose any information that would directly or indirectly identify an individual who has provided a report or information to the financial intelligence unit, or a person or entity about whom a report or information has been provided under this Act.

Powers and functions of the Financial Intelligence Unit

8. The Financial Intelligence Unit –

- (a) shall receive;
 - (i) the reports issued by financial institutions pursuant to the provisions of section 17;
 - (ii) information provided to the Financial Intelligence Unit by any agency of another country, or by a law enforcement agency, government institution or supervisory authority; and
 - (iii) any other information provided voluntarily to the Financial Intelligence Unit relating to suspicion of a money laundering offence, a financing of terrorism offence or an unlawful activity;
- (b) shall have the authority to collect any information that the Financial Intelligence Unit considers relevant to money laundering, financing of terrorism or unlawful activities whether or not publicly available, including information from commercially available databases and information from databases maintained by the government;
- (c) shall have the authority to request information from any law enforcement agency, government institution or agency supervisory authority;
- (d) shall analyse and assess all reports and information;
- (e) shall refer any matter or any information derived from any report or information it receives to the Director of Public Prosecutions if, on the basis of its analysis and assessment, the Financial Intelligence Unit has reasonable grounds to suspect that the matter or information is relevant to the investigation or prosecution of a money laundering offence, a financing of terrorism offence or an unlawful activity.
- (f) shall carry out examinations of financial institutions as set out in section 12;
- (g) shall have the authority to instruct any financial institution to take such steps as may be appropriate in relation to any information or report received by the Financial Intelligence Unit to enforce compliance with this Act or to facilitate any investigation anticipated by a law enforcement agency;
- (h) shall destroy any report or information received or collected on the expiry of six years after the date of receipt of the report or information if there has been no further activity or information relating to the report or the person named in the report, or six years from the date of the last activity relating to the report or person;
- (i) shall compile statistics and records, disseminate information within Nauru or elsewhere, and make recommendations arising out of any information received;
- (j) shall issue guidelines and provide training to financial institutions in relation to customer identification, record keeping, reporting obligations and identification of suspicious transactions;
- (k) shall provide periodic feedback to financial institutions and other relevant agencies regarding outcomes relating to the reports or information given under the Act;
- (l) shall educate the public and create awareness on matters relating to money laundering and financing of terrorism;

- (m) may disclose any report, any information derived from such report or any other information it receives to an institution or agency of a foreign state or of an international organisation established by the governments of foreign states that has powers and duties similar to those of the Financial Intelligence Unit, if on the basis of its analysis or assessment the Financial Intelligence Unit has reasonable grounds to suspect that the information would be relevant to the investigation or prosecution of money laundering offence, a financing of terrorism offence, an unlawful activity or an offence that is substantially similar to any of the foregoing offences; and
- (n) may enter into any agreement or arrangement with any domestic law enforcement agency, government institution or supervisory authority regarding the exchange and sharing of information.

Powers of Financial Intelligence Unit on suspect transaction

9(1). Where the Financial Intelligence Unit has reasonable grounds to suspect that a transaction or attempted transaction may;

- (a) involve a money laundering offence, a financing of terrorism offence or an unlawful activity; or
- (b) be preparatory to a financing of terrorism offence,

it may by an *ex parte* application to the Court, apply for an order and the Court upon being satisfied that there are reasonable grounds to suspect that a transaction or attempted transaction may involve a money laundering offence, a financing of terrorism offence, an unlawful activity or may be preparatory to a financing of terrorism offence, may grant an order to direct the financial institution in writing or by telephone to be followed up in writing within 24 hours, not to proceed with the carrying out of that transaction or attempted transaction or any other transaction in respect of the funds affected by that transaction or attempted transaction for a period to be determined by the Court, which may not be more than five days, in order to allow the Financial Intelligence Unit;

- (i) to make any necessary inquiries concerning the transaction or attempted transaction; and
- (ii) if the Financial Intelligence Unit deems it appropriate, to consult or advise the relevant law enforcement agency in the inquiries.

(2) The Financial Intelligence Unit may make an *ex parte* application to the Court to apply for an extension of time setting out the grounds for the extension of the direction set out in subsection (1).

Disclosure to foreign institutions and agencies

10(1). The Financial Intelligence Unit may disclose any report or information as set out under paragraph 8(m) to an institution or agency of a foreign state or of an international organization or body or other institution or agency established by the governments of foreign states that has powers and duties similar to those of the Financial Intelligence Unit on such terms and conditions as are set out in the agreement or arrangement between the Financial Intelligence Unit and that foreign state or international organization regarding the exchange of such information under section 11.

(2) Where such an agreement or arrangement has not been entered into between the Financial Intelligence Unit and that foreign state or international organization or body, the

Financial Intelligence Unit may disclose any report or information as set out under section 8 to an institution or agency of a foreign state or of an international organization or body or other institution or agency established by the governments of foreign states that has powers and duties similar to those of the Financial Intelligence Unit on such terms and conditions as may be agreed upon by the Financial Intelligence Unit and the institution or agency at the time of disclosure, where such terms and conditions shall include –

- (a) restriction on the use of the report or information to purposes relevant to investigating or prosecuting a money laundering offence, a financing of terrorism offence, an unlawful activity or an offence that is substantially similar to any of the foregoing offences; and
- (b) the stipulation that the report or information be treated in a confidential manner and not be further disclosed without the express consent of the Financial Intelligence Unit.

Power to enter into agreements

11(1). The Financial Intelligence Unit may, with the approval of the Minister, enter into an agreement or arrangement, in writing, with –

- (a) an institution or agency of a foreign state or foreign states or an international organization established by the governments of foreign states that has powers and duties similar to those of the Financial Intelligence Unit; and
- (b) a foreign law enforcement agency or a foreign supervisory authority, regarding the exchange of information between the Financial Intelligence Unit and the institution, authority or agency.

(2) The information exchanged under subsection (1) shall be information that the Financial Intelligence Unit, the institution or agency has reasonable grounds to suspect would be relevant to the investigation or prosecution of a money laundering offence, a financing of terrorism offence, an unlawful activity or an offence that is substantially similar to any of the foregoing offences.

(3) Agreements or arrangements entered into under subsection (1) shall include the following:

- (a) restriction on the use of information to purposes relevant to investigating or prosecuting a money laundering offence, a financing of terrorism offence, an unlawful activity or an offence that is substantially similar to any of the foregoing offences; and
- (b) the stipulation that the information be treated in a confidential manner and not be further disclosed without the express consent of the Financial Intelligence Unit.

Power to examine

12(1) The Financial Intelligence Unit or any person it authorizes may examine the records and inquire into the business and affairs of any financial institution for the purpose of ensuring compliance with Act or any regulations issued there under, and for that purpose may:

- (a) at any reasonable time, enter any premises, in which the authorized person believes, on reasonable grounds, that there are records relevant to ensuring compliance with this Act;

- (b) use or cause to be used any computer system or data processing system in the premises to examine any data contained in or available to the system;
- (c) reproduce any record, or cause it to be reproduced from the data, in the form of a printout or other intelligible output and remove the printout or other output for examination or copying; and
- (d) use or cause to be used any copying equipment in the premises to make copies of any record.

(2) The owner or person responsible of premises referred to in subsection (1) and every person found there shall give the Financial Intelligence Unit or any authorized person all reasonable assistance to enable them to carry out their responsibilities and shall furnish them with any information that they may reasonably require with respect to the administration of this Act or the regulations under the Act.

(3) The Financial Intelligence Unit may transmit any information from, or derived from, such examination to the appropriate domestic or foreign law enforcement authorities or supervisory authorities, if the Financial Intelligence Unit has reasonable grounds to suspect that the information is suspicious or is relevant to an investigation for non-compliance with this Act, a money laundering offence, a financing of terrorism offence or an unlawful activity.

(4) Any person who wilfully obstructs or hinders or fails to cooperate with the Financial Intelligence Unit or any authorized person in the lawful exercise of the powers under subsection (1) or any person who does not comply with subsection (2) is guilty of an offence and shall be punishable on conviction –

- (a) in the case of an individual by a fine not exceeding \$2000 or imprisonment for 6 months, or both; or
- (b) in the case of a body corporate - by a fine not exceeding \$30,000.

Power to enforce compliance

13(1). All officers and employees of a financial institution shall take all reasonable steps to ensure the compliance by that financial institution with its obligations under this Act.

(2) The Financial Intelligence Unit may issue a directive to any financial institution that has without reasonable excuse failed to comply in whole or in part with any obligations in this Part to implement any action plan to ensure compliance with its obligations under that Part.

(3) Where a financial institution fails to comply with a directive under subsection (2), the Financial Intelligence Unit upon application to Court and satisfying the Court that a financial institution has failed without reasonable excuse to comply in whole or in part with any obligations under this Part may obtain an order against any or all of the officers or employees of that financial institution in such terms as the Court deems necessary to enforce compliance with such obligation.

(4) In granting an order pursuant to subsection (3) the Court may direct that should the financial institution or any officer or employee of that institution fail without reasonable excuse to comply with all or any of the provisions of that order such financial institution, officer or employee shall pay a financial penalty as the Court may determine.

(5) Where the Financial Intelligence Unit has reasonable grounds to believe that a financial institution has failed to comply in whole or part with any of the obligations of subsection (4) or this Part, the Financial Intelligence Unit may apply to a Court for a warrant to enter premises belonging to, or in the possession or control of, a financial institution, or any officer or employee of the institution or dealer, and to search the premises and remove any document, material or other thing on the premises.

(6) The Court must grant the application if the Court is satisfied that there are reasonable grounds for believing that the financial institution has failed to comply with this Part or an order under subsection (4).

Audit and annual report

14(1). The Financial Intelligence Unit shall be subject to examination and audit by the Director of Audit.

(2) The Director of Audit and every person acting on behalf of or under the direction of the Director of Audit shall not use or disclose any information that they have obtained, or to which they have had access, in the course of their audit except for the purposes of exercising those powers or performing their duties and functions under the *Audit Act 1973*.

(3) The Financial Intelligence Unit shall submit an Annual Report to the Minister and Secretary of Finance within three months from the end of its financial year.

Non-disclosure

15(1). This section applies to a person while the person is, or after the person ceases to be, the Supervisor or an officer of the Financial Intelligence Unit.

(2) Except for the purpose of the performance of his or her duties or the exercise of his or her functions under this Act, or when lawfully required to do so by any court, the person referred to in subsection (1) shall not disclose any information or matter which has been obtained by him or her in the performance of his or her duties or the exercise of his or her functions under this Act or which he or she has knowledge except for one or more of the following purposes:

- (a) the detection, investigation or prosecution of a money laundering offence, a financing of terrorism offence or an unlawful activity; or
- (b) the enforcement of this Act.

Protections against liability

16. The Supervisor and any, officer of the Financial Intelligence Unit or any person appointed by the Financial Intelligence Unit for the performance of its statutory functions shall not be liable for damages for anything done or omitted to be done in the discharge or purported discharge of any of its statutory functions under this Act unless it is shown that the act or omission was in bad faith.

PART 4 -REPORTING OF FINANCIAL TRANSACTIONS

Suspicious transactions reporting

17(1) Where a financial institution;

- (a) suspects or has reasonable grounds to suspect that any transaction or attempted transaction may be related to the commission of a money laundering offence, a financing of terrorism offence or an unlawful activity; or
- (b) has information that it suspects may be;
 - (i) relevant to an act preparatory to a financing of terrorism offence; or
 - (ii) relevant to an investigation or prosecution of a person or persons for a money laundering offence, a financing of terrorism offence or an unlawful activity or may otherwise be of assistance in the enforcement of this Act,

the financial institution shall, as soon as practicable, after forming that suspicion or receiving the information but no later than two working days, report the transaction or attempted transaction or the information to the Financial Intelligence Unit.

(2) A report under subsection (1) shall:

- (a) be in writing and may be given by way of mail, telephone to be followed up in writing within 24 hours, fax or electronic mail or such other manner as may be prescribed (or be in such form and contain such details as may be prescribed by the Financial Intelligence Unit ;
- (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 person that has made a report or has given any information to the Financial Intelligence Unit shall give the Financial Intelligence Unit any further information that it has about the transaction or attempted transaction or the parties to the transaction if requested to do so by the Financial Intelligence Unit.

(4) If a financial institution fails without reasonable excuse to comply with subsection (1), the financial institution is guilty of an offence

- Penalty: (a) in the case of an individual –
- (i) Imprisonment for 10 years; and
 - (ii) \$50,000 fine; or
- (b) in the case of a body corporate - \$500,000 fine.

(5) If a financial institution fails to comply with subsection (3), the financial institution is guilty of an offence–

- Penalty: (a) in the case of an individual –
- (i) Imprisonment for 10 years; and
 - (ii) \$50,000 fine; or
- (b) in the case of a body corporate - \$500,000 fine.

Supervisory authority or auditor to report suspicious transaction report

18. Where a supervisory authority or an auditor of a financial institution has reasonable grounds to suspect that information that it has concerning any transaction or attempted transaction may be -

- (a) relevant to an investigation or prosecution of a person or persons for a money laundering offence, a financing of terrorism offence or an unlawful activity;
- (b) of assistance in the enforcement of the enforcement of this Act and the *Counter Terrorism and Transnational Organised Crime Act 2004*;
- (c) related to the commission of a money laundering offence, a financing of terrorism offence or an unlawful activity; or
- (d) preparatory to a financing of terrorism offence,

the supervisory authority or the auditor of the financial institution shall report the transaction or attempted transaction to the Financial Intelligence Unit.

False or misleading statements

19. A person who in making a report under section 17 makes any statement that the person knows is false or misleading in a material particular or omits from any statement any matter or thing without which the person knows that the statement is false or misleading in a material particular is guilty of an offence.

Penalty: (a) in the case of an individual –

- (i) Imprisonment for 10 years; and
 - (ii) \$50,000 fine; or
- (b) in the case of a body corporate - \$500,000 fine.

Disclosure of suspicious transaction reports and other information

20(1) A person shall not disclose to any other person –

- (a) that a report to the Financial Intelligence Unit under section 17 has been or may be made, or further information has been given under Part 3;
- (b) that the financial institution has formed a suspicion in relation to a transaction for purposes of section 17; or
- (c) any other information from which the person to whom the information is disclosed could reasonably be expected to infer that a suspicion has been formed or that a report has been or may be made.

(2) Subsection (1) shall not apply to disclosures made to –

- (a) an officer or employee or agent of the person making the report under section 17 for any purpose connected with the performance of that person's duties;
- (b) a lawyer, attorney or legal advisor for the purpose of obtaining legal advice or representation in relation to the matter; or
- (c) the supervisory authority of the financial institution, for the purposes of carrying out the supervisory authority's functions.

(3) No person referred to in paragraph (2)(b) to whom disclosure of any information to which that subsection applies has been made shall disclose that information except to another person of the kind referred to in that subsection, for the purpose of:

- (a) the performance of the first-mentioned person's duties; or
- (b) obtaining legal advice or representation in relation to the matter.

(4) No person referred to in subsection 2(c) to whom disclosure of any information to which that subsection applies has been made shall disclose that information except to a person referred to in that subsection for the purpose of giving legal advice or making representations in relation to the matter.

(5) Subject to this Act, nothing in any of subsections (1) to (3) shall prevent the disclosure of any information in connection with, or in the course of, proceedings before a court, provided that disclosure is in the interest of justice.

(6) If a person contravenes subsection (1), the person is guilty of an offence .

Penalty: (a) in the case of an individual –

(i) Imprisonment for 10 years; and

(ii) \$40,000 fine; or

(b) in the case of a body corporate - \$400,000 fine.

(7) If a person contravenes subsection (1) with intent to prejudice an investigation of a money laundering offence, a financing of terrorism offence or an unlawful activity or for the purpose of obtaining directly or indirectly an advantage or a pecuniary gain for himself or herself or any other person, the person is guilty of an offence.

Penalty: (a) in the case of an individual –

(i) Imprisonment for 10 years; and

(ii) \$50,000 fine; or

(b) in the case of a body corporate - \$500,000 fine.

Protection of identity of persons and information in suspicious transaction reports

21(1). A person shall not disclose any information that will identify or is likely to identify:

(a) any person who has handled a transaction in respect of which a suspicious transaction report under section 17 has been made;

(b) any person who has prepared such a suspicious transaction report;

(c) any person who has made such a suspicious transaction report; or

(d) any information contained in a suspicious transaction report or information provided pursuant to Part 3,

except for the following purposes –

(i) the investigation or prosecution of a person or persons for a money laundering offence, a financing of terrorism offence or an unlawful activity; or

(ii) the enforcement of this Act and the *Counter Terrorism and Transnational Organised Crime Act 2004*.

(2) No person shall be required to disclose any information to which this section applies in any judicial proceedings unless the judge or other presiding officer is satisfied that the disclosure of the information is necessary in the interests of justice.

(3) Nothing in this section prohibits the disclosure of any information for the purposes of the prosecution of any offence against any of the provisions of section 20 of this Act.

Protection of persons reporting suspicious transactions

22(1). No civil, criminal or disciplinary proceedings shall be taken against –

(a) a financial institution, an auditor or supervisory authority of a financial institution;
or
(b) its officer, employee or agent acting in the course of that person's employment or agency,
in relation to any action by the financial institution, the auditor or the supervisory authority or their officer, employee or agent carried out under section 17 in good faith or in compliance with directions given by the Financial Intelligence Unit.

(2) Subsection (1) shall not apply in respect of proceedings for an offence against section 20 of this Act.

(3) If a financial institution or its officer, employee, agent, supervisory authority or auditor makes a report under section 17, the person is taken, for purposes of a prosecution for a money laundering offence not to have been in possession of that information at any time.

Privileged Communication

23(1). Nothing in this Act requires any lawyer to disclose any privileged communication.

(2) For the purposes of this section, a communication is a privileged communication only if it is a confidential communication, whether oral or in writing, passing between:

- (i) a lawyer, attorney or legal advisor in his or her professional capacity and lawyer, attorney or legal advisor in such capacity; or
- (ii) a lawyer, attorney or legal advisor in his or her professional capacity and his or her client, whether made directly or indirectly through an agent of either,

and it is made or brought into existence for the purpose of obtaining or giving legal advice or assistance and it is not made or brought into existence for the purpose of committing or furthering the commission of some illegal or wrongful act.

(3) Where the information consists wholly or partly of, or relates wholly or partly to receipts, payments, income, expenditure, or financial transactions of a specified person (whether a lawyer, his or her client, or any other person), it shall not be a privileged communication if it is contained in, or comprises the whole or part of, any book, account, statement or other record prepared or kept by the lawyer in connection with a trust account of the lawyer.

(4) For the purposes of this section, references to a lawyer include a firm in which the person is a partner or is held out to be a partner.

Other preventative measures by financial institutions

24(1). A financial institution shall –

- (a) appoint a compliance officer who shall be responsible for ensuring the financial institution's compliance with the requirements of this Act; and
- (b) establish and maintain procedures and systems to –
 - (i) implement the customer identification requirements under Part V;
 - (ii) implement record keeping and retention requirements under Part V;
 - (iii) implement the monitoring requirements under Part V;

- (iv) implement the reporting requirements under this Part;
 - (v) make its officers and employees aware of the laws relating to money laundering and financing of terrorism;
 - (vi) make its officers and employees aware of the procedures and policies adopted by it to deter money laundering and the financing of terrorism; and
 - (vii) screen persons before hiring them as employees;
- (c) establish an audit function to test its anti-money laundering and the financing of terrorism; procedures and systems; and
- (d) train its officers, employees and agents to recognize suspicious transactions.

(2) Subsection (1) does not apply to an individual who, in the course of carrying on his or her business, does not employ or act in association with any other person.

(3) A financial institution shall ensure that its foreign branches and majority owned subsidiaries adopt and observe measures consistent with this Act to the extent that local laws and regulations permit and where the foreign branch or subsidiary is unable to adopt and observe such measures, to report the matter to the relevant supervisory authority or in the absence of a supervisory authority to the Financial Intelligence Unit.

PART 5 - CUSTOMER DUE DILIGENCE, RECORD KEEPING AND OTHER OBLIGATIONS OF FINANCIAL INSTITUTIONS

Overriding of secrecy

25. A financial institution shall comply with the requirements of this Act notwithstanding any obligation as to secrecy or other restriction on the disclosure of information imposed by any written law or otherwise.

Anonymous or numbered accounts and accounts in fictitious, false or incorrect names

26(1) A person who opens, operates or authorizes the opening or the operation of an account with a financial institution in an anonymous or numbered account, or with a fictitious, false or incorrect name is guilty of an offence and shall be punishable on conviction;

- (a) in the case of an individual by a fine not exceeding \$50,000 or imprisonment not exceeding 12 years, or both; or
- (b) in the case of a body corporate - by a fine not exceeding \$500,000.

(2) Where a person is commonly known by two or more different names, the person shall not use one of those names in opening an account with a financial institution unless the person has previously disclosed the other name or names to the financial institution.

(3) Where a person using a particular name in his dealings with a financial institution discloses to it a different name or names by which he or she is commonly known, the financial institution shall make a record of the disclosure and shall, at the request of the Financial Intelligence Unit give the Financial Intelligence Unit, a copy of that record.

(4) For purposes of this section;

- (a) a person opens an account in a false name if the person, in opening the account, or becoming a signatory to the account, uses a name other than a name by which the person is commonly known;
- (b) a person operates an account in a false name if the person does any act or thing in relation to the account (whether by way of making a deposit or withdrawal or by way of communication with the financial institution concerned or otherwise) and, in doing so, uses a name other than a name by which the person is commonly known; and
- (c) an account is in a false name if it was opened in a false name, whether before or after the commencement date of this Act.

(5) A financial institution who opens, operates or maintains any anonymous or numbered account, or any account which is in a fictitious, false or incorrect name shall be guilty of an offence punishable on conviction –

- (a) in the case of an individual by a fine not exceeding \$50,000; or
- (b) in the case of a body corporate by a fine not exceeding \$500,000.

Customer due diligence

27(1). A financial institution shall identify the identity of a customer on the basis of any identification record and verify the identity of the customer on the basis of reliable and independent source documents, data or information or other evidence as is reasonably capable of verifying the identity of the customer when;

- (a) the financial institution;
 - (i) enters into a continuing business relationship; or
 - (ii) in the absence of such a relationship, conducts any transaction;
- (b) the financial institution carries out an electronic funds transfer other than an electronic funds transfer referred to in section 37 of this Act.
- (c) there is a suspicion of a money laundering offence or a financing of terrorism offence; or
- (d) the financial institution has doubts about the veracity or adequacy of the customer identification and verification documentation or information it had previously obtained.

(2) Without limiting the generality of subsection (1), a financial institution shall when establishing a business relationship, obtain information on the purpose and intended nature of the business relationship.

(3) Without limiting the generality of subsection (1), if the customer is a politically exposed person, the financial institution shall;

- (a) adequately identify and verify his/her identity as set out in this section;
- (b) have appropriate risk management systems to determine whether the customer is a politically exposed person;
- (c) obtain the approval of senior management before establishing a business relationship with the customer;
- (d) take reasonable measures to establish the source of wealth and source of funds; and
- (e) conduct regular and ongoing enhanced monitoring of the business relationship.

(4) If a person conducts a transaction through a financial institution, other than an occasional transaction below a prescribed amount and the financial institution has reasonable grounds to believe that the person is undertaking the transaction on behalf of any other person or persons, then, in addition to complying with subsection (1) and (2), the financial institution shall identify, and verify the identity of, the other person or persons for whom, or for whose ultimate benefit, the transaction is being conducted.

Financial Institution cross-border relationships

28(1). A financial institution shall, in relation to its cross-border correspondent banking and other similar relationships –

- (a) adequately identify and verify the person with whom it conducts such a business relationship
- (b) gather sufficient information about the nature of the business of the person;
- (c) determine from publicly available information the reputation of the person and the quality of supervision to which the person is subject to;
- (d) assess the person's anti-money laundering and terrorist financing controls;
- (e) obtain approval from senior management before establishing a new correspondent relationship;
- (f) document the responsibilities of the financial institution and the person.

(2) Where the business relationship is a payable-through account, a financial institution shall ensure that the person with whom it has established the relationship–

- (a) has verified the identity of and performed on-going due diligence on that person's customers that have direct access to accounts of the financial institution; and
- (b) is able to provide the relevant customer identification data upon request to the reporting entity.

Financial Institution relying on others to undertake obligations

29. Where a financial institution relies on an intermediary or a third party to undertake its obligations under section 27 or to introduce business to it, it shall –

- (a) immediately obtain the necessary information required by section 27;
- (b) ensure that copies of identification data and other relevant documentation relating to the requirements in section 27 will be made available to it from the intermediary or the third party upon request without delay; and
- (c) satisfy itself that the intermediary or third party is regulated and supervised for, and has measures in place to comply with the requirements set out in this Part.

Power of Minister

30. The Minister may prescribe –

- (a) the official or identifying document documents, or the reliable and independent source documents, data or information or other evidence that is required for identification or verification of any particular customer or class of customers;
- (b) the timing of the identification and verification requirements under this section of any particular customer or class of customers; and
- (c) the threshold for, or the circumstances in which, the provisions of this section shall apply in relation to any particular customer or class of customers.

Unsatisfactory evidence of identity

31. If satisfactory evidence of the identity is not submitted to or obtained by a financial institution under this Part, the financial institution shall not proceed any further with the transaction unless directed to do so by the Financial Intelligence Unit and report the attempted transaction to the Financial Intelligence Unit as a suspicious transaction under section 17.

Financial institution contravenes section 27, 28 or 29

32. If a financial institution contravenes any part of section 27, 28 or 29, the financial institution is guilty of an offence punishable on conviction –

- (a) in the case of an individual – by a fine not exceeding \$50,000 or imprisonment not exceeding 15 years, or both; or
- (b) in the case of a body corporate - by a fine not exceeding \$500,000.

Effects of Sections 27, 28 and 29

33. Sections 27, 28 and 29 does not apply –

- (a) if the transaction is part of an existing and regular business relationship with a person who has already produced satisfactory evidence of identity unless the financial institution has reason to suspect that the transaction is suspicious or unusual;
- (b) if the transaction is an occasional transaction not exceeding \$10,000, other than an electronic transfer, unless the financial institution has reason to suspect that the transaction is suspicious or unusual; or
- (c) in such other circumstances as may be prescribed by the Minister.

Definition of “occasional transaction”

34. For purposes of this Part, “occasional transaction” means any transaction involving cash that is conducted by any person other than through an account in respect of which the person is the customer.

Record Keeping

35(1). A financial institution shall establish and maintain—

- (a) records of all transactions carried out by it and correspondence relating to the transactions in accordance with the requirements of subsection (2);
- (b) records of a person’s identity obtained in accordance with sections 27, 28 and 29;
- (c) records of all reports made to the Financial Intelligence Unit; and
- (d) all enquiries relating to money laundering and the financing of terrorism made to it by the Financial Intelligence Unit and other law enforcement agencies.

(2) Records required under subsection (1)(a) shall be those records as are reasonably necessary to enable the transaction to be readily reconstructed at any time by the Financial Intelligence Unit or a law enforcement agency, to provide, if necessary, evidence for prosecutions of any unlawful activity and 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; and
- (ii) if applicable, on whose behalf the transaction is being conducted, as well as the documents used by the financial institution to identify and 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 the officer, employee or agent of the financial institution who prepared the record.

(3) The records mentioned in subsection (1) shall be kept for a minimum period of 5 years from the date of—

- (a) the evidence of a person's identity was obtained;
 - (b) of any transaction or correspondence; or
 - (c) the account is closed or business relationship ceases,
- whichever of (b) or (c) with (a) is the later.

(4) Where any record is required to be kept under this Act—

- (a) it shall be maintained in a manner and form that will enable the financial institution to comply immediately with requests for information from the Financial Intelligence Unit; and
- (b) a copy of it may be kept:
 - (i) in a machine-readable form, if a paper copy can be readily produced from it; or
 - (ii) in an electronic form, if a paper copy can be readily produced from it and an electronic signature of the person who keeps the record is retained.

(5) The records maintained under subsection (1) shall be made available upon request to the Financial Intelligence Unit for purposes of ensuring compliance with this Act.

(6) If a financial institution contravenes subsection (1) or (2), the financial institution is guilty of an offence punishable on conviction -

- (a) in the case of an individual – by a fine not exceeding \$50,000; or
- (b) in the case of a body corporate - by a fine not exceeding \$500,000.

Monitoring of accounts and transactions

36(1) A financial institution shall pay special attention to –

- (a) any complex, unusual or large transactions; and
- (b) any unusual patterns of transactions;

that have no apparent or visible economic or lawful purpose.

(2) A financial institution shall pay special attention to –

- (a) business relations and transactions with persons in jurisdictions that do not have adequate systems in place to prevent or deter money laundering or the financing of terrorism; and
 - (b) electronic funds transfers, other than an electronic funds transfer referred to in section 33, that do not contain complete originator information.
- (3) In relation to subsections (1) and (2), a financial institution shall –
- (a) examine as far as possible the background and purpose of the transactions or business relations and record its findings in writing; and
 - (b) upon request, make available such findings to the Financial Intelligence Unit or to a law enforcement agency, to assist the Financial Intelligence Unit or the law enforcement agency in any investigation relating to a money laundering offence, a financing of terrorism offence or an unlawful activity.
- (4) A financial institution shall -
- (a) conduct ongoing due diligence on the business relationship with its customer; and
 - (b) conduct ongoing scrutiny of any transaction undertaken throughout the course of the business relationship with a customer to ensure that the transaction being conducted is consistent with the financial institution's knowledge of the customer, the customer's business and risk profile, including, where necessary, the source of funds.

Banks and money transmission service providers to include originator information

37(1). A financial institution shall include accurate originator information and other related messages on electronic funds transfers and other forms of funds transfers and such information shall remain with the transfer.

(2) Subsection (1) shall not apply to an electronic funds transfer, other than a money transfer effected from the use of a credit or debit card as means of payments, that results from a transaction carried out using a credit or debit card, provided that the credit or debit card number is included in the information accompanying such a transfer.

(3) Subsection (1) shall not apply to electronic funds transfers and settlements between financial institutions where the originator and beneficiary of the funds transfer are acting on their own behalf.

PART 6 - POWERS FOR SEARCH AND SEIZURE, AND PRODUCTION AND OTHER INFORMATION GATHERING ORDERS

Powers for search and seizure

- 38(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 the exercise of power under subsections (a) and (b), 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 any search and/or seizure under subsections (a), (b) and (c) is made -

- (i) with the consent of the person or the occupier of the land or premises as the case may be;
- (ii) under a warrant issued under section 39; or
- (iii) under section 41.

(2) Where a police officer may search a person under this Part, 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.

Suspicion by police officer

39(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 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 forfeiture 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.

Application for a search warrant

40(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 39 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.

(3) The magistrate granting a search warrant under this section shall inform the police officer of the terms of the warrant so signed and the police officer shall complete a form of warrant in the terms furnished by the magistrate.

(4) 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 the police officer.

Police officer suspecting property to be tainted

41(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 an order of a court, the police officer may -
 - (i) search a person;
 - (ii) enter upon land, or upon or into premises and search for the property; and
 - (iii) if property is found, seize the property.

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

—

- (a) property that the police officer believes on reasonable grounds to be tainted property or 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.

Duty of police officer seizing property

42. A police officer who seizes property under this Part shall –
- (a) detain the property seized;
 - (b) make a written record thereof; and
 - (c) take reasonable care to ensure that the property is preserved.

Property seized under this Part

43(1). Where property has been seized under this Part 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.

Foreign State requesting assistance

44. 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 this Part apply *mutatis mutandis* provided that the Director for Public Prosecution has under Part VIII authorised the giving of assistance to the foreign State.

Production Orders

45(1). Where there are reasonable grounds to believe that a person has been, is or will be involved in the commission of an unlawful activity, 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 for an order against the person suspected of having possession or control of such a document.

(2) A police officer may apply *ex parte* and in writing to a judge 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 enactment or otherwise of the person not to disclose either the existence or contents, or both, of the document.

Production of document pursuant to order

46(1) Where a person produces a document pursuant to an order under this Part, 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.

(2) For the purposes of subsection (1), proceedings on an application for a freezing order, a forfeiture order or a pecuniary penalty order are not criminal proceedings.

Order to produce document to a police officer

47(1). 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.

(2) A person who is guilty of an offence against this section is punishable on conviction -

- (a) in the case of an individual by a fine not exceeding \$50,000 or imprisonment not exceeding 5 years, or both; or

(b) in the case of a body corporate by a fine not exceeding \$500,000.

Foreign State requests assistance in regard to offence within its jurisdiction

48. 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 under this Part apply *mutatis mutandis*, provided that the Director of Public Prosecutions under Part VIII authorised the giving of assistance to the foreign State.

Powers to search for and seize documents relevant to locating property

49. 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 sections 45(1) and (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 tainted property 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 50.

Application for search warrant

50(1) Where -

- (a) there are reasonable grounds to believe that the person has been, is or will be involved in the commission of an unlawful activity or has or will have possession or control of any document described in sections 45(1) and (2); 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, any document of the type described in sections 45(1) and (2), the police officer may make an application supported by information on oath to a 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 judge may, subject to subsection (4), issue a warrant authorising a police officer whether or not named in the warrant with such powers 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 the type described in sections 45(1) and (2); and
- (b) to seize any document of the type described in sections 45(1) and (2) found in the course of the search that the police officer believes on reasonable grounds to be such documents.

(3) The 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 45(1) or (2) that the police officer believes on reasonable grounds to relate to another unlawful activity or to terrorist property; or
- (b) any thing that the police officer believes on reasonable grounds will afford evidence as to the commission of an unlawful activity, the police officer may seize that property or thing and the warrant shall be deemed to authorise such seizure.

Foreign State's request to locate document

51. Where a foreign State requests assistance to locate or seize any document of the type described in section 45(1) or (2), the provisions of under this Part apply *mutatis mutandis*, provided that the Director of Public Prosecutions has under Part VIII authorised the giving of assistance to the foreign State.

Monitoring Orders

52(1). The Director of Public Prosecutions may apply *ex parte*, in writing and supported by an affidavit to a judge for a monitoring order directing a financial institution to give information to a police officer.

- (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 the order is granted.

(3) The 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, an unlawful activity; or
- (ii) has benefited directly or indirectly, or is about to benefit directly or indirectly from the commission of an unlawful activity; 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 financial 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 financial institution commits an offence against this section.

- Penalty: (a) in the case of an individual –
- (i) Imprisonment for 10 years; and
 - (ii) \$50,000 fine; or
 - (b) in the case of a body corporate - \$500,000 fine.

Financial Institution not to disclose monitoring order

53(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 financial 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.

(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.

(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.

(4) A financial institution who is guilty of an offence against this section is punishable on conviction -

- Penalty: (a) in the case of an individual –
- (i) Imprisonment for 10 years; and
 - (ii) \$50,000 fine; or
 - (b) in the case of a body corporate - \$500,000 fine.

PART 7 - FREEZING AND FORFEITURE OF TAINTED PROPERTY AND TERRORIST PROPERTY

Freezing Order

54(1). The Director of Public Prosecutions may apply to the Court for a freezing order against;

- (a) any realizable property held by the defendant;
- (b) any specified realizable property held by a person other than the defendant;
or
- (c) any terrorist property.

(2) An application for a freezing 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 an unlawful activity, the unlawful activity 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 an unlawful activity, the unlawful activity 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 freezing 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 freezing order against property of a person other than the defendant, the grounds for the belief that the property is tainted property in relation to the offence and is subject to the effective control of the defendant; and
- (g) the grounds for the belief that a forfeiture 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 freezing 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 or believed to be; and
- (d) the grounds for the belief that a forfeiture order may be or is likely to be made under this Act in respect of the property.

Power of DPP to seek order to prevent dealing with or to take custody of property

55(1) Subject to this section, where the Director of Public Prosecutions applies to the Court under section 54(1)(a) or (b) for a freezing order against property and the Court is satisfied that;

- (a) the defendant has been convicted of an unlawful activity, or has been charged or is about to be charged with an unlawful activity;
- (b) where the defendant has not been convicted of an unlawful activity, 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 freezing 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 forfeiture order may be or is likely to be made under this Act in respect of the property,

the Court may make an order—

- (i) 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
- (ii) at the request of the Director of Public Prosecutions, where the Court is satisfied that the circumstances so require, directing 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 requiring any person having possession of the property to give possession thereof to such person to take custody and control of the property.

(2) Subject to this section, where the Director of Public Prosecutions applies to the Court under section 54(1)(c) for a freezing order against property and the Court is satisfied that there are reasonable grounds for believing that a forfeiture 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 Director of Public Prosecutions, where the Court is satisfied that the circumstances so require, directing such 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, requiring any person having possession of the property to give possession thereof to such court appointed person 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) Where a person appointed under subsection (1) or (2) is given a direction in relation to any property, he or she may apply to the Court for directions on any question respecting the management or preservation of the property under his or her control.

(5) An application under section 54 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 54 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 Nauru, within 3 days; and
- (b) where the offence is an offence against the law of a foreign State, within 30 days.

Court may require the Republic to give undertaking

56(1). Before making an order under section 55(1) or (2), the Court may require the Republic to give such undertakings as the Court considers appropriate with respect to the payment of damages or costs, or both, in relation to the making and execution of the order.

(2) For the purposes of this section, the Director of Public Prosecutions may give such undertakings with respect to the payment of damages or costs or both as are required by the Court.

Court may hear persons claiming interest in property

57. Before making a freezing 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.

Copy of freezing order to be served

58. A copy of a freezing 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.

Copy of freezing order on Nauru land to be served upon the Nauru Lands Committee

59(1). A copy of a freezing order, which affects lands in Nauru, shall be served upon the Nauru Lands Committee and with respect to phosphate land, the trustee for the time being of the Nauru Landowners Royalty Trust Fund.

(2) A freezing order is of no effect with respect to registered land unless it is served as required by sub-section (1).

(3) If a person seeks the approval of the President for the creation of an interest in land, the Nauru Lands Committee must inform the President if it has received a freezing

order in respect of the land and the President must refuse to give approval unless the order is removed.

Contravention of freezing order

60(1). A person who knowingly contravenes a freezing order by disposing of or otherwise dealing with property that is subject to the restraining order commits an offence

Penalty: (a) in the case of an individual –

- (i) Imprisonment for 2 years; and
 - (ii) \$10,000 fine; or
- (b) in the case of a body corporate - \$50,000 fine.

(2) Where a freezing order is made against property and the property is disposed of, or otherwise dealt with, in contravention of the freezing 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 Director of Public Prosecutions may apply to the Court that made the freezing order for an order that the disposition or dealing be set aside.

(3) Where the 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.

Revocation or varying of freezing orders

61(1) A person who has an interest in property in respect of which a freezing 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 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 recognizance, or
- (b) vary the order to permit 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.

Forfeiture Orders

62(1). Where, upon application by the Director of Public Prosecutions, the Court is satisfied on a balance of probabilities that property is tainted property in respect of an unlawful activity of which a person has been convicted, the Court may order that specified property be forfeited.

(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 intended for use in, or 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 forfeited, 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 forfeiture 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 forfeiture order, the Court may give such directions as are necessary or convenient for giving effect to the order.

- (6) (a) Subject to subsection (2), where a Court makes a forfeiture order against any property, the property vests absolutely in the Republic of Nauru by virtue of the order.
- (b) Where property ordered to be forfeited is an interest in land—

- (i) the property vests in the Republic in equity but does not vest in the Republic at law until the applicable requirements of the *Lands Act 1972* have been complied with;
- (ii) the Director of Public Prosecutions has power on behalf of the Republic to do or authorise the doing of anything necessary or convenient to obtain the recognition of the Republic as owner, including the execution of any instrument to be executed by a person transferring an interest in property of that kind.

- (c) Where the Court makes a forfeiture order against property other than an interest in land -
- (i) 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 the Republic before the relevant appeal date; and
 - (ii) 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 Director of Public Prosecutions.

(7) In this section—

"relevant appeal date" used in relation to a forfeiture order made in consequence of a person's conviction of an unlawful activity means—

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

Courts power before making forfeiture order

63. The Court may;

- (a) before making a forfeiture order; and
- (b) in the case of property in respect of which a freezing order was made, where the order was served in accordance with section 58, 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.

Person interested may claim interest in property subject of an application for forfeiture

64(1). Where an application is made for a forfeiture order against property, a person who claims an interest in the property may apply to the Court, before the forfeiture 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 forfeiture 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 forfeiture order has already been made directing the forfeiture 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 forfeiture 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 forfeiture 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 Director of Public Prosecutions, who shall be a party to any proceedings in the application.

(6) An applicant or the Director of Public Prosecutions may in accordance with the rules of court, appeal to the High Court of Australia from an order made under subsection (2).

(7) Any person appointed by the Court under section 55 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.

Forfeiture order in reliance upon conviction

65(1). Where the Court makes a forfeiture order against property in reliance on a person's conviction of an unlawful activity and the conviction is subsequently quashed, the quashing of the conviction discharges the order.

(2) Where a forfeiture order against property is discharged as provided for in subsection (1), any person who claims to have an interest in the property immediately before the making of the forfeiture order may apply to the Registrar of the Supreme Court in writing for the transfer of the interest to the person.

(3) On receipt of an application under subsection (2) the Registrar of the Supreme Court shall;

- (a) if the interest is vested in the Republic give directions that the property or part thereof to which the interest of the applicant relates be transferred to the person; or
- (b) in any other case, direct that there be payable to the person an amount equal to the value of the interest as at the time the order is made.

(4) In the exercise of its powers under this Part, the Registrar of the Supreme Court 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.

Where forfeiture order against specific property cannot be made.

66. Where the Court is satisfied that a forfeiture order should be made in respect of the property of a person convicted of an unlawful activity 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 to that the title or interest was transferred for the purpose of avoiding the forfeiture of the property;
- (c) is located outside Nauru;
- (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 forfeited, order the person to pay to the Republic an amount equal to the value of the property, part or interest.

Pecuniary Penalty Orders

67(1). Subject to this section, where the Director of Public Prosecutions applies to the Court for a pecuniary penalty order against a person in respect of that person's conviction for an unlawful activity the Court shall, if it is satisfied that the person has benefited from that unlawful activity, order him or her to pay to the Republic an amount equal to the value of his or her benefit from the unlawful activity or such lesser amount as the Court certifies in accordance with section 70(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 unlawful activity in accordance with sections 67, 68, 69 and 70.

- (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.

Determination of benefit derived from unlawful activity

68(1). Where a person obtains property as the result of, or in connection with the commission of an unlawful activity, 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 an unlawful activity, 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 an unlawful activity or from that unlawful activity taken together with other unlawful activities 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 within the period between the day the unlawful activity (or the earliest unlawful activity was committed) and the day on which the application is made, or 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 unlawful activity or those unlawful activities 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 unlawful activity or those unlawful activities; 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 unlawful activity or those unlawful activities, 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 unlawful activity 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 unlawful activity, subsection (5) does not apply to the excess or, as the case may be, that part.

Statement of benefit from unlawful activity

69(1). Where—

- (a) a person has been convicted of an unlawful activity and the 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 unlawful activity or from any other unlawful activity 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 unlawful activity or any other unlawful activity 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 unlawful activity or that any property or advantage was obtained by him or her as a result of or in connection with the commission of the unlawful activity.

(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 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 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 an unlawful activity is admissible in any proceedings for any unlawful activity.

Amount to be recovered under a pecuniary penalty order

70(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 unlawful activity, 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, 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 unlawful activity, or if more than one, all the unlawful activities in respect of which the pecuniary penalty order may be made.

Assessment of benefits

71(1). In assessing the value of benefits derived by a person from the commission of an unlawful activity, the Court may treat as property of the person any property that, in the opinion of the Court, is subject to the effective control of the person, whether or not he or she has –

- (a) any legal or equitable interest in the property; or
- (b) any right, power or privilege in connection with the property.

(2) Without prejudice to the generality of subsection (1), the Court may have regard to –

- (a) shareholdings in, debentures over or directorships in any company that has an interest, whether direct or indirect, in the property, and for this purpose the Court may order the investigation and inspection of the books of a named company;
- (b) any trust that has any relationship to the property;
- (c) any relationship whatsoever between the persons having an interest in the property or in companies of the kind referred to in subsection (a) or trust of the kind referred to in subsection (b), and any other persons.

(3) Where the Court, for the purposes of making a pecuniary penalty order against a person, treats particular property as the person's property pursuant to subsection (1), the Court may, on application by the Director of Public Prosecutions make an order declaring that the property is available to satisfy the order.

(4) Where the Court declares that property is available to satisfy a pecuniary penalty order –

- (a) the order may be enforced against the property as if the property were the property of the person against whom the order is made; and
- (b) a freezing order may be made in respect of the property as if the property were property of the person against whom the order is made.

(5) Where the Director of Public Prosecutions makes an application for an order under subsection (3) that property is available to satisfy a pecuniary penalty order against a person:

- (a) the Director of Public Prosecutions shall give written notice of the application to the person and to any person who the Director of Public Prosecutions has reason to believe may have an interest in the property; and

- (b) the person and any person who claims an interest in the property may appear and adduce evidence at the hearing.

Discharge of pecuniary penalty order

72. A pecuniary penalty order is discharged -
- (a) if the conviction of the unlawful activity or activities in reliance on which the order was made is or is taken to be quashed and no conviction for the unlawful activity or activities 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.

Forfeiture of Terrorist Property

73. The Director of Public Prosecutions may apply to the Court for a forfeiture order against terrorist property.

Duty of DPP in applying for forfeiture order

74. Where the Director of Public Prosecutions applies under section 73 for a forfeiture order -

- (a) the 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 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 radio or television published and circulating in Nauru a notice of the application.

Duty of Court in making forfeiture order

75(1). Where, upon application by the 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 forfeited.

(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 forfeiture 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 forfeiture order, the Court may give such directions as are necessary or convenient for giving effect to the order.

Property vests in the Republic

76(1). Subject to subsection (2), where a Court makes a forfeiture order against any property, the property vests absolutely in the Republic by virtue of the order.

- (2) Where property ordered to be forfeited is registrable property -
- (a) the property vests in the Republic forthwith;
 - (b) the Republic is entitled to be registered as owner of the property;
 - (c) the Director of Public Prosecutions has power on behalf of the Republic to do or authorise the doing of anything necessary or convenient to obtain the registration of the Republic 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 order of the Nauru Lands Committee or otherwise in accordance with the provisions of the laws of Nauru.

Court may set aside property transfer

- 77.** The Court may -
- (a) before making a forfeiture order; and
 - (b) in the case of property in respect of which a freezing order was made, where the order was served in accordance with section 58,

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.

Persons claiming interest in forfeited property

78 (1). Subject to subsection (2), where a forfeiture order has already been made directing the forfeiture 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 forfeiture order is made, apply under this subsection to the Court for an order under section 64(2).

- (2) A person who—
- (a) had knowledge of the application for the forfeiture 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 Director of Public Prosecutions, who shall be a party to any proceedings in the application.

(4) With the powers of the Registrar of the Supreme Court under Part VII of this Act, the Registrar of the Supreme Court shall, on application by any person who has obtained an order under section 64(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.

Appeal by DPP

79. An applicant or the Director of Public Prosecutions may in accordance with the rules of court, appeal from an order made under this Part.

PART 8 - MUTUAL ASSISTANCE IN RELATION TO MONEY LAUNDERING

Co-operation with a Foreign State

80. Subject to the provisions of section 85, if a foreign State makes a Request for assistance in the investigation or prosecution of a money laundering offence, the Director of Public Prosecutions shall:

- (a) execute the Request forthwith; or
- (b) inform the foreign State making the Request of any reason-
 - (i) for not executing the Request forthwith; or
 - (ii) for delaying the execution of the Request.

DPP power to obtain search warrant

81. The Director of Public Prosecutions may upon production to the Magistrate of a Request received pursuant to section 90, apply for a warrant to enter any premises belonging to, in the possession or control of any person named in the warrant and search the premises and remove any document, material or other thing for the purpose of executing the Request as directed in the warrant.

Property Tracking and Monitoring Orders

82. The Director of Public Prosecutions, upon application to a Magistrate and upon production to the Magistrate of a Request, may obtain an Order:-

- (a) that any document relevant to
 - (i) identifying, locating or quantifying any property; or
 - (ii) identifying or locating any document necessary for the transfer of any property;

belonging to, in the possession or under the control of any person the subject of the Request be delivered to the Director of Public Prosecutions;

- (b) that a financial institution forthwith produce to the Director of Public Prosecutions all information obtained by the institution about any business

transaction conducted by or for a person the subject of the Request with the institution during such period before or after the date of the order as the Magistrate directs.

Freezing and Forfeiture of Property

83. Subject to the provisions of section 85, the Director of Public Prosecutions, upon application to a judge of the Supreme Court and upon production to the judge of a Request for the freezing or forfeiture of property of or in the possession or under the control of a person named in the Request, may obtain an order—

- (a) freezing the property of or in the possession or under the control of the person named in the Request;
- (b) giving directions as to the disposal of that property for the purpose of:
 - (i) determining any dispute as to ownership of the property or any part thereof;
 - (ii) its proper administration during the period of freezing;
 - (iii) the payment of debts due to creditors prior to the Request; and
 - (iv) the payment of moneys to that person for the reasonable subsistence of that person and his family;
- (c) forfeiting the property of any person named in the Request.

Request Accompanied by an Evidence Order

84 (1) Subject to the provisions of section 85 the Director of Public Prosecutions may, upon application to a judge of the Supreme Court and upon production to the judge of a Request accompanied by an order issued by a competent court of the requesting State directed to any person within the jurisdiction of the Supreme Court to deliver himself or any document or material in his possession or under his control to the jurisdiction of the Court of the requesting State for the purpose of giving evidence in specified proceedings in that Court, obtain an order directed to that person in the same terms as in the order accompanying the Request.

(2) Upon being served with an order issued in accordance with the provisions of subsection (1) the person served shall for the purposes of the order either:-

- (a) deliver himself to the jurisdiction of the Supreme Court; or
- (b) deliver himself to the jurisdiction of the court of the requesting State,

in accordance with the directions in the order.

(3) If a person served with an order issued in accordance with the provisions of subsection (1) elects to deliver himself to the jurisdiction of the court of the requesting State and fails to comply with any direction in the order he shall be deemed immediately to have delivered himself to the jurisdiction of the Supreme Court as provided in sub-section (2)(a).

(4) The Supreme Court shall conduct such proceedings as are necessary to take the evidence of any person delivering himself to the jurisdiction of the court pursuant to the provisions of sub-section (2)(a). Such evidence shall subsequently be transmitted by the Director of Public Prosecutions to the requesting State.

Limitations on Compliance with Request

- 85(1)** The Director of Public Prosecutions may refuse to comply with a Request if:-
- (a) the action sought by the Request is contrary to any provision of the Constitution; or
 - (b) the execution of the Request is likely to prejudice the national interest; but
 - (c) must not refuse solely on the ground that the Request relates to an offence that relates to matters of taxation or currency.

(2) The provisions of section 83 apply only to property coming into the possession or under the control of a person after the commencement of this Act.

Requests to Other States

86. The Director of Public Prosecutions may issue to a foreign State a Request accompanied, if required, by an order issued in accordance with section 87.

Issuing Evidence Order Against Foreign Resident

87(1) The Director of Public Prosecutions upon application to a judge of the Supreme Court may in respect of any proceedings for a money laundering offence apply for an order directed to any person resident in a foreign State to deliver himself or any document or material in his possession or under his control to the jurisdiction of the Supreme Court or, subject to the approval of the foreign State, to the jurisdiction of the court of the foreign State for the purpose of giving evidence in relation to those proceedings.

(2) An order granted pursuant to sub-section (1) may be sent to the appropriate authorities in a foreign state in the form of a Request that the foreign State provide such assistance as may be necessary to give effect to the order.

Evidence Pursuant to a Request

88. Evidence taken pursuant to a Request made in accordance with section 87 in any proceedings in a court of a foreign State shall be received by a court in Nauru as prima facie evidence in any proceedings to which such evidence relates.

Requests

89. A Request shall be in writing, including facsimile or other electronic form dated and signed by or on behalf of the person making the Request but a Request sent by facsimile or other electronic form shall lapse at the expiration of 14 days if the original thereof has not been then received by the Director of Public Prosecutions.

Requirements for Request

- 90.** A Request shall:-
- (a) confirm either that an investigation or prosecution is being conducted into a suspected money laundering offence or that a person has been convicted of a money laundering offence;
 - (b) state the grounds on which any person is being investigated or prosecuted for the money laundering offence referred to in paragraph (a) or give details of the convictions of the person referred to in paragraph (a);

- (c) give particulars sufficient to identify any person referred to in paragraph (b);
- (d) give particulars sufficient to identify any financial institution or other person believed to have information, documents, or material, of assistance to the investigation or prosecution referred to in paragraph (a);
- (e) request the person or entity to whom the Request is addressed to obtain from a financial institution or other person referred to in paragraph (d) all and any information, documents or material of assistance to the investigation or prosecution referred to in paragraph (a);
- (f) specify the manner in which, and to whom, any information, documents or material obtained pursuant to the Request is to be produced;
- (g) state whether or not a freezing or forfeiture order is required;
- (h) contain such other information as may assist the execution of the Request.

Request for Forfeiture

91. A Request for forfeiture shall have attached to it a copy of the final forfeiture order of the court and a statement signed by a judge of that court to the effect that no further appeal against such order can be made.

Request Not to be Invalidated

92. A Request received in Nauru shall not be invalidated for the purpose of commencing any legal proceedings by reason of any failure to comply with the provisions of section 90 provided the Director of Public Prosecutions is satisfied that there is sufficient compliance to enable him properly to execute the Request but nothing herein shall derogate from the power of the Supreme Court to refuse to make an order if it considers that any such failure is such that an order ought not, in the circumstances, be made.

PART 9 - MISCELLANEOUS

Offences

93. A person who—
- (a) to falsifies, conceals, destroys or otherwise disposes of or cause or permits the falsification, concealment, destruction or, disposal of any document or material which is likely to be relevant to the execution of any order made in accordance with this Act; or
 - (b) knows or suspects that an investigation into money laundering has been, is being or is about to be made to divulge that fact or other information to another whereby the investigation is likely to be prejudiced..

Commits an offence.

- Penalty: (a) in the case of an individual –
- (i) Imprisonment for 15 years; and
 - (ii) \$50,000 fine; or
- (b) in the case of a body corporate - \$500,000 fine.

Effect of this Act

94(1) Subject to the Constitution and the national interest, if there is any conflict between any provision of this Act and any written law regulating the disclosure of information of a confidential nature, the provisions of this Act shall prevail.

(2) A certificate under the hand of the President shall be conclusive evidence that the disclosure of information referred to in the certificate would be against the national interest.

Disclosure Protected

95. Notwithstanding any written law to the contrary it shall not be unlawful for any person to make a disclosure in compliance with this Act

Money Laundering an Offence for Extradition Purposes

96. The Schedule to the Extradition of Fugitive Offenders Act 1972 is amended by inserting the following immediately below the number and words “29. Hi-jacking aircraft” – “30 – Money laundering “.

Regulations

97. Cabinet may make regulations as may be required for carrying into effect any of the provisions of this Act.

Savings, repeal and consequential amendments

98.(1) All proceedings, investigations, appointments and other things done under the repealed Act are deemed to have been validly commenced, done, made or otherwise given effect and continue under this Act.

(2) The *Anti-Money Laundering Act 2004* is repealed.

(3) All references to the *Anti-Money Laundering Act 2004* in any Act are, with effect from the commencement of this section, references to this Act.

SCHEDULE

Activities of financial institutions -

1. banking under the Banking Act 1973 or any Act in substitution therefor, including any person who carries on the business of accepting deposits and other payable funds from the public;
2. lending, including personal credits, mortgage credits, factoring with or without recourse, financial or commercial transactions including forfeiting;
3. finance leasing;
4. providing venture risk capital;
5. providing money transmissions services, including any person –
 - (a) collecting, holding, exchanging or remitting funds or value of money or otherwise negotiating transfers of funds or the value of money on behalf of other persons; or
 - (b) delivering funds;
6. issuing or administering means of payment, including credit cards, travellers' cheques and bankers' drafts;
7. issuing financial guarantees and commitments;
8. trading for own account or for account of customers in:-
 - (a) money market instruments (cheques, bills, Certificates of deposits etc.);
 - (b) foreign exchange;
 - (c) financial futures and options;
 - (d) exchange and interest rate instruments;
 - (e) transferable instruments;
9. investing, administering, managing or keeping custody of funds or money on behalf of other persons;
10. participating in securities issues and the provision of financial services related to such issues;
11. money broking;
12. investment business, including individual and collective portfolio management and advice;
13. insurance business transactions, including insurance intermediary services;
14. real estate agent business, where services are provided for customers in relation to the buying and selling of real estate;

15. a casino or lottery, including a person who carries on such a business through the internet, in relation to financial transactions carried on by its customer above the prescribed threshold;
16. dealing in art, antiques, precious metals, precious stones or jewels, in relation to cash transactions carried on by its customer above the prescribed threshold;
17. a trust or company service provider-
- (a) forming legal persons, partnerships or other legal arrangements;
 - (b) acting as, or arranging for another person to act as, a director or secretary of a company or a partner of a partnership or a similar position in relation to other legal persons or legal arrangements;
 - (c) providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or other legal persons or legal arrangements;
 - (d) acting as, or arranging for another person to act as, a trustee of an express trust; or
 - (e) acting as, or arranging for another person to act as, a nominee shareholder for another person; and
18. a legal practitioner or an accountant when they prepare for or carry out transactions for their clients relating to-
- (a) buying or selling real estate;
 - (b) managing client money, securities or other assets;
 - (c) managing bank, savings or securities accounts;
 - (d) organising contributions for the creation, operation or management of companies; and
 - (e) creating, operating or managing legal persons or legal arrangements and buying and selling of business entities.
19. the collecting, holding, cashing in, remitting and delivering cash as part of a business providing payroll services.
20. the conduct of alternative remittance