



ANTI-MONEY LAUNDERING (AMENDMENT) ACT, 2008

(Act 18 of 2008)

I assent

J. A. Michel
President



18th August, 2008

AN ACT to amend the Anti- Money Laundering Act, 2006, to extend the statutory remit of the Financial Intelligence Unit and to provide for extended duties, powers and functions and related matters.

ENACTED by the President and National Assembly.

1. This Act may be cited as the Anti- Money Laundering (Amendment) Act, 2008. Short Title

2. In this Act "The Principal Act" means the Anti- Money Laundering Act, 2006. Interpretation

3. The Principal Act is hereby amended by repealing section 2 and substituting therefor the following section - Amendment of section 2

"2. In this Act -

"assets agent" means a person appointed as an assets agent to the FIU under section 18;

"benefit from criminal conduct" means any money or property that is derived, obtained or realised, directly or indirectly, by any person from criminal conduct;

“business relationship” means any arrangement made between a person and a reporting entity where the purpose or effect of the arrangement is to facilitate an occasional, frequent, habitual or regular course of dealing between the person and the reporting entity including an arrangement where, the total amount of any payment to be made by any person to any other person in the course of that arrangement is not known or capable of being ascertained at the time the arrangement is made;

“cash” has the meaning set out in section 34(8);

“Commissioner” means the Commissioner of Police;

“country” includes any state or territorial unit as the context may require;

“Court” means the Supreme Court of Seychelles save where the context otherwise requires;

“Court of Appeal” means the Court of Appeal of Seychelles;

“customer”, in relation to a transaction or an account, includes—

- (a) the person in whose name a transaction or account is arranged, opened or undertaken;
- (b) a signatory to a transaction or account;
- (c) any person to whom a transaction has been assigned or transferred;
- (d) any person who is authorised to conduct a transaction; or
- (e) such other person as may be prescribed;

“criminal conduct” shall have the meaning set out in section 3 and includes the financing of terrorism;

“data” means representations in any form of information or concepts;

“Deputy Director” means the person appointed under section 17(2) save where the context otherwise requires;

“Director” means the person appointed under section 17(1) save where the context otherwise requires;

Cap 225

“Director of the Fund” means the person appointed as such under section 28 of the Social Security Act and includes any person to whom functions under that section have been delegated;

“exported” has the meaning set out in section 34(8);

Act 7 of 2004

“financing of terrorism” means any of the offences referred to in sections 5, 6, 7, 8, 9, 10, 12, 15, 16 or 19 of the Prevention of Terrorism Act, 2004;

“FIU” means the unit established under section 16;

“FIU Legal Officer” means the person appointed under section 18(2);

“funds” for the purposes of section 10 includes any property that may be received or transferred by a reporting entity to or for any person so as to transfer benefit to that person or any other person and includes cash;

Cap 225

“Inspector of the Fund” means a person appointed as such under section 29 of the Social Security Act;

“law enforcement agency” means the government department under the Commissioner of Police or the Director General of Immigration and includes the Seychelles Revenue Commission;

“legal privilege” means any communication between lawyer and client which comes into existence for the purposes of the obtaining and furnishing of legal advice and/or legal representation in respect of any criminal matter and shall not extend to any conduct of the lawyer or material in the possession or control of the lawyer in the nature of aiding and abetting, assisting, attempting,

counselling, conspiring, concealing or procuring the commission of criminal conduct by the client or any other person;

"member of the family", in relation to an individual who is an assets agent of the FIU, means the spouse, parent, grandparent, step-parent, child (including a step-child or an adopted child), grandchild, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece of the individual or of the individual's spouse, or any person who is cohabiting or residing with the individual;

"member of the police" means a police officer;

"Minister" means the Minister responsible for Internal Affairs;

"person" includes a body of persons whether it has legal personality or not;

"pecuniary penalty order" means an order under sections 38, 41, 42 or 45;

"prescribed sum" means R50,000 until otherwise prescribed by the Minister under section 37 and thereafter shall be the sum so prescribed from time to time;

"police functions" means any power or duty conferred on any member of the police by or under any Act (including an Act passed after the passing of this Act);

"proceedings" includes any hearing before any court, tribunal, commission or any committee of, or appointed by the Government;

"production order" means an order under section 23;

"property" includes money and all property, real or personal, heritable or moveable, including choses in action and other intangible or incorporeal property and references to property shall be construed as including references to any interest in property, and includes property outside the Republic where by virtue of its domestic jurisdiction generally, in rem or in personam or by virtue of an arrangement with any other country or

territory, the Court might be in a position to enforce, and/or secure compliance with any order it might make or where it might otherwise exercise jurisdiction in relation to that property to comply with an arrangement or a request from another country or territory;

“reporting entity” means any person carrying on any of the following businesses or activities including, but not limited to, a financial institution licensed under the Financial Institutions Act—

Cap 78

- (a) acceptance of deposits and other repayable funds from the public and lending, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions;
- (b) financial leasing;
- (c) money transmission services;
- (d) issuing and administering means of payment (such as credit cards, travellers' cheques and bankers' drafts);
- (e) financial guarantees and commitments;
- (f) trading for his or its own account or for the account of customers in money market instruments (such as cheques, bills, certificates of deposit), foreign exchange, financial futures and options, exchange and interest rate and index instruments, commodity futures trading and transferable securities;
- (g) participation in securities issues and the provision of services related to such issues;
- (h) money-broking;

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- (i) individual and collective portfolio management;
- (j) safekeeping and administration of cash or liquid securities on behalf of other persons;
- (k) safe custody services;
- (l) investing, administering or managing funds or money on behalf of other persons;
- (m) business of an insurer, an insurance broker or insurance agent operated under the Insurance Act;
- (n) functioning as trustee, administrator or investment manager of a superannuation scheme not being a closed-ended scheme where contributions are deducted from salaries of employees by a single employer and withdrawals are for limited purposes;
- (o) money and currency changing;
- (p) operating a gambling house, casino or lottery, including such operations through the internet;
- (q) a trust or company service provider not otherwise covered by this definition, which as a business, provides any of the following services —
 - (i) acting as a formation agent of legal persons;
 - (ii) acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership or a similar position in relation to other legal persons;
 - (iii) providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;

- (iv) acting as (or arranging for another person to act as) a trustee of an express trust;
- (v) acting as (or arranging for another person to act as) a nominee shareholder for another person;
- (r) offshore banks provided for in the Financial Institutions Act, 2004; Cap 78
- (s) attorneys-at-law, notaries and accountants when they prepare for or carry out transactions for their clients concerning the following activities —
 - (i) buying or selling of real estate;
 - (ii) management of client money, securities or other assets;
 - (iii) management of bank, savings or securities accounts;
 - (iv) organisation of contributions for the creation, operation or management of companies;
- (t) creation, operation or management of legal persons or arrangements, and buying or selling of business entities;
- (u) estate agents when they are involved in transactions for their clients concerning the buying and selling of immovable property;
- (v) dealing in precious metals or precious stones, when the persons dealing engage in any cash transaction with a customer equal to or above the prescribed value; and
- (w) such other business as may be prescribed;

Act 9 of
2007

“Republic” means the Republic of Seychelles;

“restraint order” means an order referred to in Part 4;

“revenue” shall have the meaning as defined in section 2(1) of the Seychelles Revenue Commission Act, 2007.

“Revenue Commissioner” means the person appointed as Revenue Commissioner under section 4 of the Seychelles Revenue Commission Act, 2007;

“revenue laws” means all and any law or regulation relating to any tax, including the revenue laws as described in the schedule to the Seychelles Revenue Commission Act, 2007;

“serious crime” means any act or omission against any law of the Republic punishable by a term of imprisonment exceeding 3 years and/or by a fine exceeding R50,000, whether committed in the Republic or elsewhere, and where the conduct occurs outside the Republic, would constitute such an offence if it occurred within the Republic and also constitutes an offence under the law of the country or territorial unit in which it occurs;

“Suspicious Transactions Report” means a report made or to be made by a reporting entity under section 10;

“tax” means any tax, duty, levy or charge under the care and management of the Seychelles Revenue Commission including but not limited to business tax, trades tax, goods and services tax, contributions to the Social Security Fund,

stamp duty and any other levy by way of taxation;

4. The Principal Act is hereby amended by repealing all of the words and numbers starting with "Part 3" and ending with "45. Discharge of pecuniary penalty order" where they appear under the heading "ARRANGEMENT OF SECTIONS" and substituting therefor the following –

Amendment
of
Arrangement
of Sections

"PART 3 – FINANCIAL INTELLIGENCE UNIT

16. Establishment of the FIU
- 16A. International exchange of information
- 16B. Agreements for the international exchange of information
- 16C. Power of Director to examine records of reporting entity
- 16D. Obligation of officers and employees of a reporting entity
17. Appointment of Director, Deputy Director and Acting Director of the FIU
18. Appointment of Assets Agent and FIU Legal Officer
19. Anonymity
20. Prohibition on publication
21. ~~Offences of assault, intimidation or obstruction of Assets Agents~~
22. Search warrant
23. Production order
24. Power of arrest of assets agent who is a member of the police
25. Funding of the FIU

PART 4 – RESTRAINT, SEIZURE AND FORFEITURE

26. Circumstances where Court may make restraint order
27. Restraint order
28. Notice of restraint order to be given to Registrar General
29. Appointment of Receiver
30. Immunity of Receiver
31. Provisions for restraint order when company is in liquidation
32. Effects of restraint order

33. Forfeiture
34. Search and seizure of cash
35. Court proceedings for forfeiture of cash seized
36. Cash seized and detained for more than 14 days to be lodged in interest bearing account
37. Power of Minister to prescribe

PART 5 – PECUNIARY PENALTY ORDER

38. Pecuniary penalty order
39. Procedure for calculating benefit from criminal conduct
40. Pecuniary penalty order to be confined to realisable property
41. Making of pecuniary penalty order where new evidence becomes available
42. Further determination possibly leading to increased pecuniary penalty order
43. Procedure for statements to assist calculation of amount of defendant's benefit from criminal conduct
44. Matters to be taken into account in determining amount to be paid by a pecuniary penalty order
45. Making of pecuniary penalty order where defendant has died or absconded
- 45A. Provisions regarding appeals and compensation
- 45B. Reduction in amount of penalty order when realisable property inadequate
- 45C. Increase in amount of pecuniary penalty order when value of realisable property increases
- 45D. Provisions regarding the enforcement of pecuniary penalty order
- 45E. Appointment of receiver for enforcement of pecuniary penalty order
- 45F. Provisions for interest on unpaid sums
- 45G. Provisions for disposal of proceeds of pecuniary penalty order"

Amendment of section 3

5. The Principal Act is hereby amended by repealing section 3 and substituting therefor the following section -

Offence of Money Laundering

“3.(1) A person is guilty of money laundering if, knowing or believing that property is or represents the benefit from criminal conduct or being reckless as to whether the property is or represents such benefit, the

person, without lawful authority or excuse (the proof of which shall lie on him) —

- (a) converts, transfers or handles the property, or removes it from the Republic;
- (b) conceals or disguises the true nature, source, location, disposition, movement or ownership of the property or any rights with respect to it; or
- (c) acquires, possesses or uses the property.

(2) Removing property from the Republic shall include references to removing it from another country or territory as referred to in subsection (9) (c), and moving property within the Republic or a country or territory in preparation for or for the purpose of removing it from the Republic or the country or territory in question.

(3) Any person who participates in such conduct as described in subsections (1)(a), (1)(b) or (1)(c) of this section including but not limited to, aiding, abetting, assisting, attempting, counselling, conspiring, concealing or procuring the commission of such conduct commits the offence of money laundering as a principal offender and shall be liable to be tried and punished accordingly.

(4) (a) a person guilty of money laundering is liable on conviction to a fine not exceeding R5,000,000 or to imprisonment for a term not exceeding 15 years or to both;

(b) a person other than a natural person guilty of money laundering is liable on conviction to a fine not exceeding R10,000,000.

(5) Where a person —

- (a) converts, transfers, handles or removes from the Republic any property which is or represents the benefit from criminal conduct;
- (b) conceals or disguises the true nature, source, location, disposition,

movement or ownership of the property or any rights with respect to it; or

- (c) acquires, possesses or uses the property,

in such circumstances that it is reasonable to conclude that the person—

- (i) knew or believed that the property was or represented the benefit from criminal conduct, or
- (ii) was reckless as to whether it was or represented benefit from criminal conduct,

that person shall be taken to have so known or believed or to have been so reckless, unless the court is satisfied having regard to all the evidence that there is a reasonable doubt as to whether the person so knew or believed or was so reckless.

- (6) For the purposes of this Act—

- (a) a person is reckless if he disregards a substantial risk that the property in question is or represents the benefit from criminal conduct, and for those purposes "substantial risk" means a risk of such a nature and degree that having regard to the circumstances in which the person became involved with the property and the extent of the information then available to him, the disregard of that risk involves culpability of a high degree;
- (b) references to converting, transferring, handling or removing property include references to the provision of any advice or assistance in relation to converting, transferring, handling or

removing the property.

(7) This section does not apply to a person in respect of anything done by that person in connection with the enforcement of any law.

(8) This Act shall apply whether the criminal conduct in question occurred before or after the commencement of this Act and whether it was or is attributable to the person first mentioned in subsection (1) or another.

(9) In this Act, "criminal conduct" means conduct which—

- (a) constitutes any act or omission against any law of the Republic punishable by imprisonment for life or for a term of imprisonment exceeding 3 years, and/or by a fine exceeding R50,000 and, without prejudice to the generality of the above, including the financing of terrorism as referred to in the Prevention of Terrorism Act 2004, and for the avoidance of doubt includes the offence of money laundering established by sections 3(1) and 3(3) of this Act and whether committed in the Republic or elsewhere and whether before or after the commencement of the relevant provisions of this Act; Act 7 of 2004
- (b) where the conduct occurs outside the Republic, would constitute such an offence if it occurred within the Republic and also constitutes an offence under the law of the country or territorial unit in which it occurs;
- (c) shall also include any act or omission

against any law of another country or territory punishable by imprisonment for life or for a term of imprisonment exceeding 3 years, or by a fine exceeding the monetary equivalent of R50,000 whether committed in that other country or territory or elsewhere and whether before or after the commencement of the relevant provisions of this Act, unless the Attorney General shall certify in writing that it would not be in the public interest to take action in the Republic in relation to an act or omission as defined in this sub-section; and

- (d) includes participation in such conduct, including but not limited to, aiding, abetting, assisting, attempting, counselling, conspiring, concealing or procuring the commission of such conduct.

(10) For the purposes of this Act—

- (a) references to believing that any property is or represents the benefit from criminal conduct include references to thinking that the property was probably, or probably represented, such benefit in whole or in part;
- (b) references to any property representing the benefit from criminal conduct include references to the property representing that benefit in whole or in part directly or indirectly, and cognate references shall be construed accordingly;
- (c) the standard of proof to be applied in deciding whether property is the benefit from criminal conduct shall be

the standard of proof applicable in civil proceedings;

- (d) in determining whether property is or represents the benefit from criminal conduct a court shall have account of all the surrounding circumstances of the connection of the defendant and any other relevant person with the property including but not limited to the financial ability of the defendant or that other person to have or possess such property, the explanation (if any) given by the defendant or that other person as to his connection with the property and the conduct of the defendant or that other person in relation to the property

(11) (a) As soon as the Court determines that the evidence adduced in the case gives rise to a reasonable inference that the property is or represents the benefit from criminal conduct the property shall be deemed to be the benefit from criminal conduct unless the defendant by evidence establishes otherwise to the satisfaction of the Court. The burden of proving that the property is not the benefit from criminal conduct shall be upon the defendant;

(b) It shall not be necessary in any event for the prosecution to prove that the property in question is or represents the benefit of any particular criminal conduct or that any person was convicted of criminal conduct in relation to the property.

(c) Where it is necessary in the case of a money laundering offence alleged to have been committed by a body corporate, to establish the state of mind of the body corporate, it shall be sufficient to show that a director, officer, employee or agent of the body corporate, acting in the course of his directorship, office, employment or agency as the case may be, had the required state of mind to satisfy the element of mens rea required to ground a conviction.

(d) Where a body corporate commits an offence of money laundering (whether convicted of that offence or not) and where the offence is committed with the consent,

connivance, or in any other way with the assistance or omission to act of any director, secretary, manager, auditor or accountant of the company or any person directing or person controlling such person, he shall be guilty of the offence and capable of being tried and punished as a principal offender.

(12) For the purposes of this Act -

(a) a person handles property if that person, without a claim of right made in good faith—

(i) receives it;

(ii) undertakes or assists in its retention, removal, disposal or realisation by or for the benefit of another person; or

(iii) arranges to do any of the things specified in subparagraphs (i) or (ii).

(b) (i) a document purporting to be signed by a lawyer practicing in the country or territorial unit in which the criminal conduct concerned is alleged to have occurred and stating that such conduct is an offence under the law of that country or territorial unit; and

(ii) a document purporting to be a translation of a document mentioned in subparagraph (i) and certified as correct by a person appearing to be competent to so certify, shall be admissible in any proceedings, without further proof, as evidence of the matters mentioned in those documents, unless the contrary is shown.

(13) Where a person who has failed to

comply with directions of the FIU under section 10(c) in relation to property, is subsequently charged with a money laundering offence or another offence under this Act it shall be presumed -

- (a) that the property is the benefit from criminal conduct; and
- (b) that the defendant knew or believed that the property was or represented benefit from criminal conduct or was reckless as to whether it was or represented such benefit;

until the defendant proves otherwise to the satisfaction of the Court on the civil standard of proof.

6. The Principal Act is hereby amended by repealing Part 3 and substituting therefor the following Part -

Amendment
of Part 3

"PART 3 - FINANCIAL INTELLIGENCE UNIT

16. (1) A financial intelligence and assets recovery unit to be known as the FIU is hereby established.

Establishment
of the FIU

(2) The FIU shall be a body corporate with perpetual succession, a common seal, power to sue and be sued in its corporate name, to acquire, hold and dispose of land or an interest in land and to acquire, hold and dispose of any other property.

(3) Subject to the provisions of this Act, the objectives of the FIU shall be -

- (a) the monitoring, training and enforcing compliance by reporting entities with the obligations imposed on them by Part 2 of the Act and to exercise the powers and duties set out the Schedule to this Part;

- (b) the identification of the assets, wherever situated, of persons which derive or are suspected to derive, directly or indirectly, from criminal conduct as defined in section 2;
- (c) the taking of appropriate action under the law to deprive or to deny those persons of the assets or the benefit of such assets, in whole or in part, as may be appropriate, including but not limited to all appropriate actions prior to, during and after court proceedings in relation to the making or the enforcement of a restraint order, a forfeiture order or a pecuniary penalty order within the meaning of Part 4 or Part 5 or the making or enforcement of a court order under the Proceeds of Crime (Civil Confiscation) Act, 2008;
- (d) the pursuit of any investigation or the doing of any other preparatory work in relation to any proceedings or other action arising from the objectives mentioned in paragraphs (a), (b) and (c);
- (e) the investigation of any criminal conduct; and
- (f) the taking of any other action to deprive persons of the benefit of their criminal conduct and to secure that such benefit and any abandoned goods or property be ascertained and transferred to the Republic.

(4) Without prejudice to the generality of subsection (3), the functions of the FIU, operating through its assets agents and such other persons as the Director or the Deputy Director with the consent of the President shall from time to time decide, shall be the taking of all necessary actions—

- (a) in accordance with the relevant provisions of this Act, for the monitoring, training and enforcing compliance by reporting entities with the obligations imposed on them by Part 2 of this Act;
- (b) in accordance with police functions and the FIU statutory remit, for the purposes of the confiscation,

restraint of use, freezing, preservation or seizure of assets identified as deriving or suspected to derive, directly or indirectly, from criminal conduct;

- (c) for the investigation of any criminal conduct;
- (d) under the revenue laws or any provision of any other Act, whether passed before or after the passing of this Act, which relates to revenue, to ensure that the benefit from criminal conduct or suspected criminal conduct are subjected to tax and that the revenue laws, where appropriate, are fully applied in relation to such benefit or conduct, as the case may be;
- (e) under the Social Security Act for the investigation and determination, as appropriate, of any claim for or in respect of benefit by any person suspected of being engaged in criminal conduct; and
- (f) at the request of the Director of the Fund or the Revenue Commissioner to investigate and determine, as appropriate, any claim for or in respect of a benefit where there are reasonable grounds for believing that, in the case of a particular investigation, officers of the Fund or inspectors may be subject to threats or other forms of intimidation, and such actions include, where appropriate, subject to any international agreement, as provided herein, and also as directed by the President, cooperation with any police force, institution or agency of a territory or country other than the Republic or any international organisation, institution or agency that has duties or powers similar to the FIU.

(5) In relation to the matters referred to in subsection (4), nothing in this Act shall be construed as affecting or restricting in any way the functions of the Commissioner, the Attorney General, the Seychelles Revenue Commission, the Central Bank, the Director of the Fund or any other government agency.

(6) The President, after consultation with the Director or the Deputy Director as the case may require, if he so thinks fit, by order may; -

- (a) confer on the FIU or its assets agents such additional functions connected with the objectives and functions

for the time being of the FIU; and

- (b) make such provision as he considers necessary or expedient in relation to matters ancillary to or arising out of the conferral on the FIU or its assets agents of functions under this section or the performance by the FIU or its assets agents of functions so conferred.

(7) The President may by order amend or revoke an order made by him under this Act (including an order under this subsection).

(8) As soon as may be, but not later than 3 months after the end of each year, the FIU shall present a report to the President of its activities during that year and the President shall cause a copy of the report to be tabled before the National Assembly.

(9) Each report under subsection (8) shall include information in such form and regarding such matters as the President may direct.

(10) The FIU shall, whenever so requested by the President, furnish to him information as to the general operations of the FIU.

(11) No action shall lie against the President, any assets agent, employee or agent of the FIU or any person acting under the direction of the FIU for anything done in good faith in the exercise or discharge of any powers, duties or functions under this Act.

(12) The Auditor General and every person acting on behalf of or under the direction of the Auditor General shall not disclose any information that they have obtained or to which they have had access in the course of their audit of the FIU except in the performance of their functions or when ordered by a court of law.

TABLE

Powers and duties of the FIU regarding reporting entities

The FIU—

- (a) shall receive reports made under sections 10 and 11 of this Act, information provided to the FIU by a government institution or agency of the Republic or any other country and any other information voluntarily provided to the FIU about suspicions of an offence under this Act or any other law;

- (b) shall have the authority to collect any information that the FIU considers relevant to an offence under this Act or any other law that is publicly available, including commercially available databases, or information that is collected or maintained including information that is stored in databases maintained by the government;
- (c) shall have the authority to request information from reporting entities, any supervisory agency and any law enforcement agency for the purposes of this Act;
- (d) shall analyse and assess all reports and information;
- (e) may carry out examinations of reporting entities as set out in section 16C;
- (f) may send any report, any information derived from such report or any other information it receives to the appropriate law enforcement agency and supervisory authorities, if on the basis of its analysis and assessment the FIU has reasonable grounds to suspect that a transaction is unlawful;
- (g) shall have the authority to instruct any reporting entity to take such steps as may be appropriate in relation to any information or report received by the FIU to enforce compliance with this Act or to facilitate any investigation being carried on or anticipated by the FIU;
- (h) shall compile statistics and records and may disseminate information within the Republic or elsewhere as well as make recommendations arising out of any information received;
- (i) may from time to time after consultation with supervisory authorities, issue guidelines and prescribe the form and manner of suspicious transaction reports to reporting entities in relation to customer identification, record keeping and reporting obligations and the identification of suspicious transactions;
- (j) may obtain further information on parties or transactions referred to in a report made to it under this Act;

- (k) may provide training programs for reporting entities in relation to customer identification, record keeping and reporting obligations and the identification of suspicious transactions;
- (l) may periodically inform reporting entities and other relevant agencies regarding the outcome of reports or information given under the Act;
- (m) may conduct research into trends and developments in the area of money laundering and financing of terrorism and improved ways of detecting, preventing and deterring money laundering and the financing of terrorism;
- (n) may educate the public and create awareness on matters relating to money laundering and financing of terrorism;
- (o) may disclose any report, any information derived from such report or any other information it receives to an institution or agency of a foreign country or of an international organisation in accordance with section 16A; and
- (p) may enter into any agreement or arrangements with any local institution or agency regarding exchange of information.

International
exchange of
information

16A. The FIU may, with the approval of the Attorney General, disclose any report or information as set out under paragraph (o) of the Table to section 16 to an institution or agency of a foreign country or to an international organization or institution or agency established by the governments of foreign countries that has powers and duties similar to those of the FIU –

- (a) on such terms and conditions as are set out in the agreement or arrangement between the FIU and that foreign country or international organisation, institution or agency regarding the exchange of such information;

- (b) where such an agreement or arrangement has not been entered into between the Republic and/or the FIU and that foreign country or international organisation or institution or agency, on such terms and conditions as may be agreed upon by the Republic and/or the FIU and the foreign country, international organisation, institution or agency at the time of disclosure and such terms and conditions shall include the following—
- (i) a restriction on the use of the report or information for purposes relevant to investigating or prosecuting criminal conduct, a money laundering offence or an offence of the financing of terrorism, or an offence that is substantially similar to such an offence or the restraint, forfeiture, seizing or freezing of assets (including any civil procedures similar to those provided in the Proceeds of Crime (Civil Confiscation) Act, 2008, or the making of an order in the nature of a pecuniary penalty order; and
- (ii) the stipulation that the report or information be treated in a confidential manner and not be further disclosed without the written consent of the FIU.

16B.(1) The FIU may, with the approval of the President, enter into an agreement or arrangement in writing with the government of a foreign country, or an international organisation or an institution or agency established by the governments of foreign countries regarding the exchange of information between the FIU and any institution or agency of that country or organisation that has powers and duties similar to those of the FIU.

Agreements
for the
international
exchange of
information

(2) The FIU may, with the approval of the Attorney General, enter into an agreement or arrangement, in writing, with—

- (a) an institution or agency of a foreign country or an international organisation established by the governments of foreign countries that has powers and duties similar to those of the FIU; and
- (b) a foreign law enforcement or supervisory agency or authority,

regarding the exchange of information between the FIU and the institution, agency or authority.

(3) The information exchanged under sections 16A and 16B shall be information that the FIU, the institution, agency, organisation or authority has reasonable grounds to suspect would be relevant to investigating or prosecuting criminal conduct including the offence of money laundering or of financing of terrorism or an offence that is substantially similar to any of those offences, or to the restraint, forfeiture, seizure, freezing of assets (including any civil procedures similar to those provided in the Proceeds of Crime (Civil Confiscation) Act, 2008) or the making of an order in the nature of a pecuniary penalty order.

(4) Agreements or arrangements entered into under subsections (1) and (2) of section 16B shall include the following—

- (a) a restriction on the use of the report or information for purposes relevant to investigating or prosecuting criminal conduct, a money laundering offence or an offence of the financing of terrorism, or an offence that is substantially similar to such an offence or the restraint, forfeiture, seizure or freezing of assets (including any civil procedures similar to those provided in the Proceeds of Crime (Civil Confiscation) Act 2008), or the making of an order in the nature of a pecuniary penalty order save as otherwise agreed in writing; and
- (b) a stipulation that the information be treated in a confidential manner and not be further

disclosed without the express consent of the FIU.

16C.(1) The Director or any person authorised by the Director may examine records of a reporting entity, and -

Power of Director to examine records of reporting entity

- (a) during business hours, except in a case of immediate urgency when immediate access shall be given, enter any premises of a reporting entity in which the Director or the person believes, on reasonable grounds, that there are records relevant to ensuring compliance with the provisions of 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 data in the form of a printout or other intelligible output and remove the printout or other output for examination or copying;
- (d) use or cause to be used any copying equipment in the premises to make copies of any record.

(2) The owner or person in charge of premises referred to in subsection (1) and every person found there shall give the Director or any authorised 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 the provisions of this Act or regulations made thereunder.

(3) The FIU may use or transmit any information derived from such examination to the appropriate law enforcement agency if the FIU has reasonable grounds to suspect that the information is

relevant to an investigation for non-compliance with this Act, criminal conduct, a money laundering offence or an offence of financing of terrorism.

Obligation of officers and employees of a reporting entity

16D.(1) All officers and employees of a reporting entity shall take all reasonable steps to ensure that the reporting entity complies with its obligations under this Act.

(2) The FIU may direct any reporting entity that has without reasonable excuse failed to comply in whole or in part with any of its obligations, to implement an action plan to ensure compliance with such obligations.

(3) Where a reporting entity fails to comply with a direction given under subsection (2), the FIU may make an application to the Court supported by an affidavit stating that a reporting entity has failed without reasonable excuse to comply in whole or in part with any of its obligations under this Act and the Court shall, after such inquiry as it thinks fit, issue an order to any or all of the officers or employees of that reporting entity in such terms as the Court deems necessary to enforce compliance with such obligations.

(4) If the reporting entity or any officer or employee of that entity fails without reasonable excuse to comply with the requirements of an order made under subsection (3) within such period of time as may be specified in the order, such reporting entity, officer or employee shall be guilty of an offence and on conviction shall be liable to a fine not exceeding R1,000,000 in the case of an individual and R5,000,000 in the case of a reporting entity as the Court may determine.

Appointment of Director, Deputy Director and Acting Director of the FIU

17.(1) There shall be a chief officer of the FIU who shall be known, and is referred to in this Act, as the Director.

(2) There shall be a deputy chief officer of the FIU who shall be known, and is referred to in this Act, as the Deputy Director.

(3) The President shall from time to time, appoint to the FIU the Director and the Deputy Director and may, at any time, at his absolute discretion, remove the Director, the Deputy Director or the FIU Legal Officer, from his appointment with the FIU.

(4) The Director shall carry on, manage and control generally the administration and business of the FIU in consultation

with the Deputy Director.

(5) (a) At any time the President in his absolute discretion may, by order, assign principal responsibility for any of the powers and functions of the FIU to the Director, the Deputy Director or the FIU Legal Officer, and for so long as that order remains in force the exercise of those powers and the performance of those functions shall vest exclusively in the Director, the Deputy Director or in the FIU Legal Officer as the case may be.

(b) During the continuance of an order made subsection (5) references thereafter to "the Director" shall mean the Deputy Director or the FIU Legal Officer as the case may require and the provisions herein set out shall apply mutatis mutandis to the Deputy Director or the FIU Legal Officer.

(6) Where a power may be exercised or a function performed by the Director, the Deputy Director, the FIU Legal Officer or an assets agent, no question or issue shall be raised in any court or other proceedings regarding the capacity of that person to exercise the power or perform the function and it shall not be a defence that the exercise of the power or performance of the function should have been by another person.

(7) The Director and the Deputy Director shall be responsible to the President for the performance of the functions of the FIU.

(8) (a) In the event of temporary incapacity through illness, or absence or otherwise of the Director, the Deputy Director shall perform the functions of the Director and while so acting the Deputy Director shall have and exercise all the powers and functions of the Director.

(b) Without prejudice to the foregoing, in the event of any incapacity through illness, or absence of the Director or any other cause as decided by the President, the President may appoint to the FIU a person, who shall be known as the Acting Director, to perform the functions of the Director and the President shall remove the Acting Director from that appointment upon being satisfied that the incapacity or absence of the Director or other reason has ceased.

(c) The Acting Director shall have and exercise all the powers and functions of the Director during the period of his appointment.

(9) For the purposes of this Act and otherwise where

relevant, the Director, the Deputy Director and the Acting Director, as the case may be, shall be assets agents while so appointed.

Appointment
of Assets
Agent and
FIU Legal
Officer

18.(1) The President may appoint, such and so many persons as he thinks fit to be assets agents of the FIU.

(2) The President may appoint a person to be the FIU Legal Officer, who shall—

- (a) be an assets agent;
- (b) assist and advise the Director, the Deputy Director and the assets agents in legal, administrative and operational matters, to assist the FIU in the pursuit of its objectives and functions; and
- (c) report directly to the President.

(3) An appointment under this section shall—

- (a) be in writing and signed by the President;
- (b) be known as a warrant of appointment; and
- (c) inter alia specify the name of the appointee, the date of the appointment and, if different shall specify the date from which the appointment is to take effect.

(4) (a) The powers and duties vested in an assets agent for the purposes of this Act, shall be the powers and duties vested in the assets agent, as the case may be, by virtue of—

- (i) being a member or officer of the agency, body or organization to which he was attached prior to being appointed an assets agent;
- (ii) the revenue laws or any provision of any other Act, whether passed before or after the passing of this

Act, which relates to revenue, including any authorization or nomination made thereunder;

- (iii) the Social Security Act, including any ^{Cap 225} appointment made thereunder;
- (iv) any other appointment or qualification;
- (v) such executive power as shall be granted to that assets agent by the President; and
- (vi) this Act,

and the exercise or performance of any power or duty for the purposes of this Act shall be exercised or performed in the name of the FIU.

- (b) On being so appointed (and in so far it is not already the case) an assets agent shall be deemed to have been authorized and vested with every authority and powers and functions under the law of the agency, body or organization as is mentioned in subparagraph (a) (I) above.

(5) An assets agent, other than the FIU Legal Officer or the Deputy Director, when exercising or performing any powers or duties, shall be under the direction and control of the Director.

(6) Where in any case, an assets agent (other than the Deputy Director and the FIU Legal Officer) who, prior to being appointed an assets agent, was required to exercise or perform any power or duty on the direction of any other person, it shall be lawful for the assets agent to exercise or perform such power or duty on the direction of the Director.

(7) An assets agent may exercise or perform his powers or duties pursuant to any information received by him, including but not limited to any information received from another assets agent or pursuant to any action taken by that other assets agent in the exercise or performance of that other assets agent's powers or duties, and any information, document or other material obtained by assets agents under this subsection shall be admitted in evidence in any subsequent civil proceedings, and in all proceedings under Part 5 of this Act, notwithstanding any Act, rule of law or practice to the contrary and it shall be a matter for the relevant court to

determine the weight to be attached to the said information, document or other material.

(8)(a) An assets agent may be accompanied or assisted in the exercise or performance of that assets agent's powers or duties by such other persons (including assets agents) as the first-mentioned assets agent, the Director, the Deputy Director or the FIU Legal Officer considers necessary.

(b) An assets agent may take with him to assist him in the exercise or performance of his powers or duties, any equipment or materials as that assets agent, the Director, the Deputy Director or the FIU Legal Officer considers necessary.

(c) An assets agent who accompanies or assists another assets agent under paragraph (a) shall have and be conferred with the powers and duties of the first mentioned assets agent for the purposes of that assistance and vice versa.

(d) Information, documents or other material obtained by assets agents under paragraph (a) or (c) shall be admitted in evidence in any subsequent civil proceedings, and in all proceedings under Part 5 of this Act, notwithstanding any Act, rule of law or practice to the contrary and it shall be a matter for the relevant court to determine the weight to be attached to the said information, document or other material.

(9) Any information or material obtained by an assets agent for the purposes of this Act may be disclosed by an assets agent or the FIU to—

- (a) another assets agent; and
- (b) with the consent of the Director, the Deputy Director or the FIU Legal Officer to—
 - (i) any member of the police, armed forces or other body, agency or organisation having responsibility for combating criminal conduct including drug trafficking and/or preserving the security of the Republic, for the purposes of that body, agency or organization;
 - (ii) any officer of the Seychelles Revenue Commission for the purposes of the revenue laws or any provision of any other Act, whether passed before or after the passing of this Act, which

relates to revenue;

- (iii) any other officer of a Ministry of the Government or the Governor of the Central Bank for the purposes of that other officer exercising or performing his powers or duties; and
- (iv) any officer of an agency established by the Government for the collection of intelligence and/or information for the purpose of combating criminal conduct including drug trafficking and/or preserving the security of the Republic,

and information, documents or other material obtained by an assets agent or any other person under the provisions of this subsection shall be admitted in evidence in any subsequent civil proceedings, and in all proceedings under Part 5 of this Act, by any person or body to whom it shall have been lawfully disclosed notwithstanding any law, rule of law or practice to the contrary and it shall be a matter for the relevant court to determine the weight to be attached to the said information, document or other material. For the purposes of this Act "disclose" includes "transmit".

(10)(a) The President may, at his absolute discretion, at any time, after consultation with the Director or the Deputy Director as the case may require, remove any assets agent, from the FIU whereupon the appointment of that person as an assets agent shall cease.

(b) This subsection shall not apply to the Director, the Deputy Director or the FIU Legal Officer.

(11) Nothing in this Act shall affect the powers and duties of a member of the police, an officer of the Commissioner of Taxes or any other relevant person, who is not an assets agent.

(12) An assets agent, shall hold his appointment on such terms and conditions (including terms and conditions relating to remuneration and superannuation) as the President may determine.

19.(1) Notwithstanding any requirement made by or under Anonymity

any Act or any other requirement in administrative and operational procedures, including internal procedures, all reasonable care shall be taken to ensure that the identity of an assets agent, who is not a member of the police other than the Director, the Deputy Director or the FIU Legal Officer, shall not be revealed.

(2) Where an assets agent who is not a member of the police is or may be required by law or practice, for the purposes of exercising or performing his powers or duties, to produce or show any written authority or warrant of appointment under any Act or otherwise to identify himself, the assets agent—

- (a) shall not be required to produce or show any such authority or warrant of appointment or to so identify himself, for the purposes of exercising or performing his powers or duties under those Acts; and
- (b) shall be accompanied by an assets agent who is a member of the police and the assets agent who is a member of the police shall on request by a person affected, identify himself as a member of the police and shall state that he is accompanied by an assets agent and shall inform any relevant person of the provisions in paragraph (a) whereupon that person shall be obliged to accept the authority of the assets agent.

(3) Where an assets agent exercises or performs any of his powers or duties in writing under any provision of any Act, whether passed before or after the passing of this Act, such exercise or performance of his powers or duties shall be done in the name of the FIU and not in the name of the individual assets agent involved, notwithstanding any provision to the contrary in any of those Acts.

(4) Any document relating to proceedings arising out of the exercise or performance by an assets agent of his powers or duties shall not reveal the identity of any assets agent provided that where such document is adduced in evidence subsection (6) shall apply.

(5) In any proceedings, the identity of any assets agent, other than that he is an assets agent, shall not be revealed other than, in the case of a hearing before a court, to the judge hearing the case, or in any other case, the person in charge of the hearing, provided that, where the identity of such an assets agent is relevant to the evidence adduced in the proceedings, subsection (6) shall apply.

(6) In any proceedings where an assets agent may be required to give

evidence, whether by affidavit or certificate, or oral evidence—

- (a) the judge, in the case of proceedings before a court; or
- (b) the person in charge of the proceedings, in any other case,

may, on the application of the Director or the Deputy Director, if satisfied that there are reasonable grounds in the public interest to do so, give such directions for the preservation of the anonymity of the assets agent as he thinks fit, including directions as to—

- (i) the restriction of the circulation of affidavits or certificates;
- (ii) the deletion from affidavits or certificates of the name and address of any assets agent, including the deponent and certifier; or
- (iii) the giving of evidence in the hearing

but not in the sight of any person.

20.(1) A person who publishes or causes to be published—

Prohibition
on
publication

- (a) the fact that an individual not being or having been a member of the police is or was an assets agent;
- (b) the fact that an individual is a member of the family of—
 - (i) an assets agent;
 - (ii) a former assets agent; or
- (c) the address of any place as being the address where any —
 - (i) assets agent;
 - (ii) former assets agent;

- (iii) member of the family of any assets agent, or former assets agent,
resides,

shall be guilty of an offence.

(2) The reference to publication of a fact or an address in this section shall include publication of any material from which a reasonable person could readily identify the fact or ascertain the address as the case may be.

(3) References to assets agent, or former assets agent in subsection (1)(a) of this section do not include references to the Director, the Deputy Director, the Acting Director or the FIU Legal Officer.

Offences of
assault,
intimidation
or
obstruction
of assets
agents

21.(1) A person who assaults or attempts to assault an assets agent or any member of the family of an assets agent shall be guilty of an offence.

(2) A person who utters or sends threats to or, in any way, intimidates or menaces an assets agent or any member of the family of an assets agent shall be guilty of an offence.

(3) A person who delays, obstructs, impedes, interferes with or resists an assets agent or any person lawfully accompanying or assisting an assets agent in the exercise or performance of his powers or duties or attempts or conspires to do any of the foregoing shall be guilty of an offence.

(4) A person guilty of an offence referred to in sections 20(1), 21(7), 22(8), 23(8), 24(2) or 53 of this Act shall be liable on conviction, to a fine not exceeding R500,000, or to imprisonment for a term not exceeding 5 years, or to both.

(5) A person guilty of an offence referred to in sections 21(1), 21(2), 21(3), 23(9)(e), 46, 47, 48, 49, 50 or 56 of this Act shall be liable on conviction, to a fine not exceeding R1,000,000, or to imprisonment for a term not exceeding 12 years, or to both.

(6) If a financial institution or other person whose trade or

business is regulated by license or permit is convicted of an offence under this Act, the sentencing Judge may order the said license to be terminated or to be suspended for such period as thought proper, in addition to any other penalty or sentence that may be imposed.

(7) Subject to the provisions of this section it shall be an offence to communicate with the Attorney General or an officer of the Attorney General, a member of the Police, an assets agent or a lawyer who acts on behalf of the Attorney General in his official capacity for the purpose of influencing the making of a decision to withdraw or not to initiate or otherwise influencing the conduct or outcome of, criminal proceedings or any particular charge in criminal proceedings under this Act or any other Act.

(8) If a person referred to in subsection (7) becomes of opinion that a communication is in breach of that subsection, it shall be the duty of the person not to entertain the communication further.

(9) Subsections (7) and (8) do not apply to—

- (a) communications made by a person who is a defendant or a complainant in criminal proceedings or believes that he is likely to be a defendant in criminal proceedings; or
- (b) communications made by a person involved in the matter either personally or as legal or medical adviser to a person involved in the matter or as a social worker or a member of the family of a person involved in the matter.

22.(1) A Judge of the Court, on hearing evidence on oath given by an assets agent who is a member of the police, may, if he is satisfied that there are reasonable grounds for suspecting that evidence of, or relating to assets or benefits deriving from criminal conduct or to their identity or whereabouts, is to be found in any place, issue a warrant for the search of that place and any person found at that place.

Search
Warrant

(2) A Judge of the Court, may hear an application for a search warrant under subsection (1) at any place.

(3) A warrant under this section shall be expressed to and

shall operate to authorise a named assets agent who is a member of the police accompanied by such other persons as the assets agent thinks necessary, to enter, within one week of the date of issuing of the warrant (if necessary by the use of reasonable force), the place named in the warrant, and to search it and any person found at that place and seize and retain any material found at that place, or any material found in the possession of a person found present at that place at the time of the search, which the member of the police or person accompanying him believes to be evidence of or relating to assets or benefits deriving from criminal conduct, or to their identity or whereabouts.

(4) The authority conferred by subsection (3) to seize and retain any material includes, in the case of a document or record, authority—

- (a) to make and retain a copy of the document or record; and
- (b) where necessary, to seize and retain any computer or other storage medium in which any record is kept.

(5) An assets agent acting under the authority of a warrant under this section may—

- (a) operate any computer at the place which is being searched or direct that it be operated by a person accompanying the member of the police for that purpose; and
- (b) require any person at that place who appears to the member of the police to have lawful access to the information in the computer—
 - (i) to give to the member of the police any password necessary to operate the computer;
 - (ii) to otherwise furnish any necessary information to enable the member of the police or a person accompanying the member of the police to examine the information accessible by the computer in a form in which the information is visible and legible; or
 - (iii) to produce the information to the member of the

police or a person accompanying the member of the police in a form in which it can be removed and in which the information is, or can be made, visible and legible.

(6) In this section,

- (i) “computer at the place which is being searched” includes any other computer, whether at that place or at any other place, which is lawfully accessible by means of the first mentioned computer; and
- (ii) “material” includes a copy of the material and a document or record.

(7) An assets agent who is the member of the police acting under the authority of a warrant under this section may —

- (a) require any person present at the place where the search is carried out to give to the member of the Police the person's name and address; and
- (b) arrest without warrant any person who—
 - (i) obstructs or attempts to obstruct that member of the police or any person accompanying that member of the police in the carrying out of his or her duties;
 - (ii) fails to comply with a requirement under subsection (5)(b) or subsection (7) (a); or
 - (iii) gives a name or address which the member of the police has reasonable cause for believing is false or misleading.

(8) A person who obstructs or attempts to obstruct a person acting under the authority of a warrant under this section, or who fails to comply with a requirement under subsections (5)(b) or (7)(a) or who gives a false or misleading name or address to an assets agent, shall be guilty of an offence.

(9) The power to issue a warrant under this section is in addition to and not in substitution for any other power to search without warrant or to issue a

warrant for the search of any place or person under this Act or under any other Act.

(10) In this section, "place" includes a dwelling and any vehicle, caravan or boat at or near the place named in the warrant, in circumstances where the assets agent named in the warrant suspects that evidence of or relating to assets or benefits deriving from criminal conduct, or to their identity or whereabouts, is to be found therein or thereon.

(11) Where an assets agent, or any person lawfully accompanying such assets agent is in or at any place under the authority of a warrant granted under this section or other lawful authority for the purposes of a search or an arrest the assets agent or person may seize and retain any material found at that place, or any material found in the possession of a person found present at that place at the time of the search or arrest, which the member of the police or person accompanying him believes to be evidence of or relating to the commission of any criminal conduct.

roduction
order

23.(1) For the purposes of an investigation into whether a person has benefited from assets or benefits deriving from criminal conduct or is in receipt of or controls assets or benefits deriving from criminal conduct, an assets agent who is a member of the police may apply to a Judge of the Court for an order under this section in relation to making available any particular material or material of a particular description.

(2) On an application under subsection (1) the Judge, if satisfied—

- (a) that there are reasonable grounds for suspecting that a person has benefited from assets or benefits deriving from criminal conduct or is in receipt of or controls such assets or benefits; and
- (b) that the material concerned is required for the purposes of such an investigation,

may order that any person who appears to him or her to be in possession of the material shall—

- (i) produce the material to the member of

the police or such other person named in the order so that the member of the police or other person may take the material away; or

- (ii) give the member of the police or other person named in the order access to the material within a period to be specified in the order.

(3) The period to be specified under subsection (2)(b)(ii) shall be one week, unless it appears to the Judge that a longer or shorter period would be appropriate in the particular circumstances of the case.

(4)(a) An order under this section in relation to material in any place may, on the application of the member of the police concerned, require any person who appears to the Judge to be entitled to grant entry to the place, to allow the member of the police to enter the place to obtain access to the material.

(b) Where a person required under paragraph (a) to allow the member of the police or such other person named in the order to enter a place, does not allow him to do so, section 22 shall have effect, with any necessary modifications, as if a warrant had been issued under that section authorising the member of the police, accompanied by such other persons as the assets agent thinks necessary to search the place and any person found there and to exercise the powers under such warrant.

(5) Where such material consists of information contained in a computer, the order shall have effect as an order to produce the material, or to give access to it, in a form in which it is visible and legible and in which it can be taken away.

(6) The order—

- (a) in so far as it may empower a person to take away a document or to be given access to the document, shall authorise the person to make a copy of the document and to take the copy away;
- (b) shall not confer any right to production of, or access to, any material subject to legal privilege; and
- (c) shall have effect notwithstanding any other obligation as to secrecy or other restriction on disclosure of information imposed by an Act or otherwise.

(7) Any material taken away by a person under this section may be retained for use as evidence in any proceedings.

(8) A person who without reasonable excuse fails or refuses to comply with any requirement of an order under this section is guilty of an offence.

(9)(a) For the purposes of an investigation into whether a person has benefited from assets or benefits deriving from criminal conduct or is in receipt of or controls such assets or benefits, the FIU may apply to a Judge of the Court for an order under this section in relation to obtaining information regarding any trust in which the person may have an interest or with which he may be otherwise connected.

(b) On such an application the Judge, if satisfied—

(i) that there are reasonable grounds for suspecting that a person—

(aa) has benefited from assets or benefits deriving from criminal conduct or is in receipt of or controls assets or benefits deriving from criminal conduct; and

(bb) has some interest in or other connection with the trust;

(ii) that the information concerned is required for the purposes of an investigation into whether a person has benefited from assets or benefits deriving from criminal conduct or is in receipt of or controls such assets or benefits; and

(iii) that there are reasonable grounds for believing that it is in the public interest that the information should be disclosed for the purposes of the investigation, having regard to the benefit likely to accrue to the investigation and any other relevant circumstances,

may order the trustees of the trust and any other person (including the suspected person) to disclose to the FIU such information as it may require in relation to the trust, including the identity of the settlor and any or all of the trustees and beneficiaries.

- (c) An order under this section—
- (i) shall not confer any right to production of, or access to, any information subject to legal privilege; and
 - (ii) shall have effect notwithstanding any other obligation as to secrecy or other restriction on disclosure of information imposed by an Act or otherwise.
- (d) A Judge of the Court may vary or discharge an order under this section on the application of any person to whom it relates or the FIU.
- (e) A trustee or other person who without reasonable excuse fails or refuses to comply with an order under this section or gives information which is false or misleading shall be guilty of an offence.
- (f) Any information given by a person in compliance with an order under this subsection is not admissible in evidence in any criminal proceedings against the person, except in any proceedings for an offence under paragraph (e).
- (10) In this section “information” includes—
- (a) a document or record; and
 - (b) information in non-legible form.

24.(1) Where an assets agent who is a member of the police has reasonable cause to suspect that a person is committing or has committed criminal conduct, the assets agent may—

- (a) arrest that person according to law without warrant; or

Power of
arrest of
assets agent
who is a
member of
the police

- (b) require the person to give his name and address, and if the person fails or refuses to do so or gives a name or address which the assets agent reasonably suspects to be false or misleading, the assets agent may arrest that person without warrant.

(2) A person who fails or refuses to give his name or address when required under this section or gives a name or address which is false or misleading, shall be guilty of an offence.

Funding of
the FIU

25.(1) The funds of the FIU shall be as voted by the National Assembly for the use of the FIU, together with such advances, in such manner and such sums as the President may determine and direct, to be paid from time to time either specifically or generally out of public funds voted to or in the possession of any government department, agency or the Central Bank.

(2) The Auditor General and every person acting on behalf of or under the direction of the Auditor General shall not disclose any information that they have obtained or to which they have had access in the course of their audit of the FIU except in the performance of their functions and when ordered by a court of law.

(3) No action shall lie against any assets agent, employee or agent of the FIU or any person acting under the direction of the FIU for anything done in good faith in the exercise or discharge of any powers, duties or functions under this Act.”

Amendment
Part 4

7. The Principal Act is hereby amended by repealing Part 4 and substituting therefor the following Part –

PART 4- RESTRAINT, SEIZURE AND FORFEITURE OF PROPERTY

circumstances
which Court
may make
restraint order

26.(1) The powers conferred on the Court by this part of this Act shall be exercisable where—

- (a) proceedings have been instituted in the Republic against the defendant for criminal conduct or an application has been made in respect of the defendant under section 41 or section 42 of this Act, and

- (i) the proceedings or the application have not or has not been concluded; and
 - (ii) either a pecuniary penalty order has been made or it appears to the Court that there are reasonable grounds for thinking that a pecuniary penalty order may be made in the proceedings or an application granted to the Attorney General under sections 38, 41 or 42 of this Act, or
- (b) the Court is satisfied that proceedings are to be instituted against a person for criminal conduct in respect of which a pecuniary penalty order might be made under Part 5 of this Act.

(2) For the purposes of section 27 of this Act, at any time when the powers referred to in subsection (1) are exercisable before proceedings have been instituted—

- (a) references to the defendant shall be construed as references to the person referred to in subsection (1) (b) of this section; and
- (b) references to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in subsection (1) (b) of this section for criminal conduct in respect of which a pecuniary penalty order might be made under section 38 of this Act.

(3) Where the Court has made an order under section 27 of this Act by virtue of subsection (1)(b) of this section, the Court shall discharge the order if proceedings in respect of the criminal conduct are not instituted or the relevant application is not made within such time as the court considers reasonable.

27.(1) The Court may by order (in this Act referred to as a "restraint order") prohibit any person from dealing with any realisable

Restraint
Order

property, subject to such conditions and exceptions as may be specified in that order.

(2) Without prejudice to the generality of subsection (1), a restraint order may make such provision as the Court thinks fit for living expenses and legal expenses of the defendant where the Court considers it essential to do so.

(3) A restraint order may apply—

- (a) to all realisable property held by a specified person or persons, whether the property is described in the order or not; and
- (b) to realisable property held by a specified person or persons, being property transferred to the person after the making of the order.

(4) A restraint order—

- (a) may be made only on an application by the Attorney General, and may be made ex parte and otherwise than in public; and
- (b) shall provide for notice of the application to be given to persons affected by the order.

(5) A restraint order—

- (a) may be discharged or varied in relation to any property; and
- (b) shall be discharged on the conclusion of the proceedings or of the application mentioned in subsection (6).

(6) An application for the discharge or variation of a restraint order may be made by any person affected by it.

(7) (a) Where the Court has made a restraint order, the Court may at any time appoint a receiver—

- (i) to take possession of any realisable property; and

- (ii) in accordance with the Court's directions, to manage or otherwise deal with any property in respect of which he is appointed, and may require any person having possession or control of property in respect of which the receiver is appointed to give possession of the property to the receiver,

subject to such exceptions and conditions as may be specified by the Court.

(b) On any sale of any property by a receiver appointed hereunder, the purchaser shall receive a good and valid title and as regards land, the Land Registrar shall register the purchaser as full owner in the land register without further requisition or enquiry.

(c) On the sale of any property by a receiver appointed hereunder, any right, title or interest of any person therein shall stand extinguished and any such right, title or interest shall be transferred and be limited to the net proceeds of such sale.

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

- (a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt, and
- (b) removing the property from the Republic.

(9) Where the Court has made a restraint order, a member of the police, or an officer of customs may, for the purpose of preventing any realisable property being removed from the Republic, seize the property.

(10) Property seized under subsection (9) shall be dealt with in accordance with the Court's directions.

28.(1) Where a restraint order is made, the Registrar of the Supreme Court shall, unless the court orders otherwise, serve the order

Notice of
restraint
order to be
given to
Registrar
General

on the Registrar General or any other public officer who is required under any written Act to maintain a public record relating to properties in Seychelles where any of the property affected by the order falls within the scope of such records.

(2)
General shall –

Upon receipt of a restraint order, the Registrar

- (a) where the property consists of land which is registered under the Land Registration Act, enter a Restriction under the Land Registration Act in the register in respect of the land in terms of the restraint order and this Act;
- (b) where the property consists of land falling under the Mortgage and Registration Act, enter a conspicuous note in the repertoire of the Respondent and the owner of any such land to the effect that the land is the subject of a restraint order under this Act giving the date of this order and the terms of any restriction or conditions of the restraint order; or
- (c) where the property belongs to a body corporate incorporated under any written law administered by the Registrar General, enter a conspicuous note in the register or record of the body corporate recording the existence of the restraint order, giving the date of the order and the terms of any restriction or condition of the restraint order.

(3) A restriction or a note entered pursuant to subsection (2) shall be deemed to be sufficient notice to all persons of the restraint order and any dealing, transaction, encumbering, seizure or sequestration of the property whatsoever and for whatsoever purposes contrary to the restraint order shall be null and of no effect.

(4) Where an order has been served under subsection (1) and the order is varied or discharged, the Registrar of the Supreme Court shall furnish the Registrar General with notice to that effect and the Registrar General shall thereupon cause any entry made under subsection (2) of this section to be varied or cancelled as the case may require.

29.(1) This section applies to the powers conferred on the Court by section 27 or on a receiver appointed under that section. Appointment
of Receiver

(2) Subject to the provisions of this section, the powers referred to in subsection (1) shall be exercised with a view to making available, for satisfying the pecuniary penalty order or as the case may be, any pecuniary penalty order that may be made in the defendant's case, the value for the time being of realisable property held by any person.

(3) In the case of realisable property held by a person to whom the defendant has directly or indirectly made a gift, caught by this Act, the powers shall be exercised with a view to realising no more than the value for the time being of the gift.

(4) The powers referred to in subsection (1) shall be exercised with a view to allowing any person, other than the defendant or the recipient of any such gift, to retain or recover the value of any property held by him.

(5) In exercising the powers referred to in subsection (1) no account shall be taken of any obligation of the defendant or of the recipient of any such gift that conflict with the obligation to satisfy the pecuniary penalty order.

30. Where a receiver appointed under section 27(7)(a)(i) takes any action — Immunity
of
Receiver

- (a) in relation to any property which is not realisable property, being action which he would be entitled to take if it were such property;
- (b) believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property,

no action shall lie against the receiver for anything done in good faith in the discharge of any powers, duties or functions under this Act.

Provisions
for
restraint
order when
company is
in
liquidation

31.(1) Where realisable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for a voluntary winding up, the functions of the liquidator shall not be exercisable in relation to—

- (a) property for the time being subject to a restraint order made before the relevant time; and
- (b) any proceeds of property realised by virtue of section 27 (7) for the time being in the hands of a receiver.

(2) Where, in the case of a company, an order or a resolution referred to in subsection (1) has been made or passed, the powers conferred by section 27 of this Act on the Court or on a receiver shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable—

- (a) so as to inhibit the liquidator from exercising those functions for the purpose of distributing any property held by the liquidator to the company's creditors, but so that the liquidator shall give 30 days notice to the Attorney General and the FIU of his intention to make a distribution and shall not make any distribution until the said period of 30 days shall have expired, and so that the Court or a receiver may exercise the powers mentioned in section 27 in respect of the proposed distribution or any portion thereof; or
- (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

(3) In this section—

"company" means any company which may be wound up under the Companies Act, 1972;

"relevant time" means—

- (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
- (b) where an order for the winding up of the company has been made and, before the presentation of the petition for the winding up of the company by the Court, such a resolution had been passed by the company, the time of the passing of the resolution; and
- (c) in any other case where order for the winding up of the company has been made, the time of the making of the order.

32.(1)(a) Where any property of whatever kind and wherever situated, or any interest in such property, becomes subject to seizure, forfeiture, pecuniary penalty order or any measure of restraint or control by virtue of any provision of this Act (including any provision for giving effect to orders made under the law of any country or territory outside the Republic) or of any action taken under any such provision, no purported disposition of the property or interest, and no other action purporting to be taken in respect of it, by or on behalf of any owner or other person having or claiming to have any interest in it (whether as beneficial owner or trustee or in any other capacity) in reliance on the law of any country or territory outside the Republic shall have effect so as to prevent the seizure, forfeiture, pecuniary penalty order or restraint or control measure from taking effect as provided by this Act.

Effects
of
Restraint
Order

(b) A person who knowingly contravenes or attempts to contravene a restraint order by disposing of or otherwise dealing with property that is subject to the restraint order, commits an offence punishable upon conviction by—

- (i) a fine not exceeding R500,000 or imprisonment for a period not exceeding 5 years, or both, in the case of an individual; or

(ii) fine not exceeding R1,000,000 in any other case.

(2) Where a restraint order is made against property and the property is disposed of or otherwise dealt with in contravention of the restraint order, and the disposition or dealing was not for sufficient consideration or not in favour of a person who acted in good faith and without notice, the Attorney General may apply to the Court for an order that the disposition or dealing be set aside or declared null and of no effect.

(3) Upon an application under subsection (2), the Court may—

(a) set aside or declare null and of no effect the disposition or dealing as from the day on which the disposition or dealing took place; or

(b) set aside or declare null and of no effect 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.

Forfeiture 33.(1) Subject to the following provisions of this section, where a person is convicted of an offence, and—

(a) the Court by or before which he is convicted is satisfied that any property which has been lawfully seized from him or which was in his possession or under his control at the time when he was apprehended for the offence or when a summons in respect of it was issued—

(i) has been used for the purpose of committing, or facilitating the commission of, any offence, or

(ii) was intended by him to be used for that

purpose, or

- (b) the offence, or an offence which the Court has taken into consideration in determining his sentence, consists of unlawful possession of property which—
 - (i) has been lawfully seized from him, or
 - (ii) was in his possession or under his control at the time when he was apprehended for the offence of which he has been convicted,

the Court may make an order under this section (referred to in this Act as a "forfeiture order") in respect of that property, and may do so whether or not it also deals with the offender in respect of the offence in any other way;

- (c) the Court may, in addition to any other penalty, order to be forfeited to the Republic any vehicle, vessel, aircraft or other thing whatsoever which—
 - (i) is owned by the offender and which the court is satisfied has been used in any manner in connection with the commission of the offence;
 - (ii) is owned by any other person and which the court is satisfied has been used by the offender with the consent or knowledge of the other person in connection with the commission of the offence or that other person was reckless in that regard; or
 - (iii) has been used by the offender with the consent or knowledge of the master, captain or other person in charge of same or such master, captain or other person in charge was reckless in that regard.

(2) In considering whether to make a forfeiture order in respect of any property a court shall have regard—

- (a) to the value of the property; and

(b) to the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making).

(3) Facilitating the commission of an offence shall be taken for the purposes of this section to include the taking of any steps after it has been committed for the purpose of disposing of any property to which the offence relates or of avoiding, or enabling any other person to avoid, apprehension or detection.

(4) An order under this section shall operate to deprive the offender of his rights, if any, in the property to which it relates, and the property shall (if not already in their possession) be taken into the possession of the police.

(5)(a) The Court shall not order property to be forfeited under this section if a person claiming to be the owner of it or otherwise interested in it applies to be heard by the Court, unless an opportunity has been given to him to show cause why the order should not be made.

(b) No application shall be made under this subsection by any claimant of the property after the expiration of 3 months from the date on which the forfeiture order in respect of the property was made under this section.

(c) No such application shall succeed unless the claimant satisfies the Court either that he had not consented to the offender having possession of the property or that he did not know, and had no reason to suspect, that the property was likely to be used for a purpose mentioned in subsection (1) of this section.

(d) No such application shall succeed unless the claimant satisfies the court either that he is not and was not at any material time, a member of a terrorist organisation.

(6) If at the conclusion of a trial (or at the conclusion of an appeal), the defendant shall have been found not guilty in respect of any charge of which if he had been convicted, a forfeiture order might have been made in respect of property described in subsection (1) of this section, the court notwithstanding such acquittal, may make a forfeiture order in respect of any such property which is unlawful or dangerous or

ought in the interests of safety to the public, be so forfeited.

(7) An order under this section shall not take effect until the ordinary time for instituting an appeal against the conviction or order concerned has expired or, where such an appeal is instituted, until it or any further appeal is finally decided or abandoned or the ordinary time for instituting any further appeal has expired.

(8) At any time after property in respect of which a forfeiture might be made has come into the possession of the Police or has been otherwise identified, the trial judge (or if no trial judge has been appointed any judge of the Court) may direct the Police to dispose of some or all of the property or may appoint a receiver and so that the provisions of section 27(7) shall apply mutatis mutandis to such receiver.

34.(1)(a) A member of the police, or an officer of customs or an immigration officer, notwithstanding that they might be an assets agent may search without warrant a person, his luggage or other property in his immediate vicinity or recently in his possession and any vehicle belonging to him or in which he was to be found or nearby which is reasonably suspected of being connected to him, if the member of the police, or officer has reasonable grounds for suspecting that -

Search
and
seizure of
cash

- (i) the person is importing or exporting, or intends or is about to import or export, or has possession or control of an amount of cash which is not less than the prescribed sum; and
- (ii) the cash represents benefit from criminal conduct or is intended by any person for use in connection with any criminal conduct.

(b) The said member of the police or officer may seize, and in accordance with this section, detain any cash (including cash found during a search under subsection (1)(a)) if—

- (i) its amount is not less than the prescribed sum, and
- (ii) he has reasonable grounds for suspecting that it represents benefit from, or is intended by any person to be used in connection with any criminal conduct;

(c) But so that a suspected breach of the Exchange Control Act, shall not of itself justify any search or seizure under this section and so that cash shall not be retained upon seizure except on the authority in writing of a member of the police not below the rank of Superintendent or such other person as the President shall from time to time prescribe. Cap 75

(d) The President may appoint in writing such person as he thinks fit to exercise the authority in paragraph (c) and may without cause terminate such authority in writing.

(2) Cash seized by virtue of this section shall not be detained for more than 14 days unless its detention beyond 14 days is authorised by an order made by a Judge of the Court and such order shall be made where the judge is satisfied—

- (a) that there are reasonable grounds for the suspicions mentioned in subsection (1) of this section, and
- (b) that detention of the cash beyond 14 days is justified while its origin or derivation is further investigated or consideration is given to the institution (whether in the Republic or elsewhere) of criminal proceedings against any person for an offence with which the cash is connected.

(3) (a) Any order under subsection (2) of this section shall authorise the continued detention of the cash to which it relates for such period, not exceeding 12 months beginning with the date of the order, as may be specified in the order, and a Judge of the Court, if satisfied as to the matters mentioned in that subsection, may thereafter from time to time, by order authorise the further detention of the cash but so that no period of detention specified in such an order, shall exceed 12 months beginning with the date of the order.

(b) Where an application is made under section 35(1) for an order for the forfeiture of cash detained under this section, the cash shall, notwithstanding the foregoing, continue to be so detained until the application is finally determined.

(4) Any application for an order under subsection (2) or (3) of this section shall be made by or on behalf of the Attorney General.

(5) At any time while cash is detained by virtue of the

foregoing provisions of this section a Judge of the Court may direct the release of all or part of it, if satisfied on an application made by the person from whom it was seized or a person by or on whose behalf it was being imported or exported, that there are no, or are no longer, any such grounds for the detention of all or part of the cash, as are mentioned in subsection (1) of this section.

(6) If, at a time when any cash is being detained by virtue of the foregoing provisions of this section—

- (a) an application for its forfeiture is made under section 33 of this Act; or
- (b) proceedings are instituted (whether in the Republic or elsewhere) against any person for an offence with which the cash is connected,

the cash shall not be released until any proceedings pursuant to the application or, as the case may be, the proceedings for that offence have been concluded.

(7) Cash seized under this Part of this Act and detained for more than 48 hours shall, unless required as evidence of an offence, be held in an interest-bearing account and the interest accruing on any such cash shall be added to that cash on its forfeiture or release.

(8) In this Act—

"cash" includes notes and coins in any currency, postal orders, cheques of any kind (including travellers' cheques), bank drafts, bearer bonds and bearer shares;

"exported" in relation to any cash, includes its being brought to any place in the Republic for the purpose of being exported.

(9) In this Part of this Act "the prescribed sum" means such sum as may for the time being be prescribed for the purposes of that section by the Minister and until so prescribed shall be the sum of R50,000 or its equivalent in any currency.

(10) An order under section 34 (2) of this Act shall provide for notice to be given to persons affected by the order.

(11) Provisions may be made by rules of court with respect to applications to court under this section and section 35, for the giving of notice of such applications to persons affected, for the joinder of such persons as parties. Pending the making of such rules, the Court shall implement the provisions of this Act within the existing court structures.

Court
proceedings
for forfeiture
of cash
seized

35.(1) A judge of the Court may order the forfeiture of any cash which has been seized under section 34 of this Act if satisfied, on an application made while the cash is detained under that section, that the cash amounts to not less than the prescribed sum and he has reasonable grounds for suspecting that it directly or indirectly represents any person's benefit from, or is intended by any person for use in connection with any offence.

(2) Any application under this section shall be made, by or on behalf of the Attorney General.

(3) The standard of proof in proceedings on an application under this section shall be that applicable to civil proceedings and an order may be made under this section whether or not proceedings are brought against any person for an offence with which the cash in question may be connected.

(4) Where it appears to the court on evidence tendered by or on behalf of the Attorney General consisting of or including evidence admissible by virtue of subsection (5) that the cash constitutes directly or indirectly the benefit from criminal conduct or was intended by any person to be used in connection with criminal conduct, the Court shall make an order of forfeiture under this section in respect of the whole or, if appropriate, a specified part of the cash unless it is shown to the satisfaction of the Court on evidence tendered by the respondent or any other person that the cash does not constitute directly or indirectly the benefit from criminal conduct or was not intended by any person to be used in connection with criminal conduct.

(5) Where the Director or Deputy Director of the FIU states in proceedings under this section or section 34 on affidavit or, if the Court so permits or directs, in oral evidence, that he believes, that-

- (a) the cash constitutes, directly or indirectly, benefit from criminal conduct; or
- (b) is intended by any person for use in connection

with criminal conduct,

then, if the Court is satisfied that there are reasonable grounds for the belief aforesaid, the statement shall be evidence of the matters referred to in paragraph (a) or in paragraph (b) or in both paragraphs (a) and (b), as may be appropriate and the Court shall make an order detaining the cash under section 34 or forfeiting the cash under section 35, unless it is shown to the satisfaction of the Court by or behalf of the person from whom it was seized, or a person by or on whose behalf it was being imported or exported that the cash did not constitute, directly or indirectly, benefit from criminal conduct; or was not intended by any person for use in connection with any offence.

(6) On an application made by the person from whom it was seized or a person by or on whose behalf it was being imported or exported, to a Judge of the Court at any time, the judge may order the release of so much of the cash which is detained under section 34(2), as he considers essential to enable the applicant to meet his reasonable living expenses and reasonable legal expenses in connection with the seizure.

(7) When hearing an application under this section or section 34 the Court may make such order as it considers appropriate.

36. Cash seized under this Part of this Act and detained for more than 14 days shall, unless required as evidence of an offence, be held in an interest-bearing account (where possible) and the interest accruing on any such cash shall be added to that cash on its forfeiture or release.

Cash seized and detained for more than 14 days

37. The Minister may from time to time by regulation prescribe the sum to be the prescribed sum for the purposes of sections 34 and 35 of this Act."

Power of Minister to prescribe

8. The Principal Act is hereby amended by repealing Part 5 and substituting therefor the following Part—

Amendment of Part 5

PART 5 – PECUNIARY PENALTY ORDER

Pecuniary
penalty order

38.(1) Where a person has been sentenced or otherwise dealt with by a court in respect of criminal conduct of which he has been convicted, the Attorney General may make, or cause to be made, an application to the Court to determine whether the person convicted has benefited from criminal conduct.

(2) An application under subsection (1) of this section shall be made without delay as soon as may be, after the person is sentenced or otherwise dealt with or if the Court so decides may be made at a later stage.

(3) An application under subsection (1) of this section shall not be made unless it appears to the Attorney General that the person in question has benefited from criminal conduct.

(4) If the Court determines that the person in question has benefited from criminal conduct, the Court shall determine in accordance with section 40 of this Act, the amount to be recovered in his case by virtue of this section and shall make a pecuniary penalty order under this section requiring the person concerned to pay that amount.

(5)(a) The standard of proof required to determine any question arising under this Act as to—

- (i) whether a person has benefited from criminal conduct, and/or
- (ii) the amount to be recovered in his case by virtue of this section,

shall be that applicable in civil proceedings, and

(b) The matters referred to in subparagraphs (i) and (ii) matters shall be for the determination of the trial judge before whom the person was sentenced (or in his absence before another judge exercising appropriate criminal jurisdiction), save as is otherwise provided herein.

Procedure
for
calculating
benefit from
criminal
conduct

39.(1) For the purposes of this Act—

- (a) any payments or other rewards received by a person at any time including the amount of the benefit or pecuniary advantage which the Court is satisfied that a person has obtained, in each case whether before or after the commencement of this Act, in connection with criminal conduct carried on by him or another are his benefit from criminal conduct; and
- (b) the value of his benefit from criminal conduct is the aggregate of the value of the payments, other rewards and the amount of the benefit or pecuniary advantage as determined by the Court.

(2) The Court shall, for the purpose of determining whether the defendant has benefited from criminal conduct and, if he has, of assessing the value of his benefit from criminal conduct, in addition to such evidence that the Attorney General might adduce, make the assumptions set out in subsection (4) of this section except that the court shall not make any of the said assumptions if—

- (a) the assumption is shown to be incorrect in the case of the defendant, or
- (b) it is satisfied that there would be a serious risk of injustice in his case if the assumption were to be made.

(3) Where the Court does not apply one or more of the assumptions set out in subsection (4) of this section, it shall state its reasons.

(4) The assumptions referred to in subsection (2) of this section are—

- (a) that any property appearing to the Court—
 - (i) to have been held by the defendant; or
 - (ii) to have been transferred to him,

at any time since the beginning of the period of 6 years ending on the date of the commencement of the proceedings in which the order is being sought in his case, was received by him, at the earliest time at which he appears to the Court to have held it, or it was transferred to him, as a payment or reward in connection

with criminal conduct carried on by him;

- (b) that any expenditure of his, since the beginning of that period was met out of payments received by him in connection with criminal conduct carried on by him; and
- (c) that, for the purpose of valuing any property received or assumed to have been received by him at any time as such a reward, he received the property free of any other interest in it.

(5) For the purpose of assessing the value of the defendant's benefit from criminal conduct in a case where a pecuniary penalty order has previously been made against him, the Court shall not take into account any of his benefit of criminal conduct that are shown to the Court to have been taken into account in determining the amount to be recovered under that order.

Pecuniary
penalty order
to be
confined to
realizable
property

40.(1) Subject to subsection (2) of this section, where a pecuniary penalty order is being made under section 38 of this Act, the amount to be recovered under the order shall be equal to the amount assessed by the Court to be the value of the defendant's benefit from criminal conduct.

(2) If the Court is satisfied that the amount that might be realised at the time the pecuniary penalty order is made, is less than the amount the Court assesses to be the value of his benefit from criminal conduct, the amount to be recovered in the defendant's case under the pecuniary penalty order shall be the amount appearing to the Court to be the amount that might be so realised.

Making of
pecuniary
penalty order
where new
evidence
becomes
available

41.(1) This section applies where an application has previously been made to a court under section 38 of this Act and the Court has determined that

the defendant has not benefited from criminal conduct.

(2) If the Attorney General has evidence—

- (a) which was not considered by the Court in making the determination referred to in subsection (1) of this section; and
- (b) which the Attorney General believes would have led the Court to determine that the defendant had benefited from criminal conduct if it had been considered by the Court, he may make, or cause to be made, an application to the Court for it to consider that evidence.

(3) If, having considered the evidence, the Court is satisfied that it would have determined that the defendant had benefited from criminal conduct, if that evidence had been available to it, the Court shall—

- (a) (i) make a fresh determination of whether the defendant benefited from criminal conduct; and
 - (ii) make a determination under section 40 of this Act of the amount to be recovered by virtue of that section; and
- (b) make a pecuniary penalty order under this section requiring the person concerned to pay that amount.

(4) In considering an application under this section the Court may take into account any payment or other reward received by the defendant on or after the determination referred to in subsection (1) of this section.

(5) In considering any evidence under this section which relates to any payments or reward to which subsection (4) of this section applies, the Court shall make the assumptions which are required by section 39 of this Act.

(6) No application shall be entertained by the Court under this section if it is made after the end of the period of 2 years beginning with the date on which the defendant was convicted.

42.(1) This section applies where a court has made a determination under section 40 of this Act of the amount to be recovered in a particular case by virtue of that section referred to in this section as "the current determination".

Further
determination
possibly
leading to
increased
pecuniary
penalty order

(2) Where the Attorney General is of the opinion that the real value of the defendant's benefit from criminal conduct was greater than its assessed value, the Attorney General may make, or cause to be made, an application to the Court in order that the evidence on which he has formed his opinion may be considered by the Court.

(3) In subsection (2) of this section—
"assessed value" means the value of the defendant's benefit from criminal conduct as assessed by the Court under section 40 of this Act; and
"real value" means the value of the defendant's benefit from criminal conduct which took place—

(a) in the period by reference to which the current determination was made; or

(b) in any earlier period.

(4) If, having considered the evidence, the Court is satisfied that the real value of the defendant's benefit from criminal conduct is greater than its assessed value (whether because the real value was higher at the time of the current determination than was thought or because the value of the benefit in question has subsequently increased), the Court shall make a fresh determination under section 40 of this Act of the amount to be recovered by virtue of that section.

(5) Any determination under section 40 of this Act by virtue of this section shall be by reference to the amount that might be realised at the time when the determination is made.

(6) For any determination under section 40 of this Act by virtue of this section, section 39(5) of this Act shall apply in relation to any of the defendant's benefit from criminal conduct taken into account in respect of the current determination.

(7) In relation to any such determination the relevant provisions of this Act shall be read as if "determination" was

substituted for "pecuniary penalty order" where the context so requires.

(8) The Court may take into account any payment or other reward received by the defendant on or after the date of the current determination, but only if the Attorney General shows that it was received by the defendant in connection with criminal conduct carried on by the defendant or another on or before that date.

(9) In considering any evidence under this section which relates to any payment or reward to which subsection (8) of this section applies, the Court shall make the assumptions which would otherwise be required by section 39(4) of this Act.

(10) If, as a result of making the fresh determination required by subsection (4) of this section, the amount to be recovered exceeds the amount set by the current determination, the Court may substitute for the amount to be recovered under the pecuniary penalty order which was made by reference to the current determination such greater amount as it thinks just, in all circumstances of the case.

(11) No application shall be entertained by the Court under this section if it is made after the end of the period of 2 years beginning with the date on which the defendant was convicted.

43.(1) Where—

- (a) an application has been made to the Court under section 38, 41, 42 or 45 of this Act and there is tendered to the Court by or on behalf of the Attorney General a statement as to any matters relevant to the determination of whether the defendant (in the case of a conviction for a criminal conduct offence) has benefited from criminal conduct, or
- (b) the defendant accepts to any extent any allegation in the statement, the Court may, for the purposes of that determination or assessment, treat his acceptance as conclusive evidence of the matters to which it relates.

Procedure
for
statements to
assist
calculation
of amount of
defendant's
benefit from
criminal
conduct

(2) Nothing in this section shall prevent the Attorney General from making more than one statement.

(3) Where—

- (a) an application has been made to the Court under sections 38, 41, 42 or 45 and there is tendered to the Court by or on behalf of the Attorney General a statement as to any matters relevant to the determination of whether the defendant (in the case of a conviction for a criminal conduct offence) has benefited from criminal conduct; or
- (b) the defendant accepts to any extent any allegation in the statement,

the court may, for the purposes of that determination or assessment, treat his acceptance as conclusive evidence of the matters to which it relates

(4) Nothing in this section shall prevent a defendant from making more than one statement.

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

- (a) in writing; or
- (b) as the Court may direct.

(6) No acceptance by the defendant under this section that any payment or other reward was received by him in connection with criminal conduct carried on by him or another or that he has benefited from criminal conduct offence shall be admissible in evidence in any proceedings against him.

(7) Nothing herein shall oblige the defendant to make any response to a statement tendered to the Court by or on behalf the Attorney General or to tender a statement to the court under this section and no adverse inference shall be capable of being drawn against the defendant in either event.

44.(1) When considering whether to make a pecuniary penalty order or to determine the amount to be paid by a pecuniary penalty order under this Act, the Court may take into account any information placed before it showing that a victim of an offence to

which the proceedings relate, has instituted, or intends to institute, civil proceedings against the defendant in respect of loss, injury or damage sustained in connection with the offence, and may reduce the amount of the pecuniary penalty order to take account of such civil proceedings or in its discretion may direct that such portion of the amount paid in satisfaction or part satisfaction of a pecuniary penalty order as equates to the loss of the victim, be paid to that victim.

(2) Where the Court makes a pecuniary penalty order, it may direct that payment of the amount to be recovered in respect of the order shall be made forthwith or at some other time specified in the order.

(3) Where the Court makes a pecuniary penalty order against a defendant in any proceedings, it shall, in respect of any offence of which he is convicted in those proceedings, take account of—

- (a) any fine imposed on him;
- (b) any order involving any payment by him; or
- (c) any forfeiture order made under this Act.

(4) If the Court is satisfied as to any matter relevant for determining the amount that might be realised at the time the pecuniary penalty order is made (whether by an acceptance under section 43 of this Act or otherwise), the Court may issue a certificate giving the opinion of the Court as to the matters concerned and shall do so if satisfied that the amount that might be realised at the time the pecuniary penalty order is made is less than the amount the Court assesses to be the value of the defendant's benefit from criminal conduct.

45.(1) Subsection (2) of this section applies where a person has been convicted of criminal conduct.

(2) If the Attorney General asks it to proceed under this section, the Court may exercise the powers of the Court under sections 38, 41 or 42 of this Act, in the case of a conviction for criminal conduct, to make a pecuniary penalty order against the defendant if satisfied that the defendant has died or absconded.

(3) Subsection (4) of this section applies where proceedings for criminal conduct in respect of which a pecuniary

Making of
pecuniary
penalty
order where
defendant
has died or
absconded

penalty order may be made under this Act have been instituted against a person but have not been concluded.

(4) If the Attorney General asks it to proceed under this section, the Court may exercise the powers of the Court under section 38, section 41 and section 42 of this Act, where the relevant proceedings have been instituted in respect of criminal conduct, to make a pecuniary penalty order -

- (a) against the defendant if satisfied that the defendant has absconded; or
- (b) against the defendant's estate if satisfied that the defendant has died.

(5) The power conferred by subsection (2) and (4) of this section as regards any person alleged to have absconded may not be exercised at any time before the end of the period of 6 months beginning with the date which is, in the opinion of the Court, the date on which the defendant absconded, save where it appears to the Court that it would be reasonable in the circumstances.

(6) In any proceedings on an application under this section—

- (a) the Court shall not make a pecuniary penalty order against a person who has absconded unless it is satisfied that the Attorney General has taken reasonable steps to contact him; and
- (b) any person appearing to the Court to be likely to be affected by the making of a pecuniary penalty order by the Court shall be entitled to appear before the Court and make representations.

peals and
compensation

45A.(1) An appeal against the making of a pecuniary penalty order shall lie to the Court of Appeal.

(2) If it upholds the appeal, in whole or in part, the Court of Appeal may, on an application by a person who held property which was realisable property, order compensation to be paid to the

applicant if—

- (a) it is satisfied that the applicant has suffered loss as a result of the making of the pecuniary penalty order; and
- (b) having regard to all the circumstances of the case, the Court considers it to be appropriate.

(3) The amount of compensation to be paid under this section shall be such as the court considers just in all the circumstances of the case but so that no compensation shall be paid to a member of a terrorist organization, or where it would be manifestly unjust to do so.

45B.(1) If, on an application by the defendant or by the Attorney General in respect of a pecuniary penalty order, the Court is satisfied that the value of the realisable property is inadequate for the payment of any amount remaining to be recovered under the order, the Court shall substitute for the amount to be recovered under the order such lesser amount as the Court thinks just in all the circumstances of the case.

Reduction in amount of pecuniary penalty order when realisable property inadequate

(2) For the purposes of subsection (1) of this section the Court may disregard any inadequacy in the value of the realisable property which appears to the Court to be attributable wholly or partly to anything done by the defendant for the purpose of preventing any property, including any property held by a person to whom the defendant had directly or indirectly made a gift caught by this Act from any risk of realisation under this Act.

(3) For any determination under this Part of this Act by virtue of this section, section 39 shall apply in relation to any of the defendant's benefit from criminal conduct taken into account in determining the value or the realisable value as the case may be.

45C.(1) This section shall have effect where the amount which a person is ordered to pay by a pecuniary penalty order is less than the amount assessed to be the realisable value of his benefit from criminal conduct.

Increase in amount of pecuniary penalty order when value of realisable property increases

(2) If, on an application made by the Attorney General, the Court is satisfied that the amount ("the first amount") that might be realised in the case of the person in question is greater than the amount taken into account in making the pecuniary penalty order (whether it was greater than was thought when the order was made or has subsequently increased), the Court may substitute for the first amount such amount (not exceeding the amount assessed as the value referred to in subsection (1) of this section) as appears to the Court to be appropriate having regard to the amount now shown to be realisable.

enforcement
pecuniary
penalty order

45D.(1) Where a court makes a pecuniary penalty order, then (without prejudice to the provisions of section 45G of this Act enabling property of the defendant in the hands of a receiver appointed under this Act to be applied in satisfaction of the pecuniary penalty order) the order may be enforced by the Attorney General at any time after it is made (or, if the order provides for payment at a later time, then at any time after the later time) as if it were a judgment of the Court for the payment to the Republic of the sum specified in the order (or of any lesser sum remaining due under the order), save that nothing in this subsection shall enable a person to be imprisoned.

(2) Subject to subsection (3) of this section, if, at any time after payment of a sum due under a pecuniary penalty order has become enforceable in the manner provided for by subsection (1) of this section, it is reported to the Court, by the Attorney General that any such sum or any part thereof remains unpaid, the Court shall, without prejudice to the validity of anything previously done under the order or to the power to enforce the order in the future in accordance with subsection (1) of this section, order that the defendant be imprisoned for the period set out in the second column of the table to this section opposite to the amount set out therein of the pecuniary penalty order remaining unpaid.

(3) An order under subsection (2) of this section shall not be made unless the defendant has been given a reasonable opportunity to make any representations to the Court that the order should not be made and the Court has taken into account any representations so made and any representations made by the Attorney General in reply.

(4) Any term of imprisonment imposed under subsection (2) of this section shall commence on the expiration of any term of imprisonment for which the defendant is liable under the sentence for the offence in question or otherwise, but shall be reduced in proportion to any sum or sums paid or recovered from time to time under the pecuniary penalty order.

(5) The service by the defendant of any term of imprisonment as provided herein shall not expunge any liability he may have under a pecuniary penalty order.

(6) Any term of imprisonment being served or to be served by the defendant shall not be delayed or in any way affected by an order made under subsection (1) or by the appointment of a receiver save and so far as the term of imprisonment not already served shall be appropriately reduced in accordance with the said table on the receipt by the Republic of any monies realised by either or both of those methods of enforcement.

TABLE

Amount outstanding under pecuniary penalty order	Period of imprisonment
Not exceeding R5,000	45 days
Exceeding R5,000 but not exceeding R10,000	3 months
Exceeding R10,000 but not exceeding R25,000	4 months
Exceeding R25,000 but not exceeding R50,000	6 months
Exceeding R50,000 but not exceeding R100,000	9 months
Exceeding R100,000 but not exceeding R200,000	12 months
Exceeding R200,000 but not exceeding R500,000	18 months
Exceeding R500,000 but not exceeding R1,000,000	2 years
Exceeding R1,000,000 but not exceeding R2,000,000	3 years
Exceeding R 2,000,000 but not exceeding R3,000,000	4 years

Exceeding R 3,000,000 but not exceeding R4,000,000	6 years
Exceeding R 4,000,000 but not exceeding R5,000,000	8 years
Exceeding R5,000,000	10 years

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45E.(1) Where –

- (a) a pecuniary penalty order has been made under this Act;
- (b) the pecuniary penalty order is not subject to appeal; and
- (c) the pecuniary penalty order has not been satisfied,

the Court may, on an application by the Attorney General, exercise the powers conferred by subsections (2) to (6) of this section.

(2) The Court may appoint a person to be a receiver in respect of realisable property.

(3) The Court may empower a receiver appointed under subsection (2) of this section to take possession of any realisable property subject to such conditions or exceptions as may be specified by the Court.

(4) The Court may order any person having possession or control of realisable property to give possession of it to the receiver.

(5) The Court may empower the receiver to realise any realisable property in such manner as the Court may direct.

(6) The Court may order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be,

by the recipient of any gift caught by this Act as the Court may direct.

(7) The Court shall not, in respect of any property, exercise the powers conferred by subsections (3), (4), (5) or (6) of this section unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the Court.

(8) On any sale of any property by a receiver appointed hereunder, the purchaser shall receive a good and valid title and as regards land the Land Registrar shall register the purchaser as full owner in the land register without further requisition or enquiry.

(9) On any sale of any property by a receiver appointed hereunder, any right, title or interest of any person therein shall stand extinguished and any such right, title or interest shall be transferred and be limited to the net proceeds of such sale.

45F.(1) Subject to subsection (2) of this section, if any sum required to be paid by a person under a pecuniary penalty order is not paid when it is required to be paid (whether forthwith on the making of an order or at the time specified by the court), that person shall be liable to pay interest on that sum for the period for which it remains unpaid and the amount of the interest shall for the purposes of enforcement be treated as part of the amount to be recovered from him under the pecuniary penalty order.

Interest on
unpaid sums

(2) The amount of interest payable under subsection (1) of this section shall be disregarded for the purposes of calculating the term of imprisonment to be imposed by virtue of section 45D of this Act.

(3) The rate of interest payable under subsection (1) of this section shall be that for the time being applying to a court civil judgment debt and if no such rate is provided at any material time, 8% per annum or part thereof.

45G.(1) Money paid or recovered in respect of a pecuniary penalty order (including any variation of such an order) may, to the extent necessary, be applied to meet expenses incurred in exercising any powers under this Act and the remuneration of any person employed for that purpose.

Disposal of
proceeds of
pecuniary
penalty order

(2) Money paid or recovered in respect of a pecuniary penalty order shall, following the payment of any expenses or remuneration in accordance with subsection (1) of this section, be paid to the Republic.”

9. The Principal Act is hereby amended—

amendment of
section 10

(a) by repealing subsections (1) and (2) of section 10 and substituting therefor the following subsections —

“10.(1) Where a reporting entity has —

(a) reasonable grounds to suspect that any transaction or attempted transaction may be related to the commission of criminal conduct including an offence of money laundering or of financing of terrorism;

(b) information that may be

(i) relevant to an act preparatory to an offence referred to in paragraph (a);

(ii) relevant to an investigation or prosecution of a person for an offence referred to in paragraph (a); or

(iii) otherwise of assistance in the enforcement of

this Act,

the reporting entity shall, as soon as practicable, after forming that suspicion or receiving the information, report the transaction or attempted transaction or the relevant information to the FIU.

- (c) The report ("a suspicious transaction report") shall be dispatched to the FIU within 24 hours after forming the suspicion or receiving the information as the case may be.
 - (d) The FIU shall dispatch an acknowledgement of receiving the report within 24 hours of receipt.
 - (e) Without prejudice to the generality of the foregoing, if the circumstances mentioned in paragraphs (a) and (b) of this subsection relate to a proposed transaction or a transaction, in respect of funds, that transaction or proposed transaction or any other transaction in respect of the funds shall not proceed without the consent in writing of the FIU, and if no such consent is received within a period of 10 days from the date of the receipt by the reporting entity of the acknowledgement from the FIU mentioned in paragraph (d), the proposed transaction or transaction may proceed and the provisions of section 3(10) shall not apply unless within the said 10 day period the FIU issues a direction that the transaction or the proposed transaction or other transaction should not proceed.
- (2) (a) A report under subsection (1) shall –
- (i) be in writing and may be given by way of mail, telephone to be

followed up in writing, fax or electronic mail or such other manner as may be prescribed;

- (ii) be in such form and contain such details as may be prescribed;
- (iii) contain a statement of the grounds on which the reporting entity holds the suspicion; and
- (iv) be signed or otherwise authenticated by the reporting entity.

(b) Where –

- (i) a report is made by a person to the FIU under section 10 of this Act in relation to property, or
- (ii) a person is informed by the FIU in writing or verbally and confirmed in writing within 24 hours, that property in the possession or control of that person is properly suspected to be the benefit of criminal conduct,

that person shall not commit an offence under this section or section 23(9) of this Act if and for as long as the person complies with the directions of the FIU in relation to the property.”

(b) by repealing section 10 (4);

(c) in section 11 –

- (i) in paragraph (a), by repealing the words “the offence of money-laundering or of financing of terrorism” and substituting therefor the words “criminal conduct”;

- (ii) in paragraph (c), by repealing the words “the offence of money-laundering or of financing of terrorism” and substituting therefor the words “criminal conduct”;
- (d) by repealing section 12 (1) and substituting therefor the following subsections –

“12.(1) A person (and without prejudice to the generality of the foregoing a reporting entity, its officers, employees or agents) who, knowing or suspecting that –

Amendment
of section 12

- (a) a suspicious transaction report or a direction of the FIU under section 10(1)(e) or 10(2)(b)(ii) has been or may be made or that further information has been given under section 10;
- (b) a reporting entity has formed a suspicion in relation to a transaction for the purpose of section 10;
- (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 suspicious transaction report has been or may be made;
- (d) a search warrant is to be issued or has been issued;
- (e) an application is to be made, or has been made, under this Act for a production order; or
- (f) an investigation has commenced concerning the circumstances that give rise to the suspicious transaction report, the warrant or the production order,

makes any disclosure which could or may or be likely to prejudice the implementation of the warrant, the making available of the material in accordance with the production order, or the investigation, commits an offence.

(1A) In proceedings against a person for an offence under this section it shall be a defence to prove that the person had lawful authority or reasonable excuse for making the disclosure."

(e) by repealing section 49 and substituting therefor the following section –

"49. A reporting entity that fails to report to the FIU information in accordance with section 10(1), (2) or (3) is guilty of an offence";

Amendment
of section 49

(f) by repealing sections 51, 54, 55 and 57;

9. The Principal Act is hereby amended by inserting after section 64, the following sections-

Repeal

"65. Data, books, papers, forms and things prepared or used under the Principal Act may continue to be used as before the repeal;

Savings

66. Section 26(1)(d), the reference to 26(1)(d) in the Second Schedule and sections 30 to 37 inclusive, of the Misuse of Drugs Act 1990 are hereby repealed."

Repeal of
certain
provisions of
Cap 133

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 25th July, 2008



Marie-Nella Azemia
Clerk to the National Assembly