

THE PROCEEDS OF CRIME ACT

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THE PROCEEDS OF CRIME ACT

[30th May, 2007.]

Acts
4 of 2007,
12 of 2009
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S. 14.,
9 of 2010
S. 36.,
26 of 2013,
L.N.
105C/2013.

Preliminary

1. This Act may be cited as the Proceeds of Crime Act.

Short title.

2.—(1) In this Act—

“Agency” means the Assets Recovery Agency referred to in section 3;

Interpretation.

“authorized financial investigator” means—

- (a) a member of the Constabulary Force so designated by the Commissioner of Police;
- (b) an officer of the Agency; or
- (c) any other person so designated by the Minister;

“benefit” includes any property, service or advantage;

“Court” means—

26/2013
S. 3.

- (a) the Supreme Court;
- (b) in any case where the Gun Court has jurisdiction, the High Court Division or the Circuit Court Division of the Gun Court, as the case may require; or
- (c) such other superior court of record as the Minister may specify, by order subject to affirmative resolution;

“credit union business” means the business of the taking of deposits and withdrawable shares by a credit union from its members and the provision of credit facilities by a credit union to its members, and any other business that may be so designated in writing by the Minister responsible for finance;

9/2010
S. 36.

“criminal conduct” means conduct occurring on or after the 30th May, 2007, being conduct which—

- (a) constitutes an offence in Jamaica;
- (b) occurs outside of Jamaica and would

constitute such an offence if the conduct occurred in Jamaica;

“Director” means the Director of the Assets Recovery Agency as specified in section 3(2);

“enforcing authority” means—

- (a) the Agency, where it makes an application under section 5(1) or takes proceedings under section 57;
- (b) the Director of Public Prosecutions, where he makes such an application;

“financial institution” means—

- (a) a bank licensed under the Banking Act;
- (b) a financial institution licensed under the Financial Institutions Act;
- (c) a building society registered under the Building Societies Act;
- (d) a society registered under the Co-operative Societies Act and which carries on credit union business;
- (e) a person who—
 - (i) engages in insurance business within the meaning of the Insurance Act;
 - (ii) performs services as an insurance intermediary within the meaning of the Insurance Act;

but does not include an insurance consultant or an adjuster;

- (f) a person licensed under the Bank of Jamaica Act to operate an exchange bureau;
- (g) a person licensed under the Securities Act as a dealer or investment adviser;
- (h) approved money transfer and remittance agents and agencies as defined by section 2 of the Bank of Jamaica Act;
- (i) any other person declared by the Minister responsible for national security, by order subject to affirmative resolution, to be a financial institution for the purposes of this Act;

“forfeiture order” means an order under section 5(2)(c) or (3)(a);

“free property” means property in respect of which no forfeiture order is in force under any other law;

“general criminal conduct” in relation to a defendant means all the defendant’s criminal conduct occurring after 30th May, 2007;

“interim receiving order” means an interim receiving order made pursuant to regulations under this Act;

“offence concerned” means the offence referred to in section 5(1) or 52(1)(a), as the case may require;

“overseas authority” means an authority in a country or territory outside Jamaica, which has responsibility for—

(a) making a request to an authority in another country or territory (including Jamaica) to prohibit dealing with relevant property;

or

(b) carrying out an investigation into whether—

(i) property has been obtained as a result of in connection with criminal conduct; or

(ii) a money laundering offence has been committed;

“particular criminal conduct” in relation to a defendant means all of the defendant’s conduct, occurring on or after the appointed day, which constitutes—

(a) the offence concerned;

(b) offences of which the defendant was convicted in the same proceedings as those in which he was convicted of the offence concerned; or

(c) offences which the Court will be taking into consideration in sentencing the defendant for the offence concerned;

“pecuniary penalty order” means an order under section 5(3)(b);

“property” means all property wherever situate, including—

- (a) money;
- (b) all forms of real or personal property; and
- (c) things in action and other intangible or incorporeal property;

“realizable property” means—

- (a) any free property held by the defendant; or
- (b) any free property held by the recipient of a tainted gift;

“recipient of a tainted gift” means a person to whom the defendant has made the gift;

“recoverable amount” means the amount payable under a pecuniary penalty order;

“restraint order” means an order made under section 33.

(2) A gift, whether made before or after the 30th May, 2007, is tainted if—

(a) where a court has decided that the defendant has a criminal lifestyle—

(i) it was made by the defendant at any time after the first day of the period of six years ending with—

(A) the day when proceedings for the offence concerned were started against the defendant; or

(B) if there are two or more offences and proceedings for those offences were started on different days, the earliest of those days; or

(ii) it was made by the defendant at any time and was of property which—

(A) was obtained by the defendant as a result of or in connection with the defendant's general criminal conduct; or

(B) in whole or in part, directly or indirectly, represented in the defendant's hands, property obtained by the defendant as a result of or in connection with the defendant's general criminal conduct; or

(b) where a court has decided that the defendant does not have a criminal lifestyle, the gift was made by the defendant at any time after

(i) the date on which the offence concerned was committed; or

(ii) the date of the earliest offence concerned, where the defendant's particular criminal conduct consists of two or more offences committed on different dates.

(3) For the purposes of subsection (2)

(a) an offence which is a continuing offence is committed on the first occasion when it is found to be committed, and

(b) the defendant's particular criminal conduct includes any conduct that constitutes offences that the Court has taken into consideration in deciding the defendant's sentence for the offence concerned.

(4) Where the defendant transfers property to another person for a consideration the value of which is significantly less than the value of the property at the time of the transfer—

(a) the defendant is to be treated as making a gift; and

(b) the property given is to be treated as such share in the property transferred as is represented by the fraction—

(i) whose numerator is the difference between the value of the consideration given and the value of the property at the time of the transfer; and

(ii) whose denominator is the value of the property at the time of the transfer.

(5) Subsections (6) and (7) apply for the purpose of deciding the value of a tainted gift and the material time is the time the Court makes its decision.

(6) The value at the material time of a tainted gift is the greater of the following—

(a) the value, at the time of the gift, of the property given, adjusted to take account of later changes in the value of money;

(b) the value, at the material time, of the property found under subsection (7).

(7) The property found under this subsection is—

(a) if the recipient holds the property given, that property;

(b) if the recipient holds no part of the property given, any property in the recipient's hands which directly or indirectly represents the property given,

(c) if the recipient holds part of the property given, any property in the recipient's hands which directly or indirectly represents the other part of the property given.

(8) The following rules apply in relation to property—

(a) property is held by a person if that person holds an interest in the property;

- (b) property is obtained by a person if that person obtains an interest in the property;
- (c) property is transferred by a person if that person transfers or grants an interest in the property to another person;
- (d) references to property held by a person include references to property vested in that person's trustee in bankruptcy or liquidator;
- (e) references to a beneficial interest in property held by a person include references to an interest that would be held by the person beneficially if the property were not vested as described in paragraph (d);
- (f) references to an interest in relation to land are references to any legal estate or equitable interest or power;
- (g) references to an interest in relation to property other than land include references to a right (including a right to possession).

(9) References to sentencing a defendant for an offence include references to dealing with the defendant otherwise in respect of the offence, pursuant to the provisions of the Criminal Justice (Reform) Act.

(10) Nothing in section 5 (making of order), 6 (criminal lifestyle), 7 (conduct and benefit), 8 (assumptions for determining benefit from general criminal conduct), 9 (effect of forfeiture order), 10 (voidable transfers), 20 (reconsideration of case where no order was made), 21 (reconsideration of benefit where no order was made), 22 (reconsideration of benefit after order is made) or 30 (court's powers on appeal) refers to conduct occurring, offences committed or property transferred or obtained, before the 30th May, 2007.

(11) For the purpose of the exercise of any function under this Act, where any sum of money is expressed in a currency other than Jamaican dollars, that sum shall be taken to

be the Jamaican dollar equivalent calculated in accordance with the selling rate of exchange, as determined by the Bank of Jamaica's weighted average, as at the end of the day of realization.

PART I. *The Assets Recovery Agency*

Assets
Recovery
Agency

3.—(1) In this Act, the Assets Recovery Agency means—

- (a) the Financial Investigation Division of the Ministry of Finance and Planning; or
- (b) any other entity so designated by the Minister by order.

(2) The Chief Technical Director of the Financial Investigation Division or, where another entity is designated as the Agency under subsection (1), the person in charge of the operations of that entity, shall be the Director of the Agency.

First
Schedule

(3) The provisions of the First Schedule shall have effect as to the conduct of the operations of the Agency with respect to the exercise of its functions under this Act.

(4) The Agency shall have such functions as are conferred upon it by this or any other enactment and may do anything (including the carrying out of investigations) that is appropriate for facilitating, or is incidental to, the exercise of its functions.

(5) The Agency shall give the Minister any advice or assistance that the Minister reasonably requires and that—

- (a) relates to matters connected with the operation of this Act; and
- (b) is designed to help the Minister to exercise his functions so as to reduce crime.

(6) The provisions of paragraphs 12 to 15 of the First Schedule have effect with respect to the disclosure of information to or by the Agency and the use of such information.

First
Schedule

4.—(1) Every entity that has functions relating to the investigation or prosecution of offences shall cooperate with the Agency in the exercise of its functions.

Co-operation
of entities

(2) The Agency shall co-operate with the entities referred to in subsection (1) in the exercise of any functions conferred on such entities under this Act.

PART II. *Forfeiture Orders and Pecuniary Penalty Orders*

5.—(1) Subject to subsection (9), the Court shall, upon the application of the Agency or the Director of Public Prosecutions, act in accordance with subsection (2) if the Court is satisfied that a defendant is—

Making of
order

- (a) convicted of any offence in proceedings before the Court, or
- (b) committed to the Court pursuant to section 52 (committal from Resident Magistrate's Court with a view to making forfeiture order or pecuniary penalty order).

(2) The Court shall—

- (a) determine whether or not the defendant has a criminal lifestyle and has benefitted from his general criminal conduct;
- (b) if the Court determines that the defendant does not have a criminal lifestyle, determine whether or not the defendant has benefitted from his particular criminal conduct; and

- (c) identify any property used in or in connection with the offence concerned and make an order that that property be forfeited to the Crown.

(3) Where pursuant to subsection (2) the Court determines that the defendant has benefitted from criminal conduct, the Court shall identify the property that represents the defendant's benefit from criminal conduct, and—

- (a) make an order that the property be forfeited to the Crown; or
- (b) order the defendant to pay to the Crown an amount (hereinafter referred to as the recoverable amount) equal to the value of his benefits, assessed in accordance with the provisions of this section and sections 6, 7, 8 and 11.

(4) In considering whether a forfeiture order should be made under this section, the Court shall have regard to—

- (a) the rights and interests, if any, of third parties in the property;
- (b) the gravity of the offence concerned;
- (c) any hardship that may reasonably be expected to be caused to any person by the operation of the order; and
- (d) the use that is ordinarily made of the property, or the intended use of the property.

(5) Where the Court is satisfied that a forfeiture order should be made under this section, but that the property or any part thereof or any interest therein cannot be made subject to such an order, and, in particular—

- (a) cannot, on the exercise of due diligence, be located;
- (b) has been transferred to a third party in circumstances which do not give rise to a reasonable inference that the title or interest was transferred for the purpose of

avoiding the forfeiture of the property;

- (c) is located outside Jamaica;
- (d) has been substantially diminished in value or rendered worthless; or
- (e) has been commingled with other property that cannot be divided without difficulty,

the Court may, instead of ordering forfeiture of the property or part thereof, or interest therein, order the defendant to pay to the Crown an amount equal to the value of the property, part or interest, as the case may be.

(6) Where the Court orders a person to pay an amount under subsection 3(b) or (5), that order shall be enforceable against any free property of that person.

(7) The Court shall decide any question arising under subsection (2), (3), (4) or (5) on a balance of probabilities.

(8) For the purposes of deciding whether a defendant has benefitted from criminal conduct and identifying such benefit, the Court shall take account of—

- (a) conduct occurring up to the time when the Court makes its decision; and
- (b) property obtained up to that time.

(9) The Court may, at any time before making a final determination under subsection (2), make an order for a valuation to be carried out in relation to any property concerned in the determination, and may give such ancillary directions as it considers necessary for that purpose.

(10) In any case where the Court is satisfied—

- (a) as to the matters referred to in subsection (1)(a) or (b);
- (b) that no application under subsection (1) has been made to the Court in respect of the case, and

(c) it is appropriate to act under this subsection, the Court may refer the case to the Director of Public Prosecutions, along with the notes of evidence and the Court's observations thereon, for the purpose of considering whether an application ought to be made under subsection (1).

(11) The enforcing authority shall—

- (a) give no less than fourteen days written notice of an application for a forfeiture order or pecuniary penalty order to the defendant and to any other person who the enforcing authority has reason to believe may have an interest in the property concerned in the application;
- (b) cause a copy of the notice to be published in a daily newspaper printed and circulated in Jamaica;

(12) Where an application is made for a forfeiture order against property, a person who claims an interest in the property may, before the order is made, apply to the Court for an order under subsection (13).

(13) If a person applies for an order pursuant to subsection (12), the Court shall make an order declaring the nature, extent and value (as at the time the order is made) of the person's interest if the Court is satisfied—

- (a) that the person was not in any way involved in the commission of the offence; and
- (b) where the person acquired the interest during or after the commission of the offence, that he acquired the interest
 - (i) for sufficient consideration, and
 - (ii) without knowing or having reasonable grounds to suspect that, at the time he acquired it, the property was tainted property.

(14) Subject to subsection (15), where a forfeiture order

has already been made against property, a person who claims an interest in the property may apply under this subsection for an order under subsection (13), before the end of the period of six months commencing on the day on which the forfeiture order is made or such longer period as the Court may, having regard to all the circumstances, allow.

(15) A person who—

- (a) had knowledge of the application for the forfeiture order before the order was made; or
- (b) appeared at the hearing of that application,

shall not, except with the leave of the Court, be permitted to make an application under subsection (14).

(16) A person who makes an application under subsection (12) or (14) shall not give less than fourteen days' written notice thereof to the enforcing authority, who shall be a party to any proceedings in respect of the application.

(17) An applicant or the enforcing authority may, in accordance with rules of court, appeal to the Court of Appeal from an order made under subsection (13).

(18) Where a person has obtained an order under subsection (13) and—

- (a) the period allowed by rules of court with respect to the making of appeals has expired, the Attorney-General shall act in accordance with subsection (19) on the application of that person; or
- (b) any appeal from that order made pursuant to subsection (17) has been determined in the person's favour, the Court of Appeal shall order that the Attorney-General act in accordance with subsection (19).

(19) The Attorney-General shall direct that—

- (a) the property or the part thereof to which the person's interest relates, be returned to the person; or

- (b) an amount equal to the value of the person's interest, as declared in the order be paid to the person.

(20) For the purposes of subsection (13) "tainted property", in relation to the offence concerned and any other offence constituting a course of criminal activity under section 6, means—

- (a) property used in, or in connection with, the commission of the offence; or
- (b) property derived, obtained or realized directly, by the person convicted, from the commission of the offence.

Criminal
lifestyle

6.—(1) A defendant shall be regarded as having a criminal lifestyle if the offence concerned—

Second
Schedule

- (a) is specified in the Second Schedule;
- (b) constitutes conduct forming part of a course of criminal activity, from which the defendant obtains a benefit; or
- (c) is committed over a period of at least one month and the defendant has benefited from the conduct which constitutes the offence.

(2) Conduct forms part of a course of criminal activity if the defendant has benefited from the conduct and—

- (a) in the proceedings in which he was convicted, he was also convicted of at least one other offence consisting of conduct from which he has benefitted; or
- (b) in the period of ten years ending with the day when those proceedings were started (or, if there is more than one such day, the earliest day) he was convicted on at least two separate occasions of an offence consisting of conduct from which he has benefitted.

(3) In this section, "benefit"—

- (a) for the purposes of subsection (1)(b) is—
 - (i) benefit from conduct which constitutes the offence;
 - (ii) benefit from any other conduct which forms part of the course of criminal activity

and constitutes an offence of which the defendant has been convicted;

- (iii) benefit from conduct which constitutes an offence that has been or will be taken into consideration by the Court in sentencing the defendant for an offence mentioned in subparagraph (i) or (ii);

(b) for the purposes of subsection (1)(c) is—

- (i) benefit from conduct which constitutes the offence;
- (ii) benefit from conduct which constitutes an offence that has been or will be taken into consideration by the Court in sentencing the defendant for the offence mentioned in subparagraph (i).

(4) The Minister may by order subject to affirmative resolution amend the Second Schedule.

7.—(1) A person benefits from conduct if he obtains a benefit as a result of or in connection with the conduct. Conduct and benefit.

(2) For the purpose of making a pecuniary penalty order, a person who obtains a non-pecuniary advantage as a result of or in connection with conduct shall be deemed to have obtained as a result of or in connection with the conduct, a sum of money equal to the value of the non-pecuniary advantage.

(3) References to property or a non-pecuniary advantage obtained in connection with conduct, include references to property or a non-pecuniary advantage obtained both in that and some other connection.

(4) If a person benefits from conduct, his benefit is—

- (a) for the purposes of making a forfeiture order, the property obtained as a result of or in connection with the conduct;
- (b) for the purposes of making a pecuniary penalty order, the value of the benefit obtained as a result of or in

connection with the conduct.

Assumptions
for deter-
mining
benefit from
general
criminal
conduct.

8.—(1) Subject to subsection (3), where the Court determines under section 5 that a defendant has a criminal lifestyle, the Court shall make the assumptions listed in subsection (2) for the purpose of—

- (a) determining whether the defendant has benefitted from his general criminal conduct; and
- (b) identifying his benefit from that conduct.

(2) The assumptions referred to in subsection (1) are that—

- (a) any property transferred to the defendant at any time after the relevant day was obtained by him—
 - (i) as a result of his general criminal conduct; and
 - (ii) at the earliest time from which the defendant appears to have held it;
- (b) any property held by the defendant at any time after the date of conviction was obtained by him—
 - (i) as a result of his general criminal conduct; and
 - (ii) at the earliest time from which the defendant appears to have held it;
- (c) any expenditure incurred by the defendant at any time after the relevant day was met from property obtained by him as a result of his general criminal conduct; and
- (d) for the purpose of valuing any property obtained, or assumed to have been obtained, by the defendant, he obtained the property free of any other interests in it.

(3) The Court shall not make an assumption under subsection (2) in relation to a particular property or expenditure if—

- (a) the assumption is shown to be incorrect; or
- (b) there would be a serious risk of injustice if the

assumption were made.

(4) Where the Court does not make one or more of the assumptions set out in subsection (2), the Court shall state its reasons

(5) For the purposes of this section—

(a) where no previous forfeiture order or pecuniary penalty order has been made against the defendant in relation to benefit from general criminal conduct, the “relevant day” is the first day of the period of ten years ending with—

(i) the day when proceedings for the offence concerned were started against the defendant; or

(ii) if there are two or more offences and proceedings for them were started on different days, the earliest of those days;

(b) where a previous forfeiture order or pecuniary penalty order has been made against the defendant in relation to benefit from general criminal conduct—

(i) the “relevant day” is the day when the defendant’s benefit was calculated for the purposes of the last such order; and

(ii) subsection (2)(b) does not apply to any property that was held by the defendant on or before the relevant day;

(c) the date of conviction is—

(i) the date on which the defendant was convicted of the offence concerned; or

(ii) if there are two or more offences and the convictions were on different dates, the date of the latest conviction.

9.—(1) Where a Court makes a forfeiture order the Court may give such directions as are necessary or convenient for

Effect of forfeiture order.

giving effect to the order.

(2) Subject to subsection (3), where the Court makes a forfeiture order against any property, the property vests absolutely in the Crown by virtue of the order.

(3) Where property against which a forfeiture order has been made is subject to the Registration of Titles Act—

- (a) the property vests in the Crown in equity but not at law until the applicable registration requirements have been complied with,
- (b) the Crown is entitled to be registered as owner of the property;
- (c) the Commissioner of Land Valuation has power on behalf of the Crown to do, or to authorize the doing of anything necessary or convenient to obtain the registration of the Crown as owner, including the execution of any instrument required to be executed by a person transferring an interest in that kind of property;

(4) Where the Court makes a forfeiture order against property—

- (a) the property shall not, except with the leave of the Court and in accordance with any directions of the Court, be disposed of or otherwise dealt with, by or on behalf of the Crown, before—
 - (i) the date on which the period allowed for making an application under section 5 (14) (application in respect of third party interests) expires without an application having been lodged;
 - (ii) the relevant appeal date; or
 - (iii) in the case of an absconding defendant, the relevant period within the meaning of section 28 (variation of order where defendant ceases to be an absconder),

whichever is the later;

- (b) if, after the relevant appeal date, or relevant period, as the case may require, the order has not been discharged, the property may be disposed of and the proceeds applied or otherwise dealt with in accordance with the directions of the Attorney-General.

(5) Without prejudice to the generality of subsection (4)(b), the directions that may be given pursuant thereto include a direction that property is to be disposed of in accordance with the provisions of any enactment specified in the direction.

(6) Where the Court orders that property, other than money, be forfeited to the Crown the Court shall specify in the order the amount representing the value of the property pursuant to the valuation carried out under section 5(9).

(7) In this section, “relevant appeal date” means—

- (a) the date on which the period allowed by rules of court for the lodging of an appeal against—
 - (i) a person’s conviction;
 - (ii) the making of a forfeiture order; or
 - (iii) an order under section 5 (13) (orders in respect of third party interests),

whichever is the later, expires without an appeal having been lodged; or

- (b) where an appeal is lodged against—
 - (i) a person’s conviction;
 - (ii) the making of a forfeiture order; or
 - (iii) an order under section 5 (13) (orders in respect of third party interests),

the date on which the appeal lapses in accordance with the rules of court or is finally determined, whichever is the later.

10.—(1) The Court may—

Voidable
transfers

- (a) before making a forfeiture order; and
- (b) in the case of property in respect of which a restraint order was made, where a copy of the order was served in accordance with section 33,

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

Value of
property for
the purposes
of a pecu-
niary penalty
order

11.—(1) The provisions of this section shall apply with respect to determining the value of property for the purposes of a pecuniary penalty order.

(2) Valuations under this section shall be determined pursuant to a valuation carried out under section 5(9).

(3) Subject to subsection (4), for the purpose of deciding the value at any time of property then held by a person—

- (a) the value of the property is the market value of the property at that time; or
- (b) if at that time another party holds an interest in the property, the value of the property in relation to the person is the market value of the person's interest at that time, ignoring any lien or encumbrance on the property.

(4) The provisions of subsections (5) to (7) shall apply for the purpose of deciding the value of property obtained by a person as a result of or in connection with the person's criminal conduct, and the material time is the time when the Court makes its decision.

(5) The value of the property at the material time is the greater of the following—

- (a) the value of the property, at the time when the person obtained it, adjusted to take account of later changes in the value of money; or

- (b) the value, at the material time, of the property found under subsection (6).

(6) The property found under this subsection is as follows—

- (a) if the person holds the property obtained, that property;
- (b) if the person holds no part of the property obtained, any other property in the person's possession which directly or indirectly represents the property obtained;
- (c) if the person holds part of the property obtained, any other property in the person's possession which directly or indirectly represents the other part of the property obtained.

(7) The references in subsection (5)(a) and (b) to the value are to the value determined in accordance with subsection (3).

12.—(1) Subject to the provisions of this section, the amount ordered to be paid under a pecuniary penalty order or an order under section 5(5) shall be paid forthwith upon the making of the order.

Time for
payment.

(2) If the defendant satisfies the Court making the order that the defendant needs additional time to pay the amount ordered to be paid, the Court may specify, in the order, the period within which payment shall be made.

(3) The period specified under subsection (2)—

- (a) shall start from the date on which the order is made; and
- (b) shall not exceed six months from that date.

(4) The Court may, upon the application of the defendant, extend the period referred to in subsection (3) for such longer period as the Court considers fit, not exceeding twelve months from the date on which the order is made.

(5) The Court shall not grant additional time under subsection (2), or an extension under subsection (4), unless the

Court gives the enforcing authority an opportunity to make representations.

(6) A person who fails to pay any amount required to be paid by that person under a pecuniary penalty order or an order under section 5(5), within the time allowed under this section for such payment, commits an offence and is liable upon conviction before a Resident Magistrate to imprisonment for a term not exceeding five years.

Interest on
unpaid sums

13.—(1) Where the amount required to be paid by a person under a pecuniary penalty order or an order under section 5(5) is not paid within the time required under section 12—

- (a) that person is liable to pay interest on the amount in accordance with the provisions of this section; and
- (b) such interest shall be recoverable as if it were part of the amount required to be paid under the order.

(2) Interest payable under this section shall be—

- (a) For the period for which the amount remains unpaid after it is required to be paid under section 12; and
- (b) at the rate for the time being applicable in relation to judgment debts under section 51 of the Judicature (Supreme Court) Act.

(3) For the purposes of this section, no amount shall be construed as required to be paid under section 12 if—

- (a) an application has been made under section 12(4);
- (b) the application has not been determined by the Court; and
- (c) the period of twelve months from the date on which the pecuniary penalty order or an order under section 5(5), as the case may be, is made has not ended.

Effect of
order on
Court's other
powers

14.—(1) Subject to subsection (2), the Court shall not take any forfeiture order or pecuniary penalty order into account in deciding the appropriate sentence for a defendant.

(2) In respect of the offence concerned, the Court shall take account of the forfeiture order or pecuniary penalty order, as the case may be, before—

- (a) imposing a fine on the defendant; or
- (b) making an order falling within subsection (3).

(3) The orders falling within this subsection are—

- (a) an order involving payment by the defendant, other than an order for restitution or the payment of compensation under any other law;
- (b) a forfeiture order under the Dangerous Drugs Act;
- (c) any other order prescribed by the Minister by order subject to affirmative resolution.

(4) The Court shall act in accordance with subsection

(5) if the Court—

- (a) makes both a forfeiture order or pecuniary penalty order and an order for restitution or the payment of compensation under any other law, against the same person in the same proceedings; and
- (b) believes that that person does not have sufficient means to satisfy both the orders in full.

(5) The Court shall—

- (a) determine the amount which the Court believes will not be recoverable under the compensation order because of the insufficiency of the person's means; and
- (b) direct that such amount is to be paid out of any sums recovered under the forfeiture order or pecuniary penalty order, as the case may be.

15.—(1) The Court may—

Postpone-
ment.

- (a) proceed under section 5 before sentencing the defendant for the offence concerned; or
- (b) postpone proceedings under section 5 for a specified

period (hereinafter referred to as the postponement period).

(2) The Court may extend the postponement period.

Provided that the postponement period, including any such extension, shall not, save in exceptional circumstances, exceed—

- (a) two years from the date of the defendant's conviction for the offence concerned; or
- (b) where the defendant appeals against the conviction, three months from the date on which that appeal is finally determined.

(3) For the purposes of subsection (2), if there are two or more offences and the convictions for those offences are on different dates, the date of conviction is the date of the latest conviction.

(4) A postponement or extension under this section may be made—

- (a) on the application of the defendant;
- (b) on the application of the enforcing authority; or
- (c) by the Court of its own motion.

Provided that an application for an extension shall be made before the end of the postponement period.

(5) A forfeiture order or pecuniary penalty order shall not be invalidated only on the ground that there was a defect or omission in the procedure relating to the application for or the granting of a postponement:

Provided that this subsection shall not apply if, before it made the order, the Court—

- (a) imposed a fine;
- (b) made an order falling within section 14(3); or
- (c) made an order for restitution or compensation under

any other law,

against the defendant.

16.—(1) Where the Court postpones proceedings under section 5, the Court may proceed to sentence the defendant for the offence concerned: Effect of postponement

Provided that the Court shall not, during the postponement period—

- (a) impose a fine;
- (b) make an order falling within section 14(3); or
- (c) make an order for restitution or compensation under any other law,

against the defendant.

(2) The Court may, at any time within twenty-eight days after the end of the postponement period, vary the sentence passed under subsection (1) by imposing a fine or making an order referred to in subsection (1)(b) or (c) against the defendant.

(3) For the purposes of any appeal against sentence, a sentence that is varied under subsection (2) shall be deemed to have been imposed on the day on which it is so varied.

17.—(1) If the Court is proceeding under section 5— Statement of information

- (a) in response to an application by the enforcing authority; or
- (b) in pursuance of section 20, 21 or 22, the enforcing authority shall give the Court a statement of information within the period specified by the Court.

(2) Where the enforcing authority alleges that—

- (a) the defendant has a criminal lifestyle, the statement of information required under this section shall state the matters which the enforcing authority believes are relevant as to—
 - (i) whether the defendant has a criminal lifestyle;

- (ii) whether the defendant has benefitted from his criminal conduct;
 - (iii) identifying the defendant's benefit from his criminal conduct;
 - (iv) the making by the Court of a required assumption under section 8; and
 - (v) the making by the Court of a decision that such an assumption should not be made having regard to the circumstances;
- (b) the defendant does not have a criminal lifestyle but has benefitted from particular criminal conduct, the statement of information required under this section shall state the matters which the enforcing authority believes are relevant as to—
- (i) whether the defendant has benefitted from that particular criminal conduct; and
 - (ii) identifying the defendant's benefit from the conduct.
- (3) Where the enforcing authority gives the Court a statement of information, the enforcing authority—
- (a) may at any time give the Court a further statement of information; and
 - (b) if the Court so orders, shall give the Court a further statement of information within such time as may be specified by the Court.
- (4) A copy of the statement of information shall be served on the defendant and any person who the enforcing authority has reason to believe has an interest in property which is the subject of proceedings for a forfeiture order.

Defendant's
response to
statement of
information

18.—(1) Where a statement of information is given to the Court under section 17, the Court may order the defendant, within a period specified by the Court—

- (a) to indicate the extent to which the defendant accepts

each allegation in the statement of information; and

- (b) so far as the defendant does not accept such an allegation, to give particulars of any matters on which he proposes to rely.

(2) If the defendant indicates to the Court that he accepts, to any extent, an allegation in a statement of information, the Court may treat the acceptance as conclusive of the matters to which it relates for the purpose of deciding the issues referred to in section 17(2)(a) or (b), as the case may be.

(3) If a defendant fails in any respect to comply with an order made under subsection (1), the defendant may be treated, for the purposes of subsection (2), as accepting every allegation in the statement of information except any allegation—

- (a) in respect of which he has complied with the order; and
- (b) that the defendant has benefitted from his general or particular criminal conduct.

(4) No acceptance under this section of an allegation referred to in subsection (3)(b) is admissible in evidence in proceedings for an offence.

(5) For the purposes of this section an allegation may be accepted, or particulars may be given, in a manner ordered by the Court.

19.—(1) Where the enforcing authority accepts to any extent an allegation made by the defendant—

Acceptance
of allega-
tions by
enforcing
authority.

- (a) in responding to a statement of information pursuant to an order under section 18; or
- (b) in any other statement given to the Court in relation to any matter relevant to identifying the defendant's benefit from his criminal conduct,

the Court may treat the acceptance as conclusive of the matters to which it relates.

(2) For the purposes of this section, an allegation may be

accepted in a manner ordered by the Court.

(3) No allegation referred to in this section, which amounts to an admission by the defendant that he has benefitted from criminal conduct, is admissible in evidence in proceedings for an offence.

Recon-
sideration of
case where no
order was
made.

20.—(1) Subject to the provisions of this section, the Court shall act in accordance with section 5(2) (determination whether to make a forfeiture order or pecuniary penalty order) if —

- (a) any of the conditions referred to in section 5(2)(a) or (b) are satisfied but no Court has proceeded under that section;
- (b) there is evidence which was not available to the enforcing authority on the relevant date;
- (c) before the end of the period of ten years starting with the date of conviction, the enforcing authority applies to the Court to consider that evidence; and
- (d) after considering the evidence the Court is satisfied that it is appropriate to proceed under section 5.

(2) If the Court has already sentenced the defendant for the offence concerned, section 5 has effect as if the defendant's particular criminal conduct included conduct that constitutes an offence which the Court has taken into consideration in deciding the defendant's sentence for the offence concerned.

(3) Instead of applying the provisions of section 5(8), the Court shall take account of the following for the purpose of determining the defendant's benefit—

- (a) conduct occurring before the relevant date;
- (b) property obtained before that date;
- (c) property obtained on or after that date, if the property was obtained as a result of or in connection with, conduct occurring before that date.

(4) For the purposes of section 8—

- (a) the assumptions referred to in section 8(2)(a) and (b)

shall not apply to property first held by the defendant on or after the relevant date;

- (b) the assumption referred to in section 8(2) (c) shall not apply to expenditure incurred by the defendant on or after the relevant date; and
- (c) the assumption referred to in section 8(2) (d) shall not apply to property obtained, or assumed to have been obtained, by the defendant on or after the relevant date.

(5) The recoverable amount for the purposes of a pecuniary penalty order is such amount as—

- (a) the Court thinks just; and
- (b) does not exceed the amount found under section 5(3) (b).

(6) In arriving at the just amount under subsection (5), the Court shall have regard in particular to—

- (a) the amount found under section 5(3)(b);
- (b) any fine imposed on the defendant in respect of the offence concerned;
- (c) any order which—
 - (i) falls within section 14(3);
 - (ii) has been made against the defendant in respect of the offence concerned; and
 - (iii) has not already been taken into account by the Court in deciding what is the free property held by the defendant for the purposes of section 5(3)(b);
- (d) any order for restitution or the payment of compensation, made against the defendant in respect of the offence concerned under any other law.

(7) Section 14(4) and (5) shall not apply if an order for restitution or the payment of compensation has been made

against the defendant under any other law, in respect of the offence concerned.

(8) For the purposes of this section—

(a) the relevant date is—

- (i) if the Court made a decision not to proceed under section 5, the date of that decision; or
- (ii) if the Court did not make such a decision, the date of conviction;

(b) the date of conviction is—

- (i) the date on which the defendant was convicted of the offence concerned; or
- (ii) if there are two or more such offences and the convictions were on different dates, the date of the latest conviction.

Recon-
sideration of
benefit where
no order was
made

21.—(1) This section applies where—

(a) in proceeding under section 5 the Court decides that—

- (i) the defendant has a criminal lifestyle but has not benefitted from his general criminal conduct; or
- (ii) the defendant does not have a criminal lifestyle and has not benefitted from his particular criminal conduct;

(b) there is evidence that was not available to the enforcing authority when the Court decided that the defendant had not benefitted from the criminal conduct;

(c) before the end of the period of ten years starting with the date of conviction, the enforcing authority applies to the Court to consider the evidence; and

(d) after considering the evidence the Court concludes that it would have decided that the defendant had benefitted from the criminal conduct if the evidence had been available to it.

(2) If this section applies, the Court—

- (a) shall, subject to the provisions of this section, make a fresh decision under section 5 as to whether the defendant has benefitted from his general or particular criminal conduct; and
- (b) may make a forfeiture order or a pecuniary penalty order under that section.

(3) If the Court has already sentenced the defendant for the offence concerned, section 5 has effect as if the defendant's particular criminal conduct included conduct that constitutes offences which the Court has taken into consideration in deciding the defendant's sentence for the offence concerned.

(4) In deciding whether the defendant has benefitted from conduct and identifying such benefit, the Court shall take account of—

- (a) conduct occurring before the date of the original decision that the defendant had not benefitted from the defendant's general or particular criminal conduct;
- (b) property obtained before that date; and
- (c) property obtained on or after that date if it was obtained as a result of or in connection with the conduct occurring before that date.

(5) For the purposes of applying the provisions of section 8, the assumptions referred to in—

- (a) section 8(2) (a) or (b), shall not apply to property first held by the defendant on or after the date of the original decision that the defendant had not benefitted from his general or particular criminal conduct;
- (b) section 8(2) (c), shall not apply to expenditure incurred by the defendant on or after that date; and
- (c) section 8(2) (d), shall not apply to property obtained, or assumed to have been obtained, by the defendant on or after that date.

(6) The recoverable amount for the purposes of a pecu-

niary penalty order is such amount as—

- (a) the Court thinks just; and
- (b) does not exceed the amount found under section 5(3)(b).

(7) In arriving at a just amount for the purposes of subsection (6), the Court shall have regard in particular to—

- (a) the matters specified in section 20(6)(a) to (c); and
- (b) any order for the payment of compensation made against the defendant, in respect of the offence concerned, under any other law.

(8) Section 14(4) and (5) shall not apply where an order for the payment of compensation under any other law has been made against the defendant in respect of the offence concerned.

(9) The date of conviction is the date found by applying section 20(8) (b).

Recon-
sideration of
benefit after
order is made.

22.—(1) The Court shall act under this section if—

- (a) a Court has made a forfeiture order or a pecuniary penalty order;
- (b) there is evidence which was not available to the enforcing authority at the relevant time;
- (c) the enforcing authority believes that if the Court were to identify the defendant's benefit in pursuance of this section—
 - (i) in the case of a forfeiture order, it would identify property not taken into account by the Court that made the forfeiture order; or
 - (ii) in the case of a pecuniary penalty order, the amount of the defendant's benefit would exceed the relevant amount found by the Court that made the pecuniary penalty order;
- (d) before the end of the period of ten years starting with the date of conviction, the enforcing authority applies to the Court to consider the evidence; and

- (e) after considering the evidence the Court believes it is appropriate to proceed under this section.

(2) The Court shall, subject to the provisions of this section, make a fresh identification of the defendant's benefit from the conduct concerned.

(3) If a court has already sentenced the defendant for the offence concerned, section 5 has effect as if the defendant's particular criminal conduct included conduct that constitutes offences which the court has taken into consideration in deciding his sentence for the offence concerned.

(4) In identifying the defendant's benefit from criminal conduct, the Court shall take account of—

- (a) conduct occurring up to the time the Court decided the defendant's benefit for the purposes of the forfeiture order or pecuniary penalty order;
- (b) property obtained up to that time; and
- (c) property obtained after that time if such property was obtained as a result of or in connection with conduct occurring before that time.

(5) For the purposes of applying the provisions of section 8, the assumptions referred to in—

- (a) section 8(2) (a) or (b), shall not apply to property first held by the defendant after the time the Court decided the amount of his benefit for the purposes of the forfeiture order or pecuniary penalty order;
- (b) section 8(2) (c), shall not apply to expenditure incurred by the defendant after that time;
- (c) section 8(2) (d), shall not apply to property obtained, or assumed to have been obtained, by the defendant after that time.

(6) In the case of a forfeiture order, if any property identified pursuant to subsection (2) (fresh identification of the defendant's benefit) was not included in the forfeiture order, the

Court may vary the order to include that property.

(7) In the case of a pecuniary penalty order, if the amount found pursuant to subsection (2) exceeds the relevant amount

- (a) the Court shall make a fresh calculation of the recoverable amount for the purposes of section 5(3)(b); and
- (b) if the fresh calculation of the recoverable amount exceeds the amount required to be paid under the pecuniary penalty order, the Court may vary the order by substituting for the amount required to be paid, such amount as the Court thinks just.

(8) In applying subsection (6) or (7), the Court shall have regard in particular to —

- (a) any fine imposed on the defendant for the offence concerned;
- (b) any order which—
 - (i) falls within section 14(3);
 - (ii) has been made against the defendant in respect of the offence concerned; and
 - (iii) has not already been taken into account by the Court in deciding what is the free property held by the defendant for the purposes of section 5(3); and
- (c) any order for restitution or the payment of compensation made against the defendant, in respect of the offence concerned, under any other law:

Provided that this paragraph shall not apply if the Court has made a direction under section 14(5) (sums payable under compensation order recoverable out of sums payable under forfeiture order or pecuniary penalty order).

(9) In this section and section 24, for the purpose of deciding whether one amount exceeds another, the Court shall take account of any change in the value of money.

(10) In this section—

(a) the relevant time is—

- (i) the time of the Court's identification of the defendant's benefit for the purposes of the forfeiture order or pecuniary penalty order, as the case may be, if this section has not applied previously; or
- (ii) the time of the Court's last identification of the defendant's benefit in pursuance of this section, if this section has applied previously;

(b) the relevant amount is—

- (i) the amount found as the defendant's benefit for the purposes of the pecuniary penalty order, if this section has not been applied previously; or
- (ii) the amount last found as the defendant's benefit in pursuance of this section, if this section has been applied previously;

(c) the date of conviction is the date found by applying section 20(8)(b).

23.—(1) The Court shall act in accordance with this section if—

- (a) a Court has made a pecuniary penalty order; and
- (b) the defendant or a receiver appointed under section 41 applies to the Court under this section to vary the order.

Variation of order upon inadequacy of available amount

(2) The Court shall calculate the available amount, being the aggregate of the total values (at the time the pecuniary penalty order is made) of all the free property then held by the defendant plus the total values (at that time) of all tainted gifts.

(3) If the Court finds that the available amount cal-

culated pursuant to subsection (2) is inadequate for the payment of any amount remaining to be paid under the pecuniary penalty order, the Court may vary the order by substituting for the amount required to be paid, such smaller amount as the Court thinks just.

(4) If a person has been adjudged bankrupt or his estate has been sequestered, or if an order for the winding up of a company has been made, the Court shall take into account the extent to which realizable property held by that person or that company may be distributed among creditors.

(5) The Court may disregard any inadequacy that it believes is attributable, in whole or in part, to anything done by the defendant for the purpose of preserving property held by the recipient of a tainted gift from any risk of realization under this Act.

Reconsideration of available amount after order is made

24.—(1) The Court shall act under this section if—

- (a) a court has made a pecuniary penalty order;
- (b) the amount required to be paid under such order was the amount found under section 5(3) (b);
- (c) the order has been varied pursuant to section 23; and
- (d) an application for a fresh calculation of the available amount is made to the court by—
 - (i) the agency;
 - (ii) the Director of Public Prosecutions; or
 - (iii) a receiver appointed under section 41.

(2) The Court shall make a fresh calculation of the available amount.

(3) If the amount found under the fresh calculation exceeds the relevant amount, the Court may vary the order by substituting for the amount required to be paid, such amount as—

- (a) the Court thinks just; and
- (b) does not exceed the amount found as the defendant's

benefit from the conduct concerned.

(4) In deciding what is just the Court shall have regard in particular to—

- (a) any fine imposed on the defendant for the offence concerned;
- (b) any order which—
 - (i) falls within section 14(3),
 - (ii) has been made against the defendant in respect of the offence concerned; and
 - (iii) has not already been taken into account by the Court in deciding what is the free property held by the defendant for the purposes of section 11; and
- (c) any order for restitution or the payment of compensation made against the defendant, in respect of the offence concerned, under any other law:

Provided that this paragraph shall not apply if the Court has made a direction under section 14(5) (sums payable under compensation order recoverable out of sums payable under forfeiture order or pecuniary penalty order).

(5) In this section

- (a) “the available amount” means the amount calculated pursuant to section 23(2);
- (b) the relevant amount is—
 - (i) the amount found as the available amount for the purposes of section 23, if this section has not applied previously; or
 - (ii) the amount last found as the available amount in pursuance of this section, if this section has applied previously,
- (c) the amount found as the defendant’s benefit from conduct concerned is—
 - (i) the amount so found when the pecuniary

penalty order was made; or

- (ii) if one or more fresh calculations of the defendant's benefit have been made under section 22, the amount found on the occasion of the last such calculation.

Discharge of
order with
small sum
outstanding

25.—(1) The Court may discharge a pecuniary penalty order if—

- (a) the enforcing authority applies to the Court for the discharge of the order; and
- (b) the amount remaining to be paid under the order is fifty thousand dollars or less.

(2) The Minister may by order subject to affirmative resolution vary the amount specified in subsection (1)(b).

Making of
order where
defendant
absconds
after com-
mittal or
conviction

26.—(1) The Court shall act under this section if the following conditions are met—

- (a) the defendant absconds—
 - (i) after being convicted of an offence in proceedings before a court; or
 - (ii) after being committed to the Court pursuant to section 52 (committal from Resident Magistrate's Court with a view to making a forfeiture order or pecuniary penalty order); and
- (b) the enforcing authority applies to the Court to proceed under this section and the Court is satisfied that it is appropriate to do so.

(2) The Court shall proceed under section 5 as if the conditions mentioned in subsection (2) of that section have been satisfied, and subject to the following modifications—

- (a) any person who the Court believes is likely to be affected by an order under section 5 shall be entitled to appear before the Court and make representations;
- (b) the Court shall not make an order under section 5

unless the enforcing authority has taken reasonable steps to contact the defendant; and

- (c) sections 8 (assumptions for determining benefit), 17(2) (a) (iv) and (v) (statement of information), 18 (defendant's response to statement) and 19 (acceptance of allegations) shall not apply.

27.—(1) The Court shall act in accordance with this section where—

Making of order where defendant absconds before verdict

- (a) proceedings for an offence are started against a defendant, the defendant absconds before a verdict or judgment is entered, the trial continues and the defendant is convicted; and
- (b) the enforcing authority applies to the Court to proceed under this section and the Court thinks it is appropriate to do so.

(2) The Court shall proceed under section 5 in the same way as the Court must proceed if the conditions mentioned in that section are satisfied, subject to the following modifications—

- (a) the modifications specified in section 26(2)(a) and (b); and
- (b) sections 8, 17(2) (a) (iv) and (v) and 18 to 21 shall not apply.

28.—(1) The Court shall act in accordance with this section if—

Variation of order made pursuant to section 27

- (a) the Court makes an order under section 5 as applied by section 27;
- (b) the defendant ceases to be an absconder;
- (c) in the case of—
 - (i) a forfeiture order, the defendant believes that property was wrongly included in the order; or
 - (ii) in the case of a pecuniary penalty order, the

defendant believes that the amount required to be paid under the order is too large in the circumstances prevailing at the time the amount was found for the purposes of the order; and

- (d) before the end of the relevant period, the defendant applies to the Court to consider the evidence on which the defendant's belief is based.

(2) If, after considering the evidence, the Court finds that the defendant's belief is well-founded, the Court

- (a) in the case of a forfeiture order —

- (i) shall identify the property that ought not to be included in the order; or
- (ii) may vary the order by excluding the property and order the property to be returned to the defendant or such other person as the Court determines to be the true owner of the property, or

- (b) in the case of a pecuniary penalty order—

- (i) shall find the amount which should have been the amount required to be paid in the circumstances prevailing at the time when the amount was found for the purposes of the order; and
- (ii) may vary the order by substituting for the amount required to be paid, such other amount as the Court thinks is just.

(3) For the purposes of this section, the relevant period is the period of twenty-eight days, starting from—

- (a) the date on which the defendant was convicted of the offence mentioned in section 27(1) (a); or
- (b) if there are two or more offences and the convictions for those offences are on different dates, the date of

the latest conviction.

(4) In any case where section 27(1) (a) applies to more than one offence, the Court shall not make an order under this section unless the Court is satisfied that there is no possibility of any further proceedings being taken or continued in relation to any such offence for which the defendant has not been convicted.

(5) An order under subsection (2) (a) may include such directions as the Court thinks fit for securing the return of the property to its true owner.

29.—(1) Where the Court makes a forfeiture order or a pecuniary penalty order, the enforcing authority or any person who holds property affected by the order may appeal to the Court of Appeal in respect of the order.

Appeals
against
forfeiture
orders and
pecuniary
penalty
orders

(2) Where the Court decides not to make a forfeiture order or a pecuniary penalty order, the enforcing authority may appeal to the Court of Appeal against the decision.

(3) Subsections (1) and (2) shall not apply to an order or decision made under section 20 (reconsideration of case where no order was made), 21 (reconsideration of benefit where no order was made), 26 (order where defendant absconds after committal or conviction) or 27 (order where defendant absconds before verdict).

30.—(1) On an appeal under section 29(1), the Court of Appeal may confirm, quash or vary the forfeiture order or pecuniary penalty order, as the case may be.

Court's
powers on
appeal

(2) On an appeal under section 29(2), the Court of Appeal may confirm the decision, or if it believes that the decision was wrong it may direct the Court to proceed afresh under section 5.

(3) In determining any appeal under section 29, the Court of Appeal may make such award as to costs as it thinks fit.

(4) In proceeding afresh in pursuance of this section, the Court shall comply with any directions issued by the Court of Appeal.

(5) If a Court makes or varies a forfeiture order or a pecuniary penalty order under this section or in pursuance of a direction under this section, the Court shall have regard to—

- (a) any fine imposed on the defendant in respect of the offence concerned;
- (b) any order that—
 - (i) falls within section 14 (3); and
 - (ii) has been made against the defendant in respect of the offence concerned, unless the order has been taken into account by a court in deciding what is the free property held by the defendant for the purposes of section 5.

(6) Subsections (7) to (11) shall apply where a court proceeds afresh under section 5 in pursuance of a direction under subsection (2).

(7) If a court has already sentenced the defendant for the offence concerned, section 5 has effect as if the defendant's particular criminal conduct included conduct that constitutes offences which the Court has taken into consideration in deciding his sentence for the offence concerned.

(8) If an order has been made against the defendant for restitution or the payment of compensation under any other law in respect of the offence concerned—

- (a) the Court shall have regard to that order; and
- (b) section 14(4) and (5) shall not apply.

(9) In determining the defendant's benefit from conduct, the Court shall take account of—

- (a) conduct occurring before the relevant date;
- (b) property obtained before that date; and
- (c) property obtained on or after that date, if such property was obtained as a result of or in connection with conduct occurring before that date.

(10) For the purposes of this section, the relevant date is the date on which the Court decided not to make a forfeiture order or pecuniary penalty order, as the case may be.

(11) In applying section 8, the assumptions referred to in—

- (a) section 8(2) (a) or (b), shall not apply to property first held by the defendant on or after the relevant date;
- (b) section 8(2) (c), shall not apply to expenditure incurred by the defendant after the relevant date; and
- (c) section 8(2) (d), shall not apply to property obtained by the defendant on or after the relevant date.

31.—(1) Any term of imprisonment or detention that a defendant is liable to serve for default in payment of an amount ordered to be paid under a pecuniary penalty order shall not be served concurrently with any term of imprisonment or detention that the defendant is liable to serve in respect of the offence.

Provisions re
imprisonment
or detention

(2) For the purposes of subsection (1)—

- (a) consecutive terms and terms that are wholly or partly concurrent, in respect of the offence shall be treated as a single term; and
- (b) a court shall not take into account any suspended sentence under section 6 of the Criminal Justice (Reform) Act, which has not taken effect at the time the defendant is sentenced to imprisonment for default in payment of the amount ordered to be paid under the pecuniary penalty order.

(3) The fact that a defendant serves a term of imprisonment or detention in default of paying any amount due under a pecuniary order shall not prevent that order from continuing to have effect in relation to any other method of enforcement.

PART III. *Restraint Orders*

32.—(1) The Court may make a restraint order if any of the following conditions are satisfied—

Conditions
for making
restraint order

(a) there is reasonable cause to believe that an alleged offender has benefitted from his criminal conduct and—

- (i) a criminal investigation has been started in Jamaica with regard to the offence;
- (ii) proceedings for the offence have been commenced in Jamaica and have not been concluded; or
- (iii) the enforcing authority has made an application under section 5, 20, 21, 26 or 27, which has not been determined, or the Court believes that such an application is to be made;

(b) where—

- (i) the enforcing authority has made an application under section 22 (reconsideration of benefit after order is made), which has not been determined or the Court believes that such an application is to be made; and
- (ii) there is reasonable cause to believe that the Court will decide under that section that—

(A) in the case of a forfeiture order, the property identified under the fresh identification of the defendant's benefit exceeds the property found by the Court that made the order; or

(B) in the case of a pecuniary penalty order, the amount found under the new calculation of the defendant's benefit exceeds the relevant amount as defined in that section;

(c) where—

- (i) the enforcing authority has made an application under section 24 (reconsideration of

available amount after order is made), which has not been determined, or the Court believes that such an application is to be made; and

(ii) there is reasonable cause to believe that the Court will decide under that section that the amount found under the new calculation of the available amount exceeds the relevant amount as defined in that section; or

(d) where the enforcing authority has made an application under section 58 (recovery orders), which has not been determined or the Court believes that such an application is to be made.

(2) Subsection (1)(a)(ii) is not satisfied if the Court finds that—

(a) there has been undue delay in continuing the proceedings; or

(b) the Director of Public Prosecutions does not intend to proceed.

(3) If an application mentioned in subsection (1)(a)(iii), (b), (c) or (d) has been made, the requirements of those provisions are not satisfied if the Court finds that—

(a) there has been undue delay in continuing the application; or

(b) the enforcing authority does not intend to proceed.

(4) If subsection (1)(a)(i) is satisfied—

(a) references in this Part to the defendant are to the alleged offender;

(b) references in this Part to the enforcing authority are to the Director of Public Prosecutions; and

- (c) section 2(2)(a) (relevant dates for identifying tainted gift) has effect as if proceedings for the offence had been commenced against the defendant when the investigation was started.

Restraint
orders.

33.—(1) A Judge of the Supreme Court (hereinafter referred to as the Judge) may make a restraint order upon an application made without notice in Chambers by—

- (a) the Director of Public Prosecutions; or
- (b) the Agency.

(2) If any of the conditions set out in section 32(1) is satisfied, the Judge may make an order prohibiting any person from dealing with any realizable property held by a specified person.

(3) A restraint order may provide that it applies to—

- (a) all realizable property held by the specified person, whether or not the property is described in the order;
- (b) realizable property transferred to the specified person after the order is made.

(4) A restraint order may be made subject to exceptions, which may—

- (a) provide for reasonable living expenses and reasonable legal expenses, other than any legal expenses that—
 - (i) relate to an offence which falls within subsection (5); and
 - (ii) are incurred by the defendant or by a recipient of a tainted gift;

- (b) make provision for the purpose of enabling any person to carry on any trade, business, profession or occupation;
- (c) be made subject to conditions.

(5) The offences that fall within this subsection are—

- (a) the offence mentioned in section 32(1)(a)(i), if the condition mentioned in that subsection is satisfied;
- (b) the offence mentioned in section 32(a)(ii), if the condition mentioned in that subsection is satisfied;
- (c) the offence concerned, if any of the conditions mentioned in section 32(1)(a)(iii), (b) or (c) is satisfied.

(6) Where—

- (a) the Judge makes a restraint order; and
- (b) the applicant for the order applies to the Judge to proceed under this subsection, whether as part of the application for the restraint order or at any time afterwards,

the Judge may make such order as the Judge believes is appropriate for the purpose of ensuring that the restraint order is effective, including in particular, any provisions which the Judge considers appropriate for the preservation of the property with respect to which the order is made.

(7) For the purposes of subsection (2), dealing with property includes removing property from Jamaica.

(8) A copy of a restraint order shall be served on a person affected by the order in such manner as may be prescribed by rules of court.

Discharge or
variation of
order.

34.—(1) An application to vary or discharge a restraint order may be made to the Court by—

- (a) the person who applied for the order; or
- (b) any person affected by the order.

(2) Where an application is made under subsection (1), the Court may vary or discharge the order:

Provided that if the condition that was satisfied under section 32(1) was that—

- (a) proceedings were started or an application was made, the Court shall discharge the order on the conclusion of the proceedings or the determination of the application, as the case may be; or
- (b) an investigation was started or an application was to be made, the Court shall discharge the order if within a reasonable time proceedings for the offence are not started or the application is not commenced, as the case may be.

Deteriorating
property.
26/2013
S. 3.

34A.—(1) Where a restraint order is made in respect of any deteriorating property, an application granted for the purposes of section 34 may be made for—

- (a) the variation of the restraint order to facilitate the sale of the property; and
- (b) the restraint order to apply to the proceeds of the sale.

(2) Where the Court varies a restraint order pursuant to subsection (1), the Court may issue directions as to—

- (a) the manner in which, and terms and conditions on which, the sale is to be conducted; and
- (b) the manner in which the proceeds of the sale are to be paid over and held while the restraint order is in force, which may include provision for the proceeds to be held by a specified person in trust for the person entitled to the proceeds.

(3) In subsection (1), “deteriorating property” means property relating to a matter that is—

- (a) pending or before the Court; and
- (b) in danger of diminishing in value prior to the matter being resolved by the Court.

35.—(1) If the Judge decides not to grant an application for a restraint order, the applicant may appeal to the Court of Appeal against the decision. Appeals.

(2) If an application is made to a court under section 33(6) (ancillary order to ensure effectiveness of restraint order) or 34(1) (discharge or variation of order), the following persons may appeal to the Court of Appeal against any decision of the Court on the application—

- (a) the person who applied for the order; and
- (b) any person affected by the order.

(3) On an appeal under subsection (1) or (2), the Court of Appeal may—

(a) confirm the decision; or

(b) make such order as it considers appropriate.

Seizure.

36.—(1) If a restraint order is in force, an authorized officer may seize any realizable property to which the order applies, for the purpose of preventing the removal of the property from Jamaica.

(2) Property seized under subsection (1) shall be dealt with in accordance with the directions of the Judge that made the order.

(3) In this Part, “authorized officer” means—

(a) a constable;

(b) a customs officer;

(c) an officer of the Agency; or

(d) any other person so designated by the Minister by order for the purposes of this Part.

**Hearsay
evidence.**

37.—(1) Evidence shall not be excluded in restraint proceedings on the ground that the evidence is hearsay evidence.

(2) For the purposes of this section—

(a) restraint proceedings are proceedings—

- (i) for a restraint order;
- (ii) for the discharge or variation of a restraint order; or
- (iii) on an appeal under section 35;

(b) hearsay is a statement that is made otherwise than by the person giving oral evidence in the proceedings and is tendered as evidence of the matters stated.

(3) Sections 31E to 31G of the Evidence Act shall apply in relation to restraint proceedings as they apply in relation to civil proceedings.

38.—(1) A copy of a restraint order that affects land in Jamaica, shall be registered with the Registrar of the Supreme Court and in the case of—

Registration and publication of restraint order.

- (a) registered land, shall be registered with the Registrar of Titles who shall record the particulars of the order in the Register Book of Titles; or
- (b) unregistered land, shall be lodged in the Record Office and published in at least one daily newspaper in circulation throughout Jamaica.

(2) A restraint order is of no effect with respect to land unless the order is registered under subsection (1).

(3) Where particulars of a restraint order are registered as required by this section, a person who subsequently deals with the property concerned shall, for the purposes of section 39, be deemed to have notice of the order at the time of the dealing.

(4) The registration of a restraint order under this section shall be exempt from the payment of fees under the Registration of Titles Act and stamp duty under the Stamp Duty Act.

39.—(1) A person who knowingly contravenes a restraint order by disposing of, dissipating, damaging, destroying, or otherwise dealing with, property that is subject to the restraint order commits an offence and is liable—

Contravention of restraint order

(a) on conviction in a Resident Magistrate's Court—

- (i) in the case of an individual, to a fine of not less than five hundred thousand dollars nor more than one million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment; or
- (ii) in the case of a body corporate, to a fine of not less than one million dollars nor more than two million dollars;

(b) on conviction on indictment in a Circuit Court—

- (i) in the case of an individual, to a fine or to imprisonment for a term not exceeding seven years or to both such fine and imprisonment; or
- (ii) in the case of a body corporate, to such fine as the Court may impose.

(2) Where a restraint order is made against property and—

- (a) the property is disposed of or otherwise dealt with in contravention of the restraint order; and
- (b) 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 party who applied for the restraint order may apply to the Judge for an order that the disposition or dealing be set aside.

(3) The Judge may, on an application made under subsection (2)—

- (a) set aside the disposition or dealing as from the day on which the disposition or dealing took place; or
- (b) set aside the disposition or dealing as from the day of the order under this subsection and declare the respective rights of any persons who acquired interests in the property on or after the day on which

the disposition took place, and before the day of the order under this subsection.

40.—(1) Where a Judge makes a restraint order, except with the leave of the Judge and subject to such terms as the Judge may impose—

Restrictions on the enforcement of restraint order

- (a) no charge may be levied against any realizable property to which the order applies;
- (b) if the order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a right falling within subsection (2).

(2) A right falls within this subsection if it is a right of forfeiture by re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy.

(3) If a court in which proceedings are pending in respect of any property is satisfied that a restraint order has been applied for or made in respect of the property, the court may either stay the proceedings or allow them to continue on any terms it thinks fit.

(4) Before exercising any power conferred by subsection (3), the court shall give an opportunity to be heard to—

- (a) the applicant for the restraint order; and
- (b) any receiver appointed under section 41 in respect of the property.

Receivers

41.—(1) The Court shall make an order for the appointment of a receiver (hereinafter referred to as a Director's receiver) in respect of realizable property if—

Appointment of the Director's receiver.

- (a) a court makes a pecuniary penalty order;
- (b) the order is not satisfied and is not subject to appeal; and
- (c) the enforcing authority applies to the Court for an

order under this section.

(2) The receiver appointed under subsection (1) shall be a person nominated by the Director for that purpose and named in the order.

(3) A person nominated to be the Director's receiver under this section may be—

- (a) a member of the staff of the Agency; or
- (b) a person providing services under arrangements made by the Director.

Powers of
Director's
receiver

42.—(1) Where the Court makes an order for the appointment of a Director's receiver under section 41, the Court may act under this section on the application of the Director.

(2) The Court may by order confer on the Director's receiver, in relation to realizable property, the powers to—

- (a) take possession of the property;
- (b) manage or otherwise deal with the property;
- (c) realize the property, in such manner as the Court may specify;
- (d) start, carry on or defend any legal proceedings in respect of the property.

(3) If the Court appoints a Director's receiver, the Court may act under this section on the application of the Director.

(4) The Court may by order confer on the Director's receiver, in relation to any realizable property to which the pecuniary penalty order applies, power to—

- (a) take possession of the property;
- (b) manage or otherwise deal with the property; and
- (c) start, carry on or defend any legal proceedings in respect of the property.

(5) The Court may by order confer on the Director's receiver the power to enter any premises described in the order

and to do any of the following—

- (a) search for or inspect anything authorised by the Court;
- (b) make or obtain a copy, photograph or other record of anything so authorised;
- (c) remove anything that the Director's receiver is required or authorised to take possession of in pursuance of an order of the Court.

(6) The Court may by order authorise the Director's receiver to do any of the following for the purpose of the exercise of his functions—

- (a) hold property;
- (b) enter into contracts;
- (c) sue and be sued;
- (d) employ agents;
- (e) execute powers of attorney, deeds or other instruments;
- (f) take such other steps as the Court thinks appropriate.

(7) The Court may order any person who has possession of realizable property to which the pecuniary penalty order applies to give possession of that property to the Director's receiver.

(8) The Court may order any person who has possession of realizable property to give possession of the property to the Director's receiver.

(9) The Court may—

- (a) order a person holding an interest in realizable property to make to the receiver such payment as the Court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift; and
- (b) on such payment being made, by order transfer, grant or extinguish any interest in the property.

(10) Subsections (2), (8) and (9) shall not apply to property for the time being subject to pecuniary penalty order under any other law.

(11) The Court shall not—

- (a) confer the power mentioned in subsection (2)(b) or (c) in respect of property; or
- (b) exercise the power conferred on it by subsection (9) in respect of property,

unless the Court gives persons holding interests in the property a reasonable opportunity to make representations to the Court.

(12) The Court may order that a power conferred by an order under this section is subject to such conditions and exceptions as it specifies.

(13) For the purposes of this section, managing or otherwise dealing with property includes—

- (a) selling the property or any part of, or interest in, the property;
- (b) carrying on or arranging for another person to carry on, any trade or business the assets of which are part of the property;
- (c) incurring capital expenditure in respect of the property.

Application
of sums by
Director's
receiver.

43.—(1) This section applies to sums that are in the hands of the Director's receiver and are -

- (a) the proceeds of the realization of property under section 42; or
- (b) sums in which the defendant holds an interest, other than sums mentioned in paragraph (a);

(2) The sums shall be applied in the following order of priority—

- (a) first, in payment of such remuneration and expenses as are payable under section 135 (remuneration and expenses of insolvency practitioner);
- (b) second, in making any payments directed by the Court; and

- (c) third, on the defendant's behalf towards satisfaction of the pecuniary penalty order, by being paid to the Agency account of the amount payable under such order.

(3) If the amount payable under the pecuniary penalty order has been fully paid and any sums remain in the Director's receiver's hands, those sums shall be distributed—

- (a) among such persons who held, or hold, interests in the property concerned; and
- (b) in such manner and proportion as the Court directs.

(4) Before making a direction under subsection (3), the Court shall give the persons referred to in subsection (3)(a) a reasonable opportunity to make representations to the Court.

(5) For the purposes of subsection (3), the property concerned is—

- (a) the property represented by the proceeds mentioned in subsection (1)(a);
- (b) the sums mentioned in subsection (1)(b).

44.—(1) This section applies if the Agency receives sums on account of the amount payable under a pecuniary penalty order (whether the sums are received under section 42 or 43 or otherwise).

Sums
received by
Agency.

(2) If the Agency's receipt of the sums reduces the amount payable under the order, but the Agency shall apply the sums received as follows—

- (a) if the Agency received the sums under section 43, first, in the payment of the remuneration and expenses payable under section 135 (remuneration and expenses of insolvency practitioner), if not already paid under section 43;
- (b) if a direction was made under section 14(5) for an amount of compensation to be paid out of sums recovered under the pecuniary penalty order, second

in payment of that amount; and

- (c) payment into an interest-bearing account held by the Agency on behalf of the Government of Jamaica.

(3) The sums paid into the account referred to in subsection (2)(c) shall be administered by the Agency for the benefit of Jamaica's criminal justice system, in accordance with regulations made under this Act.

Restrictions
on Director's
receiver

45.—(1) Where—

- (a) a Court makes an order under section 42 appointing a Director's receiver; and

- (b) the order applies to a tenancy of any premises,

except with the leave of the Court and subject to such terms as the Court may impose, no landlord or other person to whom rent is payable may exercise a right falling within subsection (2).

(2) A right falls within this subsection if it is a right of forfeiture by re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy.

(3) If a court in which proceedings are pending in respect of any property is satisfied that an order under section 41 appointing a Director's receiver in respect of the property has been applied for or made in respect of the property, the court may either stay the proceedings or allow them to continue on such terms as it thinks fit.

(4) Before exercising any power conferred by subsection (3), the court shall give an opportunity to be heard to—

- (a) the Director; and

- (b) the Director's receiver (if the order under section 41 has been made).

Protection of
Director's
receiver

46. If a Director's receiver—

- (a) takes action in relation to property which is not realizable property;

- (b) would be entitled to take the action if it were realizable property; and
- (c) believes on reasonable grounds that he is entitled to take the action,

the receiver shall not be liable to any person in respect of any loss or damage resulting from the action, except so far as the loss or damage is caused by the receiver's negligence.

47.—(1) A receiver appointed under section 41 may apply to the Court for an order giving directions as to the exercise of the receiver's powers. Application for direction.

(2) The Court may, on the application of the following persons, make such order as the Court thinks appropriate—

- (a) any person affected by action taken by the receiver;
- (b) any person who may be affected by action which the receiver proposes to take.

48.—(1) The following persons may apply to the Court to vary or discharge an order made under section 41 or 42— Discharge or variation of order concerning Director's receiver.

- (a) the Director;
- (b) the Director's receiver;
- (c) the Director of Public Prosecutions; or
- (d) any person affected by the order.

(2) Subject to subsection (3), on an application under subsection (1), the Court may vary or discharge the order.

(3) If the condition that was satisfied under section 32 for the making of the order was that—

- (a) proceedings were started or an application was made, the Court shall discharge the order on the conclusion of the proceedings or of the application, as the case may be;
- (b) an application was to be made, the Court shall discharge the order if the application is not made within a reasonable time; or

- (c) an investigation was started, the Court shall discharge the order if proceedings for the offence are not started within a reasonable time.

Appeals

49.—(1) Where a Court refuses an application for an order under section 41 or 42, the person who made the application may appeal to the Court of Appeal against the decision.

(2) Where a Court makes an order under section 41 or 42, the following persons may appeal to the Court of Appeal in respect of the decision—

- (a) the person who applied for the order; and
- (b) any person affected by the order.

(3) Where a Court refuses an application for an order under section 47 (application for directions or by person affected by action taken or proposed to be taken by receiver), the person who applied for the order may appeal to the Court of Appeal against the refusal.

(4) Where the Court makes an order under section 47, the following persons may appeal to the Court of Appeal in respect of the order—

- (a) the person who applied for the order;
- (b) any person affected by the order; or
- (c) the Director's receiver.

(5) The following persons may appeal to the Court of Appeal against the decision of the Court on an application under section 48 (discharge or variation of order concerning receiver)—

- (a) the Director of Public Prosecutions;
- (b) the Director;
- (c) the Director's receiver;
- (d) any person affected by the Court's decision.

(6) On an appeal under this section, the Court of Appeal may—

- (a) confirm the decision; or
- (b) make such order as it considers appropriate.

*General provisions as to the exercise of powers under
Parts II and III*

50.—(1) This section applies to money that—

Seized
money

- (a) is held by a person in an account maintained by that person with a financial institution;
- (b) has been seized by a constable by virtue of a power of seizure exercised by the constable under any law and is held, on behalf of the Government of Jamaica, in an account maintained by the constabulary force with a financial institution; or
- (c) has been seized by a customs officer by virtue of a power of seizure exercised by the officer under any law and is held, on behalf of the Government of Jamaica, in an account maintained by the Commissioner of Customs with a financial institution.

(2) A Resident Magistrate's Court may act in accordance with subsection (3) if—

- (a) a restraint order has effect in relation to money to which this section applies;
- (b) a forfeiture order or a pecuniary penalty order is made against—
 - (i) the person by whom the money is held, in any case falling within subsection (1)(a); or
 - (ii) the person from whom the money is seized, in any case falling within subsection (1)(b) or (c); and
- (c) in the case of a pecuniary penalty order, any period allowed under section 12 for payment of the amount ordered to be paid under the order has ended.

(3) Subject to subsection (4), a Resident Magistrate's

Court may order the financial institution to pay the money to the Agency on account of the amount payable under the forfeiture order or pecuniary penalty order, within such period as shall be specified in the order.

(4) Subsection (3) shall not apply to any money which the Resident Magistrate's Court is satisfied is required for the purpose of evidence of an offence in any proceedings under Part II or III.

(5) A financial institution that fails to comply with an order under subsection (3) commits an offence and is liable to a fine of not less than two hundred and fifty thousand dollars nor more than one million dollars for each day that the offence continues.

(6) Subject to affirmative resolution, the Minister may by order published in the Gazette amend the amount specified in subsection (5).

Sentencing
powers of
court and
Director's
receiver

51.—(1) This section applies to—

(a) the powers conferred on a court by sections—

- (i) 33 to 38, 40 to 45 (restraint orders and appointment of Director's receiver); and
- (ii) 47 to 50 (directions, discharge or variation of orders, appeals and seized money);

(b) the powers of a Director's receiver.

(2) Subject to subsection (3), the powers—

(a) shall be exercised with a view to—

- (i) the value for the time being of realizable property being preserved or, in the case of a pecuniary penalty order, realized, for satisfying any forfeiture or pecuniary penalty order, as the case may be, that has been or may be made against the defendant; or
- (ii) securing that there is no diminution in the value of realizable property, in a case where a forfeiture order or pecuniary penalty order has not been

made;

(b) shall be exercised without taking account of any obligation of the defendant or a recipient of a tainted gift, if the obligation conflicts with the object of satisfying any forfeiture order or pecuniary penalty order that has been made or may be made against the defendant;

(c) may be exercised in respect of a debt owed by the Crown.

(3) Subsection (2) has effect subject to the following rules—

(a) the powers must be exercised with a view to allowing a person other than the defendant or a recipient of a tainted gift to retain or recover the value of any interest held by him;

(b) in the case of realizable property held by a recipient of a tainted gift, the powers must be exercised with a view to realizing no more than the value for the time being of the gift;

(c) in a case where a forfeiture order or pecuniary penalty order has not been made against the defendant, property must not be sold if the Court so orders under subsection (4).

(4) If on an application by the defendant, or by the recipient of a tainted gift, the Court decides that property cannot be replaced, the Court may order that the property must not be sold.

(5) An order under subsection (4) may be revoked or varied.

52.—(1) A Resident Magistrate's Court or the Resident Magistrate's Division of the Gun Court, as the case may be shall act in accordance with subsection (2) if—

(a) a defendant is convicted of an offence by that court; and

(b) the Director of Public Prosecutions or the Agency asks

Committal
by Resident
Magistrate's
Court.
26/2013
S. 4.

the Court to commit the defendant to the Supreme Court with a view to a forfeiture order or pecuniary penalty order being considered under section 5.

(2) The Resident Magistrate shall commit the defendant to the Supreme Court for the hearing of the application under section 5.

(3) If a committal is made under subsection (2), section 5 shall apply accordingly.

(4) A committal under this section may be in custody or on bail.

53. Where a defendant is committed to the Supreme Court under section 52, nothing in that section shall affect the powers of the Resident Magistrate to deal with the defendant in respect of any offence for which the defendant is convicted before the Resident Magistrate.

54.—(1) Requests for assistance sent to or received from an overseas authority in relation to any matter under this Act other than a matter under Part IV, shall be dealt with in accordance with the provisions of the Mutual Assistance (Criminal Matters) Act.

(2) A person who, by virtue of his functions under this Act, receives any request referred to in subsection (1) shall ensure that the request is conveyed to the Central Authority as defined by the Mutual Assistance (Criminal Matters) Act.

(3) Subject to the provisions of this Act, the Agency may, with the approval of the Minister, enter into a contract, memorandum of understanding or other agreement or arrangement with a Ministry or Department of Government, executive agency, Government company, overseas authority, or any other person or body, whether inside or outside of Jamaica, regarding the exchange of information, or the provision of assistance, relevant to any investigation or proceeding under Part IV.

(4) Subject to the provisions of this Act, the Minister may enter into any agreement or arrangement in writing with—

(a) the government of a foreign State;

Sentencing powers of Resident Magistrate not affected. 26/2013 S. 5.

Enforcement abroad.

- (b) an international organization;
- (c) an overseas authority or any association of overseas authorities; or
- (d) any other overseas entity,

regarding the exchange, between the agency, any institution or agency of an entity referred to in paragraph (a), (b), (c) or (d) of information, or the provision of assistance, relevant to any investigation or proceeding under Part IV.

PART IV. *Civil Recovery of the Proceeds.
etc. of Unlawful Conduct*

55.—(1) In this Part—

Interpre-
tation

“associated property” or “property associated with recoverable property” means property of any of the following descriptions, which is not itself the recoverable property—

- (a) any interest in the recoverable property;
- (b) any other interest in the property in which the recoverable property subsists;
- (c) if the recoverable property is a tenancy in common, the tenancy of the other tenant;
- (d) if the recoverable property is part of a larger property but not a separate part, the remainder of that property;

Provided that no property shall be treated as associated with recoverable property consisting of rights under a pension scheme within the meaning of sections 64 to 66;

“authorized officer” means a constable, a customs officer or any other person designated as such by the Minister by order for the purposes of this Act;

“cash” means the following items found at any place in Jamaica—

- (a) notes and coins in any currency;
- (b) postal orders;
- (c) cheques of any kind, including traveller's cheques;
- (d) bankers' drafts;
- (e) bearer bonds and bearer shares;
- (f) monetary instruments of any kind designated by the Minister by order as falling within this paragraph;

"dealing" with property includes disposing of, taking possession of, or removing, property from Jamaica;

"interest", in relation to—

- (a) land, means any legal estate and any equitable interest or power;
- (b) property other than land, includes any right, including a right to possession;

"minimum amount" means one hundred thousand dollars or such other amount as may be specified by the Minister by order published in the *Gazette* for the purposes of this Part;

"part", in relation to property, includes a portion;

"property obtained through unlawful conduct" is property obtained directly or indirectly by or in return for or in connection with unlawful conduct, and for the purpose of deciding whether any person obtains property through unlawful conduct—

- (a) it is immaterial whether or not any money, goods or services were provided in order to put the person in a position to carry out the conduct;
- (b) it is not necessary to show the particulars of

the conduct:

“recovery property” shall be construed in accordance with sections 84 to 89;

“respondent” means—

- (a) where proceedings are brought by the enforcing authority by virtue of any of the provisions of sections 57 to 71, the person against whom the proceedings are brought;
- (b) where no such proceedings have been brought but the enforcing authority has applied for an interim receiving order, the person against whom the enforcing authority intends to bring such proceedings;

“unlawful conduct” means—

- (a) conduct that occurs in, and is unlawful under the criminal law of, Jamaica; or
- (b) conduct that—
 - (i) occurs in a country outside of Jamaica and is unlawful under the criminal law of that country; and
 - (ii) if it occurred in Jamaica would be unlawful under the criminal law of Jamaica.

(2) For the purposes of this Part—

- (a) references to a person disposing of his property include a reference to his disposing of, or granting an interest in, the property;
- (b) references to the property disposed of are to any property obtained on the disposal;
- (c) a person who makes a payment to another shall be treated as making a disposal of his property to the

other, whatever form the payment takes;

- (d) property that passes from a person under a will or intestacy or by operation of law, shall be treated as disposed of by that person;
- (e) a person shall only be treated as having obtained property for valuable consideration, in a case where that person gave unexecuted consideration, if the consideration has become executed consideration;
- (f) any reference to a person's property, whether expressed as a reference to the property held by the person or otherwise, shall be read as follows—
 - (i) in relation to land, it is a reference to any interest held by the person in the land;
 - (ii) in relation to property other than land, it is a reference to the property, if it belongs to him, or to any other interest held by the person in the property;
- (g) references to proving any matter or satisfying any Judge or court of any matter shall be construed as references to proof or satisfaction, as the case may require, on the balance of probabilities.

(3) For the purpose of deciding whether or not property was recoverable at any time, including any time before the appointed day, it shall be deemed that this Part was in force at that and any other relevant time.

General
purpose of
this Part.

56.—(1) This Part has effect for the purposes of—

- (a) enabling the enforcing authority to recover, in civil proceedings before the Court, property which is, or represents, property obtained through unlawful conduct;
- (b) enabling cash which is, or represents, property obtained through unlawful conduct or which is intended to be used in unlawful conduct, to be forfeited in civil proceedings before a Resident

Magistrate's Court.

(2) The powers conferred by this Part are exercisable in relation to any property (including cash), whether or not any proceedings have been brought for an offence in connection with the property,

(3) The Court mentioned in subsection (1)(a) or (b) shall decide on a balance of probabilities whether it is proved that—

(a) any matters alleged to constitute unlawful conduct have occurred; or

(b) any person intended to use any cash in unlawful conduct.

Civil Recovery in the Supreme Court

57. The enforcing authority may take proceedings in the Court against any person who the enforcing authority believes holds recoverable property. Proceedings for recovery orders.

58.—(1) If in proceedings under this Part the Court is satisfied that any property is recoverable, the Court shall make an order under this section (hereinafter called a recovery order). Recovery orders

(2) Subject to subsection (8), the recovery order shall vest the recoverable property in the Agency.

(3) If each of the conditions in subsection (4) is met, the Court shall not make in a recovery order any provision in respect of recoverable property unless it is just and equitable to do so.

(4) The conditions referred to in subsection (3) are that—

(a) the respondent obtained the recoverable property in good faith;

(b) the respondent took steps after obtaining the property, which he would not have taken if he had not obtained it, or he took steps before obtaining the property, which he would not have taken if he had not believed

he was going to obtain it;

- (c) when the respondent took the steps mentioned in paragraph (b), he had no notice that the property was recoverable; and
- (d) if a recovery order were made in respect of the property, the order would, by reason of the steps mention in paragraph (b), be detrimental to the respondent.

(5) In deciding whether it is just and equitable to make provision in respect of recoverable property in a recovery order where the conditions in subsection (4) are met, the Court shall have regard to—

- (a) the degree of detriment that would be suffered by the respondent if the provision were made;
- (b) the enforcing authority's interest in receiving the realized proceeds of the recoverable property.

(6) A recovery order may sever any property.

(7) The provisions of this section are subject to sections 61 to 66 and any consent order made, or limit on recovery imposed by, regulations made under this Act.

(8) Where property which is the subject of a recovery order includes real property—

- (a) the order shall vest that real property in the Crown; and
- (b) the provisions of section 9(3) to (5) shall apply, with the necessary modifications, to that real property, so however that the directions given pursuant to section 9(4) shall provide for the realized proceeds to be paid over to the Agency.

(9) Where the enforcing authority is entitled to take proceedings for a recovery order before a Court, the enforcing authority may apply for an interim receiving order in such manner and in such circumstances as may be prescribed.

59.—(1) The functions of the Agency in giving effect to a recovery order are—

Functions of the Agency in giving effect to recovery order

- (a) to secure the detention, custody or preservation of any property vested in it by the recovery order;
- (b) in the case of property other than money, to realise the value of the property for the benefit of the Agency; and
- (c) to perform any other functions conferred on it by virtue of this Part.

(2) The Agency shall realize the value of property vested in it by the recovery order, so far as practicable, in the manner best calculated to maximize the amount payable to the Agency.

(3) The Agency has the powers mentioned in the Third Schedule.

Third Schedule.

(4) References in this Part to a recovery order include a consent order under regulations made under this Act and references to property vested in the Agency or the Crown, as the case may require, by a recovery order include property vested in the Agency or the Crown in pursuance of such a consent order.

60.—(1) A recovery order shall have effect in relation to any property notwithstanding any provision (of whatever nature) that would otherwise prevent, penalize or restrict the vesting of the property.

Rights of pre-emption etc

(2) A right or pre-emption, return or other similar right shall not operate or become exercisable as a result of the vesting of any property under a recovery order.

(3) Where property is vested under a recovery order, any right referred to in subsection (2) shall have effect as if—

- (a) the person in whom the property is vested were the same person in law as the person who held the property, and

(b) no transfer of the property had taken place.

(4) For the purposes of this section—

(a) a right of return means any right under a provision for the return of property in specified circumstances;

(b) references to rights in subsections (2) and (3) do not include any rights in respect of which the recovery order was made.

(5) This section applies in relation to the creation of interests, or the doing of any other thing, by a recovery order as it applies in relation to the vesting of property.

Associated
and joint
property.

61.—(1) Sections 62 and 63 shall apply if the Court makes a recovery order in respect of any recoverable property in a case falling within subsection (2) or (3).

(2) A case falls within this subsection if—

(a) the property to which the proceedings relate includes property that is associated with the recoverable property and is specified or described in the claim form; and

(b) if the associated property is not the respondent's property, the claim form or application has been served on the person who owns the property or the Court has dispensed with service.

(3) A case falls within this subsection if—

(a) the recoverable property belongs to joint tenants; and

(b) one of the joint tenants is an excepted joint owner.

(4) For the purposes of this Part—

(a) an excepted joint owner is a person who obtained the property in circumstances in which it would not be recoverable against him; and

(b) references to the excepted joint owner's share of the recoverable property are references to so much of the recoverable property as would have been his if the

joint tenancy had been severed.

62.—(1) Where—

- (a) this section applies;
- (b) the Agency agrees; and
- (c) the person who holds the associated property or who is the excepted joint owner agrees,

Agreements
about
associated or
joint
property

the recovery order may, instead of vesting the recoverable property in the Agency or the Crown, as the case may require, order the person whose agreement is obtained under paragraph (c) to make a payment to the Agency in accordance with subsection (2).

(2) The amount of the payment shall be the amount that the Agency and the person agree represents—

- (a) in a case falling within section 61(2), the value of the recoverable property;
- (b) in a case falling within section 61(3), the value of the recoverable property less the value of the excepted joint owner's share,

Provided that if—

- (a) an interim receiving order or interim administration order applied at any time to the associated property or joint tenancy; and
- (b) the Agency agrees that the person has suffered loss as a result of that order,

the amount of the payment may be reduced by an amount that the Agency and the person agree is reasonable, having regard to that loss and to any other relevant circumstances.

(3) If there is more than one such associated property or excepted joint owner—

- (a) the total amount to be paid to the Agency; and
- (b) the part of such amount that is to be provided by each person who holds any such associated property

or who is an excepted joint owner,
shall be agreed between both (or all) of them and the Agency.

(4) A recovery order that makes any requirement under subsection (1)—

- (a) may, so far as is required for giving effect to the agreement, include provision for vesting, creating or extinguishing any interest in property;
- (b) shall make provision for any recoverable property to cease to be recoverable.

Default of
agreement
about
associated or
joint
property

63.—(1) Where this section applies, the Court may make the provisions referred to in subsection (2) in a recovery order, if—

- (a) there is no agreement under section 62; and
- (b) the Court thinks it just and equitable to do so.

(2) The provisions are—

- (a) for the associated property to vest in the Agency or the Crown, as the case may require, or for the excepted joint owner's interest to be extinguished; or
- (b) in the case of an excepted joint owner, for the severance of his interest.

(3) A recovery order containing any provision by virtue of subsection (2)(a) may also provide for either or both of the following matters—

- (a) for the Agency to pay an amount to the person who holds the associated property or who is an excepted joint owner; or
- (b) for the creation of interests in favour of that person, or the imposition of liabilities or conditions in relation to the property vested in the Agency.

(4) In making any provisions in a recovery order by virtue of subsection (2) or (3), the Court shall have regard to—

- (a) the rights of any person who holds the associated

property or who is an excepted joint owner and the value to him of that property or, as the case may require, of his share, including any value which cannot be assessed in terms of money;

- (b) the Agency's interest in receiving the realized proceeds of the recoverable property.

(5) Where—

- (a) an interim receiving order applied at any time to associated property or a joint tenancy; and
- (b) the Court is satisfied that the person who holds the associated property or who is an excepted joint owner has suffered loss as a result of that order,

a recovery order making any provision by virtue of subsection(2) or (3) may require the Agency to pay compensation to that person.

(6) The amount of compensation to be paid under subsection (5) is the amount that the Court thinks reasonable, having regard to the person's loss and to any other relevant circumstances.

64.—(1) This section applies to recoverable property consisting of rights under a pension scheme.

Payments in respect of rights under pension schemes

(2) Subject to any consent order made under regulations prescribed pursuant to this Act, a recovery order in respect of the property shall, instead of vesting the property in the Agency, require the trustees or managers of the pension scheme—

- (a) to pay to the Agency within a prescribed period, the amount determined by the trustees or managers of the pension scheme to be the value of the rights; and
- (b) to give effect to any other provision made, by virtue of this section or section 65 or 66, in respect of the scheme.

(3) A recovery order made by virtue of subsection (2)—

- (a) shall override the provisions of the pension scheme to the extent that they conflict with the provisions of the order; and

(b) may provide for the recovery by the trustees or managers of the scheme, whether by deduction from any amount which they are required to pay to the Agency or otherwise, of costs incurred by them in—

- (i) complying with the recovery order; or
- (ii) providing information, before the order was made, to the Agency, interim receiver or interim administrator.

(4) No provision in any other law or in any pension scheme, which prevents or restricts the assignment of any pension shall apply to a Court making a recovery order by virtue of subsection (2).

Consequential
adjustment of
liabilities
under pension
schemes

65.—(1) A recovery order made by virtue of section 64(2) shall require the trustees or managers of the pension scheme—

- (a) to make such reduction in the liabilities of the scheme as they think necessary in consequence of the payment made in pursuance of that subsection; and
- (b) to provide for the liabilities of the pension scheme relating to the respondent's recoverable property in respect of which an order under section 64(2) is made.

(2) So far as the trustees or managers of a pension scheme are required to act under subsection (1), their powers include the power to reduce the amount of—

- (a) any benefit or future benefit to which the respondent is or may be entitled under the scheme;
- (b) any future benefit to which any other person may be entitled under the scheme in respect of that property.

Supplemen-
tary provisions
in respect of
pension
schemes

66.—(1) The Minister responsible for the management of pension schemes may make regulations regarding the exercise by the trustees or managers of a pension scheme of their powers under sections 64 and 65.

(2) Without prejudice to the generality of subsection (1), regulations made under this section may include provision for the calculation and verification of the value at any time of rights or liabilities

(3) The power conferred by subsection (2) includes power to provide for any values to be calculated or verified—

- (a) in a manner that, in the particular case, is approved by a prescribed person; or
- (b) in accordance with guidance from time to time prepared by a prescribed person.

67.—(1) This section applies to—

- (a) sums that represent the realized proceeds of property which was vested in the Agency by a recovery order or which the Agency obtained in pursuance of a recovery order;
- (b) sums vested in the Agency by a recovery order or obtained by the Agency in pursuance of a recovery order.

Applying
realized
proceeds

(2) The Agency shall make out of the sums—

- (a) first, any payment required to be made by it by virtue of section 63;
- (b) second, any payment of remuneration or expenses that are payable by virtue of section 135 (remuneration and expenses of insolvency practitioner).

and any sum that remains shall be paid to the Agency.

68.—(1) In proceedings for a recovery order, a person (hereinafter in this section referred to as the applicant) who claims that any property alleged to be recoverable property, or any part of that property, belongs to him may apply for a declaration under this section.

Exemption
for victims
of theft, etc.

(2) If the applicant appears to the Court to meet the conditions mentioned in subsection (3), the Court may make a declaration to that effect.

(3) The conditions are that—

- (a) the applicant was deprived of the property he claims, or of property which it represents, by unlawful conduct;

(b) the property he was deprived of was not recoverable property immediately before he was deprived of it; and

(c) the property he claims belongs to him.

(4) Property to which a declaration under this section applies is not recoverable property.

(5) Where a declaration is made under subsection (2), the Court may make an order for the restitution of the property to the applicant with such ancillary directions as are necessary to secure such restitution, including, where the property is subject to the Registration of Titles Act, provision directing the Registrar to register the title of the applicant.

Compensation

69. (1) If, in the case of any property to which an interim receiving order has at any time applied, the Court does not in the course of the proceedings decide that the property is recoverable property or associated property, the person who owns property they may make an application to the Court for compensation.

(2) Subsection (1) does not apply if the Court—

(a) has made a declaration in respect of the property by virtue of section 68; or

(b) makes a consent order.

(3) If the Court has made a decision by reason of which no recovery order could be made in respect of the property, the application for compensation shall be made within the period of three months beginning with—

(a) the date of the decision;

(b) if any application is made for leave to appeal, the date on which the application is withdrawn or refused; or

(c) if the application is granted, the date on which any proceedings on appeal are finally concluded.

(4) If the proceedings in respect of the property have

been discontinued, the application for compensation shall be made within the period of three months after the date of the discontinuance.

(5) If the Court is satisfied that the applicant has suffered a loss as a result of the interim receiving order, the Court may require the Agency to pay compensation to the applicant.

(6) If, but for section 60(2), any right mentioned therein (right of pre-emption or return) would have operated in favour of, or become exercisable by, any person, that person may make an application to the Court for compensation.

(7) An application under subsection (6) shall be made within the period of three months beginning with the vesting referred to in section 60(2).

(8) If the Court is satisfied that, in consequence of the operation of section 60, the right in question cannot subsequently operate in favour of the applicant or, as the case may be, become exercisable by him, the Court may require the Agency to pay compensation to the applicant.

(9) The amount of compensation to be paid under this section is the amount the Court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

70.—(1) At any time when an order referred to in subsection (2) is in force, the Agency shall not start proceedings for a recovery order unless the Agency reasonably believes that the aggregate value of the recoverable property that the Agency wishes to be subject to a recovery order is not less than two hundred and fifty thousand dollars.

Financial
threshold.

(2) The Minister may, subject to affirmative resolution, make an order amending the amount specified in subsection (1).

(3) If the Agency applies for an interim receiving order before starting the proceedings, subsection (1) applies to the application instead of to the start of the proceedings.

(4) This section does not affect the continuation of

proceedings which have been properly started for a recovery order, or the making or continuing effect of an interim receiving order that has been properly applied for.

Limitation.

71.—(1) The time limits established by the Limitation of Actions Act shall not apply to any proceedings under any of the foregoing provisions of this Part.

(2) Proceedings under any of the foregoing provisions of this Part shall not be brought after the expiration of the period of twenty years from the date on which the Agency's cause of action accrued.

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(3) For the purposes of this section—

(a) proceedings are brought when—

(i) a claim form is issued; or

(ii) an application is made for an interim receiving order,

whichever first occurs;

(b) the Agency's cause of action accrues in respect of recoverable property—

(i) in the case of proceedings for a recovery order in respect of property obtained through unlawful conduct, when the property is so obtained;

(ii) in the case of proceedings for a recovery order in respect of any other recoverable property, when the property obtained through unlawful conduct which it represents is so obtained.

(4) Subsection (5) shall apply if—

(a) a person would, but for the provisions of the Limitation of Actions Act, have a cause of action in respect of the conversion of a chattel; and

(b) proceedings are started under any of the foregoing

provisions of this Part for a recovery order in respect of the chattel.

(5) The Limitation of Actions Act shall not prevent—

- (a) the person referred to in subsection (4) from asserting on an application under section 80 (appeal against forfeiture) that the property belongs to him; or
- (b) the Court from making a declaration in that person's favour under section 68 (exemption for victims of theft, etc.).

(6) If the Court makes a declaration referred to in subsection (5)(b), the person's title to the chattel is to be treated as not having been extinguished by the Limitation of Actions Act.

Recovery of Cash in Summary Proceedings

72.—(1) Subject to section 73, if an authorized officer who is lawfully on any premises has reasonable grounds for suspecting that there is on the premises cash— Searches.

- (a) which is recoverable property or is intended by any person for use in unlawful conduct; and
- (b) the amount of which is not less than the minimum amount,

the authorized officer may search for the cash on those premises.

(2) An authorized officer may exercise the powers set out in subsection (3) if the officer has reasonable grounds for suspecting that a person is carrying cash—

- (a) which is recoverable property or is intended by any person for use in unlawful conduct; and
- (b) the amount of which is not less than the minimum amount.

(3) The authorized officer may, so far as he thinks necessary or expedient, require the person suspected of carrying the cash—

- (a) to permit a search of any article found in that person's

possession; or

(b) to permit a search of his person.

(4) An authorized officer exercising powers by virtue of subsection (3)(b) may detain the person so long as is necessary for the exercise of those powers.

(5) The powers conferred by this section are exercisable only so far as is reasonably required for the purpose of finding cash.

Prior approval.

73.—(1) For the purposes of this section—

(a) the appropriate approval means a search warrant issued by a Justice of the Peace or, if that is not practicable in any case, the approval of a senior officer;

(b) “a senior officer” means—

(i) in relation to the exercise of the power by a customs officer, a customs officer of a rank designated by the Commissioner of Customs as equivalent to that of a senior police officer;

(ii) in relation to the exercise of the power by a constable, a senior police officer;

(iii) in relation to the exercise of the power by a any other authorized officer, the Director or a senior officer of the Agency;

(c) “a senior police officer” means a member of the Constabulary Force of at least the rank of inspector.

(2) The powers conferred by section 72(1) may be exercised only with the appropriate approval as specified in subsection (1), but an authorized officer who, pursuant to that subsection, exercises the powers without obtaining a search warrant shall give a written account to the senior officer in accordance with subsection (3), in any case where—

(a) no cash is seized by virtue of section 75; or

(b) it was not practical to obtain a search warrant.

(3) The account shall give particulars of the circumstances that led the authorized officer to believe that—

(a) the powers were exercisable; and

(b) it was not practicable to obtain a search warrant.

74.—(1) The Minister shall—

Code of
practice.

(a) establish a code of practice in connection with the exercise by authorized officers of the powers conferred by section 72; and

(b) lay the code before the Houses of Parliament.

(2) The code is admissible in evidence in criminal or civil proceedings and shall be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.

75.—(1) An authorized officer may seize any cash if the officer has reasonable grounds for suspecting that the cash is—

Seizure of
cash.

(a) recoverable property; or

(b) intended by any person for use in unlawful conduct.

(2) Subject to subsection (3), where—

(a) an authorized officer has reasonable grounds for suspecting that a part of cash is—

(i) recoverable property; or

(ii) intended by any person for use in unlawful conduct; and

(b) it is not reasonably practicable to seize only that part, the whole of the cash may be seized by the officer.

(3) This section does not authorize the seizure of an amount of cash if that cash or, as the case may be, the part to which the suspicion relates, is less than the minimum amount.

76.—(1) While the authorized officer continues to have reasonable grounds under section 75(1) or (2), cash seized under that section may be detained initially for a period of seventy-two hours.

Detention of
seized cash.

(2) The period for which cash or any part thereof may be detained under subsection (1) may be extended by an order made by a Resident Magistrate's Court:

Provided that no such order shall authorize the detention of any of the cash—

- (a) beyond the end of the period of three months beginning with the date of the order, in the case of an order first extending the period; or
- (b) in the case of a further order under this section, beyond the end of the period of two years beginning with the date of the first order.

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(3) A Justice of the Peace for any parish (whether the seizure takes place within the limits of the jurisdiction of that Justice of the Peace or elsewhere in Jamaica outside of that jurisdiction) may also exercise the power of a Resident Magistrate's Court to make an order first extending the period mentioned in subsection (1).

(4) An application for an order under subsection (2) may be made by an authorized officer.

(5) On an application under subsection (4), the Court or Justice of the Peace, as the case may be, may make the order if satisfied, in relation to any cash to be further detained, that either of the following conditions is met—

- (a) there are reasonable grounds for suspecting that the cash is recoverable property and that either—
 - (i) its continued detention is justified while its derivation is further investigated or consideration is given to bringing (in Jamaica or elsewhere) proceedings against any person for an offence with which the cash is connected; or
 - (ii) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded; or
- (b) there are reasonable grounds for suspecting that the cash is intended to be used in unlawful conduct and

that either—

- (i) its continued detention is justified while its intended use is further investigated or consideration is given to bringing (in Jamaica or elsewhere) proceedings against any person for an offence with which the cash is connected; or
- (ii) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.

(6) Where an application is made for an order under subsection (2) in the case of cash seized under section 75(2), the Court or Justice of the Peace, as the case may be, shall not make the order unless satisfied that—

- (a) the condition in subsection (5)(a) or (b) is met in respect of part of the cash; and
- (b) it is not reasonably practicable to detain only that part.

(7) An order under subsection (2) shall provide for notice to be given to persons affected by it.

77.—(1) Where cash is detained under section 76 for more than seventy-two hours, the cash shall, as soon as is reasonably practicable, be deposited in an interest-bearing account and held there, and the interest accruing on it shall be added to it on its forfeiture or release. Interest

(2) In the case of cash seized under section 75(2) and detained under section 76, the authorized officer shall, on depositing the cash in the account, release the part of the cash to which the suspicion does not relate.

(3) Subsection (1) does not apply if the cash or, as the

case may be, the part to which the suspicion relates is required as evidence of an offence in proceedings under this Part.

Release of
detained
cash

78.—(1) This section applies while any cash is detained under section 76.

(2) A Resident Magistrate's Court may direct the release of the whole or any part of the cash if the Court is satisfied, on the application by the person from whom the cash is seized, that the conditions in section 76 for the detention of the cash are no longer met in relation to the cash to be released.

(3) An authorized officer may, with the approval of the Resident Magistrate's Court or Justice (as the case may be) under whose order cash is being detained, release the whole or any part of it if satisfied that the detention of the cash to be released is no longer justified.

Forfeiture

79.—(1) While cash is detained under section 76, the authorized officer may make an application to the Resident Magistrate's Court for the forfeiture of the whole or any part of the cash.

(2) On an application under subsection (1), the Resident Magistrate's Court may order the forfeiture of the cash or any part of it if satisfied that the cash or part, as the case may be—

(a) is recoverable property; or

(b) is intended by any person for use in unlawful conduct.

(3) In the case of recoverable property that belongs to joint tenants, an order under subsection (2) shall not apply to so much of the property as the Court thinks is attributable to the excepted joint owner's share of the property.

(4) Where an application for the forfeiture of any cash is made under this section, the cash shall be detained, and may not be released under any power conferred by this Part, until any proceedings in pursuance of the application (including any proceedings on appeal) are concluded.

Appeal
against
forfeitures.

80.—(1) Any party to proceedings in which an application or order is made under section 79 for the forfeiture of cash, who is

aggrieved by the decision of the Court in relation thereto, may appeal to the Court of Appeal in respect of the decision.

(2) An appeal under subsection (1) shall be made within the period of thirty days beginning with the date on which the order is made.

(3) The Court hearing the appeal may make any order it thinks appropriate.

81.—(1) Cash forfeited under this Part, and any accrued interest thereon, shall, subject to the provisions of subsection (3), be paid into the Consolidated Fund. Application of forfeited cash

(2) Cash shall not be paid in under subsection (1)—

- (a) before the end of the period specified in section 80(2) within which an appeal under that section may be made; or
- (b) if a person appeals under that section, before the appeal is determined or otherwise disposed of.

(3) Regulations made under section 138 may provide for the disbursement of funds, paid into the Consolidated Fund pursuant to subsection (1), for the benefit of Jamaica's criminal justice system.

82.—(1) A person who claims that any cash detained under this Part belongs to him may apply to a Resident Magistrate's Court for the cash to be released to him. Victims and other owners

(2) An application under subsection (1) may be made in the course of proceedings under section 76 or 79 or at any other time.

(3) On an application under subsection (1) the Court may act in accordance with subsection (4) or (5).

(4) If it appears to the Court that—

- (a) the applicant was deprived of the cash to which the application relates, or of property which it represents, by unlawful conduct;
- (b) the property that the applicant was deprived of was not, immediately before he was deprived of it, recoverable property; and
- (c) the cash belongs to the applicant,

the Court may order the cash to which the application relates to be released to the applicant.

(5) If the applicant is not the person from whom the cash to which the application relates was seized and—

- (a) it appears to the Court that the cash belongs to the applicant;
- (b) the Court is satisfied that the conditions in section 76 for the detention of the cash are no longer met or, if an application has been made under section 79, the Court decides not to make an order under that section in relation to that cash; and
- (c) no objection to the making of an order under this subsection has been made by the person from whom that cash was seized,

the Court may order the cash to which the application relates to be released to the applicant or the person from whom it was seized

Compensation

83.—(1) If no forfeiture order is made in respect of any cash detained under this Part, the person to whom the cash belongs or from whom the cash was seized may make an application to the Resident Magistrate's Court for compensation.

(2) If, for any period beginning with the first reasonably practicable opportunity to deposit the cash in an interest-bearing account after the initial detention of the cash for seventy-two hours, the cash was not so deposited, the Court may order that compensation be paid to the applicant.

(3) Subject to subsection (4), the amount of compensation to be paid under subsection (2) is the amount that the Court thinks would have been earned in interest in the period in question if the cash had been held in an account that bears interest at the rate of interest applicable to Government Treasury Bills over the period in question.

(4) If a forfeiture order is made in respect of only a portion of any cash detained under this Part, this section has effect in relation to the other portion.

General

84.—(1) Property obtained through unlawful conduct is recoverable property: Property obtained through unlawful conduct

Provided that if such property has been disposed of since it was so obtained, it is recoverable property only if it is held by a person into whose hands it may be followed.

(2) Recoverable property obtained through unlawful conduct may be followed into the hands of a person obtaining it on a disposal by—

- (a) the person who obtained the property through the unlawful conduct; or
- (b) a person into whose hands it may, by virtue of this subsection, be followed.

85.—(1) Where property obtained through unlawful conduct (hereinafter in this section referred to as the original property) is or has been recoverable, any property that represents in whole or in part, directly or indirectly, the original property, is also recoverable property. Tracing property, etc

(2) Where a person enters into a transaction by which—

- (a) that person disposes of recoverable property, whether the original property or property which, by virtue of this Part, represents original property; and
- (b) he obtains other property in place of it, the other property represents the original property.

(3) If a person disposes of recoverable property that represents the original property, the property—

- (a) may be followed into the hands of the person who obtains it; and
- (b) continues to represent the original property.

86.—(1) Subsection (2) applies if a person's recoverable property is mixed with other property, whether belonging to that person or any other person. Mixed property.

(2) The portion of the mixed property that is attributable to the recoverable property represents the property obtained through unlawful conduct.

87.—(1) This section applies where a person who has recoverable property obtains further property consisting of profits accruing in respect of the recoverable property.

Profits accruing in respect of recoverable property.

(2) The further property shall be treated as representing property obtained through unlawful conduct.

88.—(1) Where—

General exceptions.

- (a) a person disposes of recoverable property; and
- (b) the party who obtains the property on the disposal does so in good faith, for valuable consideration and without notice that the property was recoverable property.

the property may not be followed into that party's hands and ceases to be recoverable.

(2) If recoverable property is vested, forfeited or otherwise disposed of in pursuance of powers conferred by virtue of this Part, the property ceases to be recoverable.

(3) Recoverable property ceases to be recoverable if—

- (a) the property consists of a payment made to the claimant, or property otherwise obtained by the claimant, from the defendant in pursuance of a judgment in civil proceedings, whether in Jamaica or elsewhere; and
- (b) the claimant's claim is based on the defendant's unlawful conduct.

(4) Recoverable property ceases to be recoverable if the property consists of a payment made to a person in pursuance of an order for restitution or the payment of compensation under any other law.

(5) Property is not recoverable while—

- (a) a restraint order applies to the property under section 33; or
- (b) a forfeiture order made under any other law is in force in respect of the property

(6) Property is not recoverable in relation to any person if the property has been taken into account in deciding the amount of that person's benefit from criminal conduct for the purpose of making—

- (a) a forfeiture order or pecuniary penalty order, or
- (b) a forfeiture order under any other law,

and, in relation to an order mentioned in paragraph (b), the reference to the amount of a person's benefit from criminal conduct shall be construed as a reference to the corresponding amount under the enactment in question.

(7) Where—

- (a) a person enters into a transaction to which section 85(2) applies; and
- (b) the disposal is one to which subsection (1) or (2) applies,

this section does not affect the recoverability (by virtue of section 85(2)) of any property obtained on the transaction in place of the property disposed of.

89.—(1) Where a person grants an interest in recoverable property, the question whether the interest is also recoverable shall be determined in the same manner as on any other disposal of recoverable property.

Grant of
interest in
recoverable
property

(2) On the grant of an interest in recoverable property—

- (a) where the property is property obtained through unlawful conduct, the interest shall also be treated as obtained through that conduct;
- (b) where the property represents, in the hands of the grantor, property obtained through unlawful conduct, the interest shall also be treated as representing, in the grantor's hands, the property so obtained.

90.—(1) This section applies to recoverable property, or property associated with recoverable property, if—

Insolvency.

- (a) the property is an asset of a company being wound up in pursuance of a resolution for voluntary winding up;
- (b) the property is an asset of any entity and a deed of

arrangement under section 52 of the Bankruptcy Act has effect in relation to the entity;

(c) an order under section 23 of the Bankruptcy Act (appointment of receiver) has effect in relation to the property;

(d) the property is an asset of an individual in respect of whom a provisional or absolute order for bankruptcy has effect under the Bankruptcy Act

(2) Proceedings for a recovery order may not be taken or continued in respect of property to which this section applies, unless—

(a) the appropriate court gives leave; and

(b) the proceedings are taken or continued, as the case may be, in accordance with any terms imposed by that court.

(3) An application for an order for the further detention of any cash to which this section applies may not be made under section 76 unless the appropriate court gives leave.

(4) An application under this section for leave to take proceedings for a recovery order may be made without notice to any person.

(5) Subsection (4) does not affect any requirement for notice of an application to be given to the Director's receiver.

(6) In this section, "the appropriate court" means the court that is the applicable court for the purposes of the relevant resolution, deed of arrangement, or provisional or absolute order, mentioned in subsection (1).

PART V *Money Laundering*

Interpretation

91.—(1) For the purposes of this Part—

(a) property is criminal property if it constitutes a person's benefit from criminal conduct or represents such a benefit, in whole or in part and whether directly or indirectly (and it is immaterial who carried out or benefitted from the conduct);

(b) money laundering is an act which—

- (i) constitutes an offence under section 92 or 93;
 - (ii) constitutes an attempt, conspiracy or incitement to commit an offence specified in sub-paragraph (i); or
 - (iii) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in sub-paragraph (i);
- (c) a disclosure to a nominated officer is a disclosure that—
- (i) is made to a person nominated by the alleged offender's employer to receive disclosures under this Part; and
 - (ii) is made in the course of the alleged offender's employment and in accordance with the procedure established by the employer for the purpose, and references to a "nominated officer" shall be construed accordingly;
- (d) for the purposes of paragraph (c)—
- (i) references to a person's employer include—
 - (A) any body, association or organization (including a voluntary organization) in connection with whose activities the person exercises a function (whether or not for gain or reward); and
 - (B) where the employer is a company, a parent company of that company or a subsidiary company of that parent company; and
 - (ii) references to employment shall be construed accordingly;

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(e) “authorized disclosure” means a disclosure made under section 100(4);

(f) “authorized officer” means—

- (i) a constable;
- (ii) a customs officer; or
- (iii) an officer of the Agency;

(ff) “business in the regulated sector” has the meaning specified in section 94 for determination in accordance with the provisions of the Fourth Schedule.

*(g) “competent authority” means the authority from time to time authorized in writing by the Minister to—

- (i) monitor compliance by any type of business in the regulated sector, with the requirements of this Part and any regulations made under this Part; and
- (ii) issue guidelines to businesses in the regulated sector regarding effective measures to prevent money laundering;

(h) “designated authority” means the Chief Technical Director of the Financial Investigations Division of the Ministry responsible for finance, or such other person as may be designated by the Minister by order.

(2) For the purposes of sections 92, 93 and 99—

(a) the appropriate consent is—

- (i) if an authorized disclosure is made to a nominated officer, the consent of the nominated officer to do a prohibited act;

Fourth
Schedule.
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S. 8(b).

- (ii) if an authorized disclosure is made to a constable, the consent of the constable to do a prohibited act;
 - (iii) if an authorized disclosure is made to a customs officer, the consent of the customs officer to do a prohibited act;
 - (iv) if an authorized disclosure is made to an officer of the Agency, the consent of that officer to do a prohibited act;
- (b) a person shall be deemed to have the appropriate consent if the person makes an authorized disclosure to an authorized officer and—
- (i) before the end of the notice period the person is not notified by the authorized officer that consent to the doing of the act is refused; or
 - (ii) the person is so notified before the end of the notice period, but ten days have passed since the receipt of the notice.

(3) The notice period referred to in subsection (2) and section 99 is the period of seven days (exclusive of Saturdays, Sundays and public general holidays), starting with the first day after the person makes the disclosure.

(4) References in subsection (2) and sections 99 and 100 to a prohibited act are references to an act prohibited by section 92 or 93.

91A.—(1) In addition to any other functions of a competent authority under this Part, and without prejudice to any other functions which that competent authority may exercise under any other enactment, a competent authority shall exercise the functions set out in subsection (2) for the purpose of ensuring

Functions of
competent
authority.
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that any business in the regulated sector which that competent authority is responsible for monitoring operates in compliance with this Act and any regulations made under this Act.

(2) A competent authority—

- (a) shall establish such measures as it thinks fit, including carrying out, or directing a third party to carry out, such inspections or such verification procedures as may be necessary;
- (b) may issue directions to any of the businesses concerned; and the directions may require the business to take measures for the prevention or detection of, or reducing the risk of, money laundering or terrorist financing;
- (c) may examine and take copies of information or documents in the possession or control of any of the businesses concerned, and relating to the operations of that business;
- (d) may share information, pertaining to any examination conducted by it under this section, with another competent authority, a supervisory authority or the designated authority, or an authority in another jurisdiction exercising functions analogous to those of any of the aforementioned authorities—
 - (i) other than information which is protected from disclosure under this Act or any other law; and
 - (ii) subject to any terms, conditions or undertakings which it thinks fit in order to prevent disclosure of the kind referred to in subparagraph (i) and secure against the compromising or obstruction of any investigation in relation to an offence under this Part or any other law;

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(e) may require the businesses concerned, in accordance with such procedures as it may establish by notice in writing to those businesses—

- (i) if a registration requirement does not already exist under any other law, to register with the competent authority such particulars as may be prescribed; and
- (ii) to make such reports to the competent authority in respect of such matters as may be specified in the notice.

(3) Nothing in subsection (2)(c) shall be construed as requiring an attorney-at-law to disclose any information or advice that is subject to legal professional privilege.

(4) Subsection (3) does not apply to information or other matter that is communicated or given with the intention of furthering a criminal purpose.

(5) A business in the regulated sector which fails to comply with any requirement or direction issued to it under this Part by the competent authority, commits an offence and is liable—

- (a) on summary conviction before a Resident Magistrate, to a fine not exceeding two hundred and fifty thousand dollars; or
- (b) on indictment before a Circuit Court, to a fine not exceeding one million dollars.

(6) Where a business which is convicted of an offence under subsection (5) is registered, or is the holder of a licence or other form of permit in respect of its operations under a regime administered by the competent authority concerned, the conviction for the offence shall be deemed to constitute grounds on which the registration, licence or other form of permit may be suspended or revoked; and the competent authority may, if it thinks fit, act accordingly.

Concealing,
etc., criminal
property.

92.—(1) Subject to subsection (4), a person commits an offence if that person—

- (a) engages in a transaction that involves criminal property;
- (b) conceals, disguises, disposes of or brings into Jamaica any such property; or
- (c) converts, transfers or removes any such property from Jamaica,

and the person knows or has reasonable grounds to believe, at the time he does any act referred to in paragraphs (a), (b) or (c), that the property is criminal property.

(2) Subject to subsection (4), a person commits an offence if that person enters into or becomes concerned in an arrangement that the person knows or has reasonable grounds to believe facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person.

(3) For the purposes of this section, concealing or disguising property includes concealing or disguising the nature of the property, its source, location, disposition, movement or ownership or any rights with respect to the property.

(4) A person does not commit an offence under subsection (1) or (2) if—

- (a) before doing any act described in subsection (1) or (2), the person makes an authorized disclosure and has the appropriate consent to act;
- (b) the person—
 - (i) intended to make such a disclosure before doing the act and has a reasonable excuse for not doing so; and
 - (ii) does make such a disclosure on his own initiative as soon as is reasonably practicable after doing the act; or

- (c) the person acts in good faith in the exercise of a function relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

93.—(1) Subject to subsections (2) and (3), a person commits an offence if that person acquires, uses or has possession of criminal property and the person knows or has reasonable grounds to believe that the property is criminal property.

Acquisition, use and possession of criminal property.

(2) A person does not commit an offence under subsection (1) if—

- (a) before doing any act described in subsection (1), the person makes an authorized disclosure and receives the appropriate consent to act;
- (b) the person—
 - (i) intended to make such a disclosure but has a reasonable excuse for not doing so; and
 - (ii) make such a disclosure on his own initiative as soon as is reasonably practicable after doing the act;
- (c) the person acquired, used or had possession of the property *bona fide* and without notice that the property is criminal property; or
- (d) the person acts in good faith in the exercise of a function relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

(3) An attorney-at-law shall not be taken to engage in money laundering to the extent that he receives *bona fide* fees for legal representation.

Non-
disclosure
by a person
in the
regulated
sector.
Fourth
Schedule.

94.—(1) The provisions of the Fourth Schedule shall have effect, for the purposes of this Part, in determining what is—

- (a) a business in the regulated sector;
- (b) a supervisory authority.

(2) A person commits an offence if—

- (a) that person knows or believes, or has reasonable grounds for knowing or believing, that another person has engaged in a transaction that could constitute or be related to money laundering;
- (b) the information or matter on which the knowledge or belief is based or which gives reasonable grounds for such knowledge or belief, came to him in the course of a business in the regulated sector; and
- (c) the person does not make the required disclosure as soon as is reasonably practicable, and in any event within fifteen days, after the information or other matter comes to him.

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(3) For the purposes of subsection (2)(c), the required disclosure is a disclosure—

- (a) to a nominated officer; or
- (b) to the designated authority,

in the form and manner prescribed for the purposes of this subsection by regulations made under 102, of the information or other matter on which the knowledge or belief is based, or which gives reasonable grounds for the knowledge or belief, that another person has engaged in a transaction that could constitute or be related to money laundering.

(4) For the purposes of this section, a business in the regulated sector shall, in relation to each customer—

(a) make and retain for a period of not less than seven years or such other period as the supervisory authority shall in writing direct, a record of all—

(i) complex, unusual or large business transactions carried out by that customer with the business; and

(ii) unusual patterns of transactions, whether completed or not, which appear to the person to be inconsistent with the normal transactions carried out by that customer with the business; and

(b) pay special attention to all business relationships and transactions with any customer resident or domiciled in a territory specified in a list of applicable territories published by notice in the *Gazette* by a supervisory authority for the purposes of this paragraph, so as to ensure that the background and purpose of all such relationships and transactions are examined and the findings thereon set out in writing—

(i) in accordance with procedures set out in regulations made under this Part; and

(ii) made available, upon request, to the designated authority, a supervisory authority or the competent authority concerned, as the case may require.

(5) A person does not commit an offence under this section if—

(a) he has a reasonable excuse for not disclosing the information or other matter;

- (b) he is an attorney-at-law and the information or other matter came to him in privileged circumstances; or
- (c) subsection (6) applies to him.

(6) This subsection applies to a person if the person—

- (a) does not know or suspect that another person is engaged in money laundering; and
- (b) has not been provided by his employer with such training as is specified by the Minister by regulations made for the purposes of this section.

(7) In deciding whether a person committed an offence under this section or section 95, the Court shall consider whether the person followed—

- (a) any relevant guidance that was at the time concerned—
 - (i) issued by a supervisory authority or any other body that regulates, or is representative of, any trade, profession, business or employment carried on by the alleged offender;
 - (ii) approved by the Minister; and
 - (iii) published in the *Gazette*; and
- (b) the procedures prescribed by regulations made under this Act for the purpose of the prevention or detection of money laundering.

(8) Information or other matter comes to an Attorney-at-Law in privileged circumstances if it is communicated or given to him—

- (a) by, or by a representative of, a client of his in connection with the giving by the Attorney-at-Law of legal advice to the client;
- (b) by, or by a representative of, a person seeking legal advice from the Attorney-at-Law; or
- (c) by a person in connection with legal proceedings or contemplated legal proceedings:

Provided that this subsection does not apply to information or other matter that is communicated or given with the intention of furthering a criminal purpose.

Fourth
Schedule

(9) The Minister may by order, subject to affirmative resolution, amend the Fourth Schedule.

95.—(1) A nominated officer commits an offence if—

Non-
disclosure by
a nominated
officer in the
regulated
sector

- (a) the nominated officer knows or believes, or has reasonable grounds for knowing or believing, that another person has engaged in a transaction that could constitute or be related to money laundering;
- (b) the information or other matter on which his knowledge or belief is based or which gives reasonable grounds for such knowledge or belief, as the case may be, came to the nominated officer in consequence of a disclosure made under section 94; and
- (c) the nominated officer fails, without reasonable excuse, to make the required disclosure as soon as is reasonably practicable, and in any event within fifteen days, after the information or matter comes to him.

(2) For the purposes of subsection (1)(c), the required disclosure is a disclosure of the information or other matter—

- (a) to the designated authority; and
- (b) in such form and manner as may be prescribed for the purposes of this subsection by regulations made under section 102.

Non-
disclosure by
authorized
officer.

96.—(1) An authorized officer commits an offence if—

- (a) that officer knows or has reasonable grounds to believe that another person has engaged in money laundering;
- (b) the information or other matter on which that knowledge or reasonable grounds for belief is based came to the authorized officer in the consequence of a disclosure made under section 100; and
- (c) the authorized officer fails, without reasonable excuse, to make the required disclosure as soon as is reasonably practicable, or in any event within fifteen days, after the information or other matter comes to him.

(2) For the purposes of subsection (1) (c), the required disclosure is a disclosure of the information or other matter—

- (a) to the designated authority; and
- (b) in such form and manner as may be prescribed for the purposes of this subsection by regulations made under section 102.

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97.—(1) A person commits an offence if—

- (a) knowing or having reasonable grounds to believe that a disclosure falling within section 100 has been made, he makes a disclosure which is likely to prejudice any investigation that might be conducted following the first mentioned disclosure; or
- (b) knowing or having reasonable grounds to believe that the enforcing authority is acting or proposing to act in connection with a money laundering investigation which is being, or about to be, conducted, he discloses information or any other matter relating to the investigation to any other person.

(2) A person does not commit an offence under subsection (1) if—

- (a) in the case of a disclosure mentioned in subsection (1) (a), at the time of making the disclosure the person did not know or suspect that the disclosure was likely to be prejudicial as mentioned in subsection (1) (a);
- (b) the disclosure is made in carrying out a function that the person has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct;
- (c) the disclosure is to an attorney-at-law for the purpose of obtaining legal advice;
- (d) the person is an attorney-at-law and the disclosure falls within subsection (3); or
- (e) the disclosure is a disclosure to the competent authority.

(3) A disclosure falls within this subsection if it is a disclosure—

- (a) to, or to a representative of, a client of the attorney-at-law in connection with the giving by the attorney-at-law of legal advice to the client; or
- (b) to any person in connection with legal proceedings or contemplated legal proceedings;

Provided that a disclosure does not fall within this subsection if the disclosure is made with the intention of furthering a criminal purpose.

98.—(1) A person who commits an offence under section 92 or 93 is liable— Penalties

- (a) on conviction before a Resident Magistrate—
 - (i) in the case of an individual, to a fine not exceeding three million dollars or to imprisonment for a term not exceeding five years or to both such fine and imprisonment,
 - (ii) in the case of a body corporate, to a fine not exceeding five million dollars;

(b) on conviction on indictment before a Circuit Court—

(i) in the case of an individual, to a fine or imprisonment for a term not exceeding twenty years or to both such fine and imprisonment,

(ii) in the case of a body corporate, to a fine.

(2) A person who commits an offence under section 94, 95, 96 or 97 is liable—

(a) on conviction before a Resident Magistrate, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment;

(b) on conviction on indictment before a Circuit Court, to a fine or imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

(3) Subject to affirmative resolution, the Minister may by order amend by any penalty imposed under this section or section 99.

Appropriate
consent by
nominated
officer

99.—(1) A nominated officer shall not give the appropriate consent to the doing of a prohibited act unless the officer makes a disclosure that property is criminal property to the designated authority, and—

(a) the designated authority gives consent to the doing of the act;

(b) before the end of the notice period, the officer is not notified by the designated authority that consent to the doing of the act is refused; or

(c) before the end of the notice period, the officer is so notified, but ten days have passed since the officer received the notice.

(2) A nominated officer commits an offence if—

(a) he gives consent to a prohibited act in circumstances

where none of the provisions of subsection (1) (a), (b) or (c) is satisfied; and

(b) he knows or has reasonable grounds to believe that the act is a prohibited act.

(3) A nominated officer who commits an offence under subsection (2) is liable—

(a) on conviction before a Resident Magistrate, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment;

(b) on conviction on indictment before a Circuit Court, to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

(4) The designated authority may give oral notice of its consent, or refusal of consent, under this section, but shall as soon as is reasonably practicable, and in any event, within five days after giving the oral notice, send a written form of the notice to the nominated officer.

100.—(1) A disclosure is protected under this section if it satisfies the condition referred to in subsection (3).

Protected
and
authorized
disclosures.

(2) A protected disclosure shall not be taken to breach any restriction on the disclosure of information, however imposed.

(3) The conditions mentioned in subsection (1) are that—

(a) the information or other matter disclosed came to the person making the disclosure in the course of that person's trade, profession, business or employment;

(b) the information or other matter causes the person making the disclosure to know or believe, or to have reasonable grounds for knowing or believing, that another person has engaged in money laundering; and

(c) the disclosure is made to an authorized officer or nominated officer as soon as is reasonably practicable

after the information or other matter, which gives rise to the knowledge or belief or reasonable grounds for such knowledge or belief, comes to the person making the disclosure.

(4) For the purposes of this Part, a disclosure is authorized if—

- (a) it is a disclosure to an authorized officer or nominated officer of information or other matter that causes the person making the disclosure to know or believe, or to have reasonable grounds for knowing or believing, that property is criminal property;
- (b) it is made in such form and manner as may be prescribed for the purposes of this section by regulations made under section 102; and
- (c) the first or second condition referred to in subsection (5) is satisfied.

(5) The conditions mentioned in subsection (4)(c) are as follows—

- (a) firstly, that the disclosure is made before the person making the disclosure does the prohibited act;
- (b) secondly, that—
 - (i) the disclosure is made after the person making the disclosure does the prohibited act;
 - (ii) the person has a reasonable excuse for failing to make the disclosure before doing the act; and
 - (iii) the disclosure is made on the person's own initiative and as soon as it is reasonably practicable for him to make it.

(6) An authorized disclosure shall not be taken to breach any restriction on the disclosure of information, however imposed.

Cross border
movement of
fund.

101.—(1) In this section, references to “cash” shall be construed as including references to bearer-negotiable instruments.

(2) A person who transports or causes the transportation of cash into or out of Jamaica, exceeding ten thousand dollars in United States currency or its equivalent in any other currency or such other amount as may be prescribed, shall (in such form and manner as may be prescribed by the Minister by order and before the transportation takes place) report to the designated authority—

- (a) the fact and the amount being transported;
- (b) particulars about the carrier;
- (c) the source of the funds;
- (d) the purpose for which the funds are being transported.

(3) A person who fails to make a report as required by subsection (2) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding two hundred and fifty thousand dollars or treble the amount of cash transported, whichever is the greater or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

26/2013
S. 12.

101A.—(1) Subject to subsection (2), a person shall not—

Limit on cash
transaction.
26/2013
S. 13.

- (a) pay or receive cash in excess of the prescribed amount in a transaction for the purchase of any goods or services or for the payment or reduction of any indebtedness, accounts payable or other financial obligation; or
- (b) artificially separate a single activity or course of activities into a set of transactions so that each transaction involves a payment and receipt of cash that is less than the prescribed amount but which activity or course of activities in the aggregate involves payment and receipt of cash that exceeds the prescribed amount.

(2) Subsection (1) shall not apply to—

- (a) a payment made to or by a permitted person;
- (b) an exempted person; or

(c) an exempted transaction.

(3) Where the Minister is satisfied that it is in the public interest to do so, the Minister may, by order subject to affirmative resolution, exempt a person or a particular type of transaction from the requirements of this section.

(4) A person who contravenes subsection (1) commits an offence and is liable—

- (a) on summary conviction before a Resident Magistrate, to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment; or
- (b) on indictment before a Circuit Court, to a fine or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

(5) Nothing in this section affects the enforceability of transactions in civil proceedings.

(6) In this section—

“cash” means notes and coins—

- (a) of the currency of the Island issued by the Bank of Jamaica, pursuant to the Bank of Jamaica Act; or
- (b) issued by the authority responsible for the issue of notes or coins of any other country which is designated as the legal tender of the country and which circulates and is customarily used and accepted as a medium of exchange in the country of issue.

“exempted person” or “exempted transaction” means a person or transaction in relation to which the Minister has made an order under subsection (3);

“permitted person” means any of the following persons acting in accordance with the regulatory requirements applicable to that person, namely—

- (a) a bank licensed under the Banking Act;

- (b) a licensed deposit-taking institution that is regulated by the Bank of Jamaica;
- (c) a person licensed under the Bank of Jamaica Act to operator an exchange bureau;
- (d) any other person that the Minister may, by order subject to affirmative resolution, prescribe for the purposes of this subsection;

“prescribed amount” means—

- (a) the amount of one million dollars or its equivalent (as at the date of the relevant transaction) in any other currency; or
- (b) such other amount as the Minister may, by order subject to affirmative resolution, prescribe.

102.—(1) The Minister may make regulations—

- (a) prescribing the form and manner in which a disclosure under sections 94, 95, 96 or 100(4) shall be made, and different forms may be prescribed for different categories of businesses in the regulated sector;
- (b) subject to affirmative resolution, prescribing the programmes, policies, controls and procedures to be implemented by businesses in the regulated sector; and
- (c) requiring financial institutions to report, in the form and manner prescribed, cash transactions involving an amount prescribed for the purposes of this paragraph by regulations, subject to affirmative resolution.

Regulations.
26/2013
S. 14(a).

26/2013
S. 14(b).

26/2013
S. 14(c).

26/2013
S. 14(d).

(2) Regulations under this section may also provide that the form referred to in subsection (1)(a) may include a request to the person making the disclosure to provide additional information specified in the form.

(3) The additional information mentioned in subsection (2) is information that is necessary to enable the person to whom the disclosure is made to decide whether to start or continue a money laundering investigation.

(4) A disclosure made in pursuance of a request under subsection (2) shall not be taken to breach any restriction on the disclosure of information, however imposed.

(5) References to a “money laundering investigation” shall be construed in accordance with section 103.

(6) Subsections (1)(a) and (2) do not apply to a disclosure made to a nominated officer.

(7) Regulations made under this section may provide for penalties in excess of the amounts specified in section 29 of the Interpretation Act for breach of any provision of such regulations.

PART VI. *Investigations*

Interpretation.

103. For the purposes of this Part—

“appropriate officer” means—

- (a) in relation to a forfeiture investigation, the Director, an authorized financial investigator, or an authorized officer;
- (b) in relation to a civil recovery investigation, the Director;
- (c) in relation to a money laundering investigation, an authorized financial investigator or an authorized officer;

“authorized officer” means—

- (a) a constable;
- (b) a customs officer; or
- (c) an officer of the Agency or any other person so designated by the Minister by order for the purposes of this Part;

“civil recovery investigation” is an investigation into—

- (a) whether property is recoverable property or associated property;
- (b) who holds the property; or

(c) the extent or whereabouts of the property;

Provided that an investigation is not a civil recovery investigation if—

- (i) proceedings for a recovery order have been started in respect of the property in question;
- (ii) an interim receiving order applies to the property in question; or
- (iii) the property in question is detained under section 76;

“document” has the same meaning as in section 31B of the Evidence Act;

“excluded material” means—

- (a) medical records;
- (b) human tissue or fluid which has been taken for the purposes of diagnosis or medical treatment and which a person holds in confidence;

“forfeiture investigation” means an investigation into—

- (a) whether a person has benefited from his criminal conduct; or
- (b) the extent or location of a person’s benefit from his criminal conduct;

“Judge” means a Judge of the Supreme Court;

“money laundering investigation” means an investigation into whether a person has committed a money laundering offence;

“senior appropriate officer” means—

- (a) in relation to a forfeiture investigation—
 - (i) the Director;
 - (ii) a member of the Constabulary Force not below the rank of superintendent;

- (iii) a customs officer who is not below such grade as is designated by the Commissioner of Customs as equivalent to the rank mentioned in sub-paragraph (ii);
- (iv) an authorized financial investigator;
- (v) any other person so designated by the Minister by order for the purposes of this Part;
- (b) in relation to a civil recovery investigation, the Director;
- (c) in relation to a money laundering investigation—
 - (i) a member of the Constabulary Force who is not below the rank of superintendent;
 - (ii) a customs officer who is not below such grade as is designated by the Commissioner of Customs as equivalent to the rank referred to in sub-paragraph (i);
 - (iii) an authorized financial investigator;
 - (iv) any other person designated by the Minister by order for the purposes of this Part.

Offences
prejudicing
investigation

104.—(1) This section applies if a person knows or has reasonable grounds to believe that an appropriate officer is acting, or proposing to act, in connection with a forfeiture investigation, a civil recovery investigation or a money laundering investigation that is being or is about to be conducted.

(2) The person commits an offence if—

- (a) he makes a disclosure that is likely to prejudice the

investigation; or

- (b) he falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents that are relevant to the investigation.

(3) A person does not commit an offence under subsection (2)(a) if—

- (a) he does not know or have reasonable grounds to believe that the disclosure is likely to prejudice the investigation;
- (b) the disclosure is made in the exercise of a function under this Act or any other enactment relating to criminal conduct or benefit from criminal conduct or in compliance with a requirement imposed under or by virtue of this Act; or
- (c) the person is an attorney-at-law and the disclosure falls within subsection (4).

(4) A disclosure falls within this subsection if it is a disclosure—

- (a) to, or to a representative of, a client of the attorney-at-law in connection with the giving by the attorney-at-law of legal advice to the client; or
- (b) to any person in connection with legal proceedings or contemplated legal proceedings:

Provided that a disclosure does not fall within this subsection if the disclosure is made with the intention of furthering a criminal purpose.

(5) A person does not commit an offence under subsection (2)(b) if—

- (a) he does not know or suspect that the documents are relevant to the investigation; or
- (b) he does not intend to conceal any facts disclosed by the documents from any appropriate officer carrying

out the investigation.

(6) A person who commits an offence under subsection (2) is liable—

- (a) on conviction before a Resident Magistrate, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment; or
- (b) on conviction on indictment before a Circuit Court, to a fine or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

(7) Nothing in this section prohibits a disclosure made to the competent authority by a business in the regulated sector in respect of a money laundering investigation or any order served upon that business pursuant to this Part.

Disclosure orders

Disclosure
orders

105.—(1) A Judge may, on an application made to him by an appropriate officer, make a disclosure order if he is satisfied that each of the requirements for the making of the order is fulfilled.

(2) The application for a disclosure order shall state that—

- (a) a person specified in the application is subject to a forfeiture investigation or a money laundering investigation, or that property specified in the application is subject to a civil recovery investigation;
- (b) the order is sought for the purposes of the investigation;
- (c) the order is sought in relation to information or material, or information or material of a description, specified in the application;
- (d) a person specified in the application appears to be in possession or control of the information or material.

(3) A disclosure order is an order—

- (a) requiring the person specified under subsection (2)(d) to produce the information or material to an appropriate officer for the officer to take the information or material away;
- (b) requiring that person to give an appropriate officer access to the information or material, within the period stated in the order; or
- (c) requiring that person to answer questions, either at a time specified in the order or at once, at a place so specified.

(4) The period stated under subsection (3)(b) shall be a period of seven days beginning with the day on which the order is served:

Provided that the Judge by whom the order is made may specify a shorter or longer period if satisfied that such shorter or longer period would be appropriate in the particular circumstances.

106.—(1) Before making a disclosure order, the Judge shall be satisfied that there are—

Requirements
for making a
disclosure
order

- (a) reasonable grounds for believing that—
 - (i) in the case of a forfeiture investigation, the person that the application for the order specifies as being subject to the investigation has benefited from his criminal conduct;
 - (ii) in the case of a civil recovery investigation, the property that the application for the order specifies as being subject to the investigation is recoverable property or associated property;
 - (iii) in the case of a money laundering investigation, the person that the application for the order specifies as being subject to the investigation has committed a money laundering offence;

- (b) reasonable grounds for believing that the person that the application for the order specifies as appearing to be in possession or control of the information or material so specified is in possession or control of the information or material;
- (c) reasonable grounds for believing that the information or material is likely to be of substantial value, whether or not by itself, to the investigation for the purposes of which the order is sought; and
- (d) reasonable grounds for believing that it is in the public interest for the information or material to be produced or for access to the information or material to be given, having regard to—
 - (i) the benefit likely to accrue to the investigation if the information or material is obtained; and
 - (ii) the circumstances under which the information or material is held by the person named in the application as appearing to be in possession or control of the information or material.

(2) An order under section 105(3)(a) shall not be made in respect of accounting records used in the ordinary business of banking, including ledgers, day-books, cash books and account books.

(3) A person who is required to produce any records referred to in subsection (2) may apply to a Judge in Chambers for a variation of the order and if the Judge is satisfied that the records are essential to the business activities of that person, the Judge may vary the disclosure order so that it requires the person to give the appropriate officer access to the record.

Order to
grant entry

107.—(1) This section applies if a Judge makes a disclosure order requiring a person to give an appropriate officer access to information or material on any premises.

(2) The Judge may, on an application made to him by an appropriate officer and specifying the premises, make an order to grant entry in relation to the premises.

(3) An order to grant entry is an order requiring any person who appears to an appropriate officer to be entitled to grant entry to the premises, to allow the officer to enter the premises to obtain access to information or material that is the subject of a disclosure order.

108.—(1) A disclosure order does not require a person to produce, or to give access to—

Production, copying and retention of information or material.

(a) any information or material which the person would be entitled to refuse to produce on the grounds of legal professional privilege in proceedings in the Supreme Court; or

(b) excluded material

(2) Subject to subsection (1), a disclosure order has effect notwithstanding any restriction on the disclosure of information, however imposed.

(3) An appropriate officer may take copies of any information or material that is produced, or to which access is given, in compliance with a disclosure order.

(4) Information or material produced in compliance with a disclosure order may be retained for so long as it is necessary to retain it in the original form in connection with the investigation for the purposes of which the order was made:

Provided that if an appropriate officer has reasonable grounds for believing that—

(a) the information or material may need to be produced for the purposes of any legal proceedings; and

(b) it might otherwise be unavailable for those purposes, the information or material may be retained until the proceedings are concluded.

109.—(1) This section applies if any of the information specified in an application for a disclosure order consists of

Electronic information.

information contained in a computer or stored in electronic form.

(2) If the disclosure order requires a person to produce the information to an appropriate officer for the officer to take the information away, the order has effect as an order to produce the information in a form—

- (a) in which it can be taken away by the officer; and
- (b) that is visible, legible and intelligible.

(3) If the disclosure order requires a person to give an appropriate officer access to the information, the order has effect as an order to give the officer access to the information in a form in which the information is visible, legible and intelligible.

(4) In subsections (5) and (6) and section 110—

“key” in relation to any protected information means any key, code, password, algorithm or other data the use of which (with or without other keys)—

- (a) allows access to the protected information; or
- (b) facilitates the putting of protected information in intelligible form;

“protected information” means any electronic data which, without the key to the data, cannot, or cannot readily, be accessed or put into intelligible form.

(5) Subject to subsection (6), a person to whom a disclosure order is addressed—

- (a) shall be entitled to use any key in his possession to obtain access to the protected information; and
- (b) in accordance with the order, shall produce the protected information in an intelligible form.

(6) Where a disclosure order requires the person to whom it is addressed to produce protected information in an intelligible form, that person shall be taken to have complied with the requirement if—

- (a) he makes, instead, a disclosure of any key to the

protected information that is in his possession;
and

- (b) the disclosure is made in accordance with the order, with respect to the person to whom, and in the time in which, he was requested to disclose the information.

(7) In this section and section 110—

“electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electro-magnetic or similar capabilities;

“electronic data” includes—

- (a) material in whatever form stored electronically;
- (b) the whole or part of a computer program; and
- (c) a representation suitable for processing electronically;

“information” includes data, text, images, sounds, codes, computer programs, software and databases.

110.—(1) Where an appropriate officer has reasonable grounds to believe that— Ancillary order

- (a) a key to protected information is in the possession of any person; and
- (b) production of the key is necessary for the purposes of the investigations in relation to which—
 - (i) the appropriate officer makes, or intends to make, an application for a disclosure order; or
 - (ii) a disclosure order has been issued to the appropriate officer,

the appropriate officer may apply to the Judge for an ancillary order to be included in the disclosure order.

(2) An application under subsection (1) may be made—

- (a) in any case referred to in subsection (1)(b)(i), at the

time of application for the disclosure order;

- (b) in any case referred to in subsection (1)(b)(ii), at any time after the making of the disclosure order.

(3) Where the Judge grants an application under subsection (1), the Judge shall—

- (a) in the case of an application under subsection (2)(a), include the ancillary order in the disclosure order;
- (b) in the case of an application made under subsection (2)(b), vary the disclosure order to include the ancillary order.

(4) An ancillary order shall—

- (a) describe the information to which it relates;
- (b) specify the time by which the order is to be complied with, being a reasonable time in all the circumstances; and
- (c) set out the disclosure that is required by the order and the form and manner in which the disclosure is to be made,

and any such order may require the person to whom it is addressed to keep secret the contents and existence of the order.

(5) An ancillary order shall not require the disclosure of any key which—

- (a) is intended to be used for the purpose only of generating electronic signatures; and
- (b) has not in fact been used for any other purpose.

(6) In subsection (5), “electronic signature” means anything in electronic form that—

- (a) is incorporated into, or otherwise logically associated with, any electronic information;

- (b) is generated by the signatory or other source of the information; and
- (c) is used for the purpose of facilitating, by means of a link between the signatory or other source and the information, the establishment of the authenticity of the information, the establishment of its integrity, or both.

(7) In granting an ancillary order, the Judge shall—

- (a) take into account—
 - (i) the extent and nature of any other information in addition to the information in question, to which the key is also a key; and
 - (ii) any adverse effect that complying with the order might have on a business carried on by the person to whom the order is addressed; and
- (b) require only such disclosure as is proportionate to what is sought to be achieved, allowing, where appropriate, for disclosure in such manner as would result in the putting of the information in intelligible form other than by disclosure of the key itself.

(8) An ancillary order shall not require the making of any disclosure to a person other than the appropriate officer or such other person as may be specified in the order.

(9) Where an ancillary order requiring access to protected information or the putting of protected information into intelligible form is addressed to a person who is—

- (a) not in possession of the protected information to which the order relates; or
- (b) incapable, without the use of a key that is not in his possession, of obtaining access to the protected information or producing it in intelligible form,

he shall be taken to have complied with the order if he discloses

any key to the protected information that is in his possession.

(10) It shall be sufficient for the purpose of complying with an ancillary order for the person to whom it is addressed to produce **only** those keys the production of which is sufficient to enable the person to whom they are produced to obtain access to the protected information and to put it into intelligible form.

(11) Where—

- (a) the disclosure required by an ancillary order allows the person to whom it is addressed to comply with the order without disclosing all of the keys in his possession; and
- (b) there are different keys or combination of keys in the possession of that person the disclosure of which would constitute compliance with the order,

the person may select which of the keys, or combination of keys, to disclose for the purpose of complying with the order.

(12) Where an ancillary order is addressed to a person who—

- (a) was in possession of the key but is no longer in possession of it; and
- (b) if he had continued to have the key in his possession, would be required by virtue of the order to disclose it; and
- (c) is in possession of information that would facilitate the obtaining or discovery of the key or the **putting of the** protected information into an intelligible form,

that person shall disclose to the person to whom he would have been required to disclose the key, all such information as is mentioned in paragraph (c).

(13) An appropriate officer who obtains an ancillary order shall ensure that such arrangements are made as are necessary for securing that—

- (a) a key disclosed in pursuance of the order is used to obtain access or to put into intelligible form only the protected information in relation to which the order was made;
- (b) every key disclosed in pursuance of the order is stored, for so long as it is retained, in a secure manner, and any records of such key are destroyed as soon as no longer needed to access the protected information or put it into intelligible form; and
- (c) the number of—
 - (i) persons to whom the key is disclosed or otherwise made available; and
 - (ii) copies made of the key,

is limited to the minimum that is necessary for the purpose of enabling the protected information to be accessed or put into an intelligible form.

(14) An appropriate officer who knowingly contravenes subsection (13) commits an offence and, upon conviction before a Resident Magistrate, is liable to a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment.

111.—(1) A disclosure order may be made in relation to information or material in the possession or control of a Government department.

Government
departments

(2) In this section—

“Government company” means a company registered under the Companies Act, being a company in which the Government or an agency of the Government, by the holding of shares or otherwise, is in a position to direct the policy of that company;

“Government department” or “department” means—

- (a) a Ministry, department or agency of Government,

- (b) a Parish Council, municipality or the Kingston and Saint Andrew Corporation;
- (c) a statutory body or authority, or
- (d) a Government company.

(3) An order under subsection (1)—

- (a) may require any officer of the department, whether named in the order or not, who may for the time being be in possession or control of the information or material to comply with the order;
- (b) shall be served as if the proceedings were civil proceedings against the department.

(4) Where an order under subsection (1) is served in respect of a department—

- (a) the person on whom the order is served; and
- (b) any other officer of the department who is in receipt of the order,

shall take all reasonable steps to bring it to the attention of the officer concerned.

(5) If the order is not brought to the attention of the officer concerned within the period stated in the order pursuant to section 105(3), the person on whom the order is served shall report the reasons for the failure to a Judge of the Supreme Court within seventy-two hours.

Offences

112.—(1) A person commits an offence if the person fails, without reasonable excuse, to comply with a requirement imposed on him under a disclosure order.

(2) A person who commits an offence under subsection (1) is liable upon conviction before a Resident Magistrate to a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

(3) A person commits an offence if, in purported compliance with a requirement imposed on him under a disclosure

order, he—

- (a) makes a statement that he knows to be false or misleading in a material particular; or
- (b) recklessly makes a statement that is false or misleading in a material particular.

(4) A person who commits an offence under subsection (3) is liable—

- (a) upon conviction before a Resident Magistrate, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment;
- (b) upon conviction on indictment before a Circuit Court, to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

113.—(1) Subject to subsection (2), a statement made by a person in response to a requirement imposed on that person under a disclosure order may not be used in evidence against him in criminal proceedings.

Restriction
on use of
statements in
evidence.

(2) Subsection (1) does not apply—

- (a) to proceedings under Part II (confiscation proceedings);
- (b) on a prosecution for an offence under section 112 (1) or (3);
- (c) on a prosecution for an offence under the Perjury Act; or;
- (d) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement referred to in subsection (1).

(3) A statement may not be used by virtue of subsection (2)(d) against a person unless—

- (a) evidence relating to the statement is adduced; or

- (b) a question relating to the statement is asked, by that person, or on his behalf, in the proceedings arising out of the prosecution.

Supple-
mentary

114.—(1) An application for a disclosure order or an order to grant entry may be made to a Judge in Chambers.

(2) An application under subsection (1) may be made without notice and shall be in writing accompanied by an affidavit.

(3) An application to discharge or vary a disclosure order or an order to grant entry may be made to the Court by—

- (a) the person who applied for the order; or
- (b) any person affected by the order,

and the Court may discharge or vary the order.

(4) Where an authorized financial investigator or an authorized officer applies for a disclosure order or an order to grant entry, an application to discharge or vary the order need not be by the same authorized financial investigator or authorized officer, and references to the person who applied for the order shall be construed accordingly.

Search and seizure warrants

Search and
seizure
warrants

115.—(1) A Judge may, on an application made to him by appropriate officer, issue a search and seizure warrant if he is satisfied that—

- (a) a disclosure order made in relation to information or material has not been complied with and there are reasonable grounds for believing that the information or material is on the premises specified in the application for the warrant; or
- (b) section 116 is satisfied in relation to the warrant.

(2) An application under subsection (1) shall state that—

- (a) a person specified in the application is subject to a

forfeiture investigation or a money laundering investigation, or that property specified in the application is subject to a civil recovery investigation;

- (b) the warrant is sought for the purposes of the investigation;
- (c) the warrant is sought in relation to the premises specified in the application; and
- (d) the warrant is sought in relation to information or material specified in the application, or that there are reasonable grounds for believing that there is information or material falling within section 116(6) on the premises.

(3) A search and seizure warrant is a warrant authorizing an appropriate person—

- (a) to enter and search the premises specified in the application for the warrant; and
- (b) to seize and retain any information or material found there which is likely to be of substantial value, whether or not by itself, to the investigation for the purposes of which the application is made.

(4) For the purposes of this section and section 116, an appropriate person is—

- (a) an authorized officer, if the warrant is sought for the purposes of a forfeiture investigation or a money laundering investigation;
- (b) a named member of the staff of the Agency, if the warrant is sought for the purposes of a civil recovery investigation.

116.—(1) This section is satisfied in relation to a search and seizure warrant if—

- (a) subsection (2) applies; and
- (b) either of the conditions set out in subsection (3) (a) or

Requirements
where
disclosure
order not
available

(b) is complied with.

(2) This subsection applies if there are reasonable grounds for believing that—

- (a) in the case of a forfeiture investigation, the person specified in the application for the warrant has benefited from his criminal conduct;
- (b) in the case of a civil recovery investigation, the property specified in the application for the warrant is recoverable property or associated property;
- (c) in the case of a money laundering investigation, the person specified in the application for the warrant has committed a money laundering offence.

(3) The conditions are that—

- (a) it would not be appropriate to make a disclosure order for any one or more of the reasons specified in subsection (4), and there are reasonable grounds for believing that—
 - (i) any information or material on the premises specified in the application for the warrant is likely to be of substantial value, whether or not by itself, to the investigation for the purposes of which the warrant is sought; and
 - (ii) it is in the public interest for the information or material to be obtained, having regard to the benefit likely to accrue to the investigation if the information or material is obtained; or
- (b) any one or more of the requirements set out in subsection (5) is met and there are reasonable grounds for believing that—
 - (i) there is material on the premises specified in the application for the warrant and that the information or material falls within subsection (6); and

- (ii) it is in the public interest for the information or material to be obtained, having regard to the benefit likely to accrue to the investigation if the information or material is obtained.

(4) For the purposes of subsection (3)(a), the reasons specified are that—

- (a) it is not reasonably practicable to communicate with any person—
 - (i) against whom the disclosure order could be made; or
 - (ii) who would be required to comply with an order to grant entry to the premises;
- (b) the investigation might be seriously prejudiced unless an appropriate person is able to secure immediate access to the information or material.

(5) For the purposes of subsection (3)(b), the requirements are that—

- (a) it is not reasonably practicable to communicate with any person entitled to grant entry to the premises;
- (b) entry to the premises will not be granted unless a warrant is produced; or
- (c) the investigation might be seriously prejudiced unless an appropriate person arriving at the premises is able to secure immediate entry to them.

(6) For the purposes of subsection (3)(b)(i), information or material falls within this subsection if the information or material cannot be identified at the time of the application and—

- (a) in the case of a forfeiture investigation, the information or material—
 - (i) relates to—
 - (a) the person specified in the application;
 - or

- (b) any question whether that person has benefited from his criminal conduct or as to the extent or whereabouts of his benefit from his criminal conduct; and
 - (ii) is likely to be of substantial value, whether or not by itself, to the investigation for the purposes of which the warrant is sought;
- (b) in the case of a civil recovery investigation, the information or material—
 - (i) relates to—
 - (A) the property specified in the application; or
 - (B) any question whether it is recoverable or associated property, as to who holds any such property, whether the person who appears to hold any such property holds other property which is recoverable property, or the whereabouts of any property mentioned in this sub-paragraph; and
 - (ii) is likely to be of substantial value, whether or not by itself, to the investigation for the purposes of which the warrant is sought,
- (c) in the case of a money laundering investigation, the information or material—
 - (i) relates to the person specified in the application or to the question whether that person has committed a money laundering offence; and
 - (ii) is likely to be of substantial value, whether or not by itself, to the investigation for the purposes of which the warrant is sought.

Privileged or
excluded
material

117. A search and seizure warrant does not confer the right to seize any information or material that a person would be able to

refuse to produce on the grounds of legal professional privilege in proceedings in the Supreme Court.

118.—(1) This section applies to search and seizure warrants sought for the purposes of a confiscation investigation, civil recovery investigation or a money laundering investigation.

Supple-
mentary

(2) An application for a warrant may be made without notice to a Judge in Chambers.

(3) A warrant—

- (a) may be issued subject to conditions;
- (b) continues in force until the end of the period of one month starting with the day on which it is issued;
- (c) may include provision authorizing a person who is exercising powers under it to do other things that—
 - (i) are specified in the warrant; and
 - (ii) are necessary in order to give effect to the warrant;
- (d) authorizes the person exercising powers under the warrant to take copies of any information or material seized under the warrant.

(4) Where a warrant authorizes the person named in it to search, seize and retain any information which is held in a computer and is accessible from the premises specified in the application for the warrant, and which the person believes relates to any matter relevant to the investigation, the warrant authorizes the person to obtain the information in a form—

- (a) that can be taken away by the person; and
- (b) which is visible, legible and intelligible.

(5) The provisions of sections 109(4) to (7) and 110 shall apply, with the necessary modifications, with respect to obtaining information in an intelligible form under this section.

(6) Where the Director gives written authority for any

member of staff of the Agency to accompany the person named in the warrant for the purpose of executing the warrant, the members so authorized have the same powers under the warrant as the person named in the warrant.

(7) A person exercising powers under a warrant may secure from other persons such assistance as is reasonably necessary for the purpose of executing the warrant.

(8) Information or material seized under a warrant may be retained for so long as is necessary to retain it, in its original form, in connection with the investigation for the purposes of which the warrant was issued:

Provided that if the Director has reasonable grounds for believing that the material—

(a) may need to be produced for the purposes of any legal proceedings; and

(b) might otherwise be unavailable for those purposes, the information or material may be retained until the proceedings are concluded.

Customer information orders

119.—(1) A Judge may, on an application made to him by an appropriate officer, make a customer information order if the Judge is satisfied that each of the requirements specified in section 121 for the making of the order is fulfilled.

(2) The application for a customer information order shall state that the order is sought—

(a) for the purposes of—

(i) a forfeiture investigation or a money laundering investigation being carried on in respect of a person specified in the application; or

(ii) a civil recovery investigation being carried on in respect of property specified in the

Customer
information
orders.

application, and a person specified in the application appears to hold the property; and

- (b) against one or more financial institutions specified in the application.

(3) An application for a customer information order may specify—

- (a) all financial institutions;
- (b) a particular description, or particular descriptions of, financial institutions; or
- (c) a particular financial institution or particular financial institutions.

(4) A customer information order is an order that a financial institution covered by the order shall, on being required to do so by notice in writing given by an appropriate officer, provide any such customer information as it has relating to the person specified in the application

(5) A financial institution that is required to provide information under a customer information order shall provide the information to an appropriate officer in such manner, and at or by such time, as the appropriate officer requires.

(6) If a financial institution, on which a requirement is imposed by a notice given under a customer information order, requires the production of evidence of authority to give the notice, the financial institution is not bound to comply with the requirement unless evidence of the authority has been produced to it.

120.—(1) In this Part, “customer information” is information as to whether a person holds, or has held, (whether solely or jointly with another) any account at, or has during a specified period conducted any transaction with, the financial institution concerned and, if so, information as to—

Meaning of customer information.

- (a) the matters specified in subsection (2), if the person is an individual; or
- (b) in the case of any other person, the matters specified in subsection (3).

(2) The matters specified for the purposes of subsection (1)(a) are—

- (a) the account or transaction number, as the case may require;
- (b) the individual's full name and date of birth;
- (c) the individual's taxpayer registration number;
- (d) the individual's most recent address and any previous addresses;
- (e) in the case of an account, the date on which the individual began to hold the account and, if the individual has ceased to hold the account, the date on which he did so;
- (f) in the case of a transaction, the date of the transaction and a description of the type of transaction;
- (g) such evidence of the individual's identity as was obtained by the financial institution under or for the purposes of any enactment relating to money laundering;
- (h) the full name, date and most recent address, and any previous addresses, of any person who holds, or has held, an account at the financial institution jointly with the individual;
- (i) the account number of any other accounts to which the individual is a signatory, held at the financial institution, and details of the persons holding those accounts.

(3) The matters specified for the purposes of subsection (1)(b) are—

- (a) the account number;
- (b) the entity's full name;
- (c) a description of the business carried on by the entity;
- (d) the country or territory in which the entity is incorporated or otherwise established;
- (e) the taxpayer registration number assigned to the entity;
- (f) the entity's—
 - (i) registered office, and any previous registered offices, under the Companies Act; or
 - (ii) place of business under the Registration of Business Names Act or any other enactment governing the establishment of the entity;

or, if the entity is incorporated or otherwise established outside Jamaica, anything similar under corresponding legislation of the country or territory in which the entity is incorporated or otherwise established;

- (g) the date on which the entity began to hold the account and, if the entity has ceased to hold the account, the date of cessation;
- (h) such evidence of the entity's identity as was obtained by the financial institution under or for the purposes of any legislation relating to money laundering;
- (i) the full name, date of birth and most recent address and any previous addresses of any person who is a signatory to the account.

(4) The Minister may by order, subject to affirmative resolution, amend the provisions of subsection (2) or (3).

(5) For the purposes of this section, money laundering is an act that—

- (a) constitutes an offence under section 92 or 93; or

- (b) has been committed outside of Jamaica and would constitute an offence specified in paragraph (a) if done in Jamaica.

Requirements
for making a
customer
information
order.

121. The requirements for making a customer information order are that—

- (a) in the case of a forfeiture investigation, there are reasonable grounds for believing that the person specified in the application for the order has benefited from his criminal conduct;
- (b) in the case of a civil recovery investigation, there are reasonable grounds for believing that—
 - (i) the property specified in the application for the order is recoverable property or associated property; and
 - (ii) the person specified in the application holds all or some of the property;
- (c) in the case of a money laundering investigation, there are reasonable grounds for believing that the person specified in the application for the order has committed a money laundering offence;
- (d) in the case of any investigation, there are reasonable grounds for believing that customer information which may be provided in compliance with the order is likely to be of substantial value, whether or not by itself, to the investigation for the purposes of which the order is sought; and
- (e) in the case of any investigation, there are reasonable grounds for believing that it is in the public interest for the customer information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

Offences.

122.—(1) A financial institution commits an offence if without reasonable excuse it fails to comply with a requirement imposed on it under a customer information order.

(2) A financial institution that commits an offence under subsection (1) is liable upon conviction before a Resident Magistrate to a fine not exceeding one million dollars.

(3) A financial institution commits an offence if, in purported compliance with a customer information order, the financial institution—

- (a) makes a statement which it knows to be false or misleading in a material particular; or
- (b) recklessly makes a statement which is false or misleading in a material particular.

(4) A financial institution that commits an offence under subsection (3) is liable—

- (a) on summary conviction before a Resident Magistrate, to a fine not exceeding one million dollars; or
- (b) on conviction on indictment before a Circuit Court, to a fine.

123.—(1) Subject to subsection (2), a statement made by a financial institution in response to a customer information order may not be used in evidence against the financial institution in criminal proceedings.

Restriction
on use of
statements
in evidence

(2) Subsection (1) does not apply to—

- (a) proceedings under Part II (forfeiture proceedings);
- (b) a prosecution for an offence under section 122(1) or (3); or
- (c) a prosecution for some other offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement referred to in subsection (1).

(3) A statement may not be used by virtue of subsection (2)(c) against a financial institution unless—

- (a) evidence relating to it is adduced; or

(b) a question relating to it is asked,
by or on behalf of the financial institution in proceedings
arising out of the prosecution.

Disclosure of
information.

124. A customer information order has effect notwithstanding any restriction on the disclosure of information, however imposed.

Supple-
mentary.

125.—(1) An application for a customer information order may be made to a Judge in Chambers.

(2) An application under subsection (1) may be made without notice and shall be in writing accompanied by an affidavit.

(3) An application to discharge or vary a customer information order may be made to the Court by—

(a) the person who applied for the order;

(b) any person affected by the order,

and the Court may discharge or vary the order.

(4) Where an authorized financial investigator or an authorized officer applies for a customer information order—

(a) an application to discharge or vary the order need not be by the same authorized financial investigator or authorized officer; and

(b) for the purpose of paragraph (a), references in this section to a person who applied for a customer information order shall be construed accordingly.

(5) An authorized financial investigator or an authorized officer shall not make an application for a customer information order unless he is a senior appropriate officer or is authorized to do so by a senior appropriate officer.

Account monitoring orders

Account
monitoring
orders.

126.—(1) A Judge may, on an application made to him by an appropriate officer, make an account monitoring order if the

Judge is satisfied that each of the requirements specified in subsection (2) for making the order is fulfilled.

(2) The requirements for making an account monitoring order are that—

- (a) in the case of a forfeiture investigation, there are reasonable grounds for suspecting that the person specified in the application for the order has benefited from his criminal conduct;
- (b) in the case of a civil recovery investigation, there are reasonable grounds for suspecting that—
 - (i) the property specified in the application for the order is recoverable property or associated property; and
 - (ii) the person specified in the application holds all or some of the property;
- (c) in the case of a money laundering investigation, there are reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence;
- (d) in the case of any investigation, there are reasonable grounds for believing that account information which may be provided in compliance with the order is likely to be of substantial value, whether or not by itself, to the investigation for the purposes of which the order is sought; and
- (e) in the case of any investigation, there are reasonable grounds for believing that it is in the public interest for the account information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

(3) An application for an account monitoring order shall state that—

- (a) the order is sought for the purposes of—

- (i) a forfeiture investigation or a money laundering investigation being carried on in relation to a person specified in the application; or
 - (ii) a civil recovery investigation being carried on in respect of property specified in the application, and a person specified in the application appears to hold the property; and
- (b) the order is sought against a financial institution specified in the application in relation to the account information of the description so specified.

(4) For the purposes of this section, account information is information relating to an account held at, or a transaction conducted with, the financial institution specified in the application, by the person so specified, whether solely or jointly with another.

(5) An account monitoring order under this section—

- (a) is an order that the financial institution specified in the application for the order shall, for the period stated in the order, provide account information of the description specified in the order to an appropriate officer in the manner and at or by the time or times stated in the order; and
- (b) may specify information relating to—
 - (i) all accounts held, or transactions conducted within the stated period, by the person specified in the application for the order at the financial institution so specified;
 - (ii) a particular description, or particular descriptions, of accounts so held or transactions so conducted; or
 - (iii) a particular account or transaction, or particular accounts or transactions, so held or conducted.

(6) The period referred to in subsection (5)(a) shall not exceed the period of ninety days beginning with the day on which the order is made:

Provided that the Judge may extend the period for a further ninety days, upon the application of an appropriate officer, if satisfied that the circumstances so warrant.

(7) An account monitoring order has effect notwithstanding any restriction on the disclosure of information, however imposed.

127.—(1) Subject to subsection (2), a statement made by a financial institution in response to an account monitoring order may not be used in evidence against that financial institution in criminal proceedings. Restriction on use of statements in evidence

(2) Subsection (1) does not apply to—

- (a) proceedings under Part II (forfeiture proceedings);
- (b) proceedings for contempt of court; or
- (c) a prosecution for an offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement referred to in subsection (1).

(3) A statement may not be used by virtue of subsection (2)(c) against a financial institution unless—

- (a) evidence relating to the statement is adduced; or
- (b) a question relating to the statement is asked, by or on behalf of the financial institution in the proceedings arising out of the prosecution.

128.—(1) An application for an account monitoring order may be made to a Judge in Chambers. Supplementary.

(2) An application under subsection (1) may be made without notice and shall be in writing accompanied by an affidavit.

(3) An application to discharge or vary an account monitoring order may be made to the Court by—

- (a) the person who applied for the order;
- (b) any person affected by the order,

and the Court may discharge or vary the order.

(4) If an authorized financial investigator or an authorized officer applies for an account monitoring order, an application to discharge or vary the order need not be made by the same authorized financial investigator or authorized officer, and for the purposes of subsection (3), references to a person who applied for an account monitoring order shall be construed accordingly

PART VII *General*

129.—(1) Where a person is adjudged bankrupt in Jamaica, the following property is excluded from the person's estate for the purposes of section 104 of the Bankruptcy Act—

- (a) property for the time being subject to a restraint order made before the order adjudging the person bankrupt; and
- (b) any property in respect of which an order under section 41 (appointment of Director's receiver) is in force.

(2) If in the case of a debtor (within the meaning of the Bankruptcy Act)—

- (a) a receiver is appointed under section 23 of the Bankruptcy Act; and
- (b) any property of the debtor is at that time subject to a restraint order,

the powers conferred on the receiver under the Bankruptcy Act do not apply to property then subject to the restraint order.

130.—(1) Where a person is adjudged bankrupt in Jamaica, the powers referred to in subsection (2) shall not be exercised in relation to the property referred to in subsection (3).

Property
excluded
from
operation of
Bankruptcy
Act

Restriction of
powers in
case of
bankruptcy.

(2) The powers referred to in this subsection are the powers conferred on a court by sections 33 to 50 and the powers of a receiver appointed under section 41:

Provided that nothing in the Bankruptcy Act shall be taken to restrict, or enable the restriction of, the powers referred to in this subsection.

(3) The property is—

- (a) property that is the property of the debtor for the purposes of section 104 of the Bankruptcy Act;
- (b) property which is to be applied for the benefit of creditors of the bankruptcy by virtue of a condition imposed under section 72(6) of the Bankruptcy Act;
- (c) in a case where a forfeiture order or a pecuniary penalty order has been made, any sums remaining in the hands of a receiver appointed under section 41 after the amount required to be paid under the order has been fully paid.

131.—(1) This section applies if a person who is adjudged bankrupt in Jamaica has made a tainted gift, whether directly or indirectly.

Tainted gifts
made by
bankrupt.

(2) Sections 111, 112, 115 and 116 of the Bankruptcy Act (avoidance of certain transactions) shall not apply in respect of the making of the gift at any time when—

- (a) any property of the recipient of the tainted gift is subject to a restraint order; or
- (b) an order under section 41 (appointment of Director's receiver) is in force in respect of such property.

(3) The Trustee in Bankruptcy shall, in respect of any transaction avoided under section 111, 112, 115 or 116 of the Bankruptcy Act after an order referred to in subsection (2)(a) or (b) is discharged, take into account any realization under Part II of property held by the recipient of the tainted gift.

Property
excluded on
the winding
up of a
company

132.—(1) Where under the Companies Act an order for the winding up of a company is made or the company passes a resolution for its voluntary winding up, the functions of the liquidator (or any provisional liquidator) are not exercisable in relation to the following property—

- (a) property for the time being subject to a restraint order made before the relevant time;
- (b) any property in respect of which an order under section 41 (appointment of Director's receiver) is in force.

(2) Where under the Companies Act an order for the winding up of a company is made or the company passes a resolution for its voluntary winding up, the powers referred to in subsection (3) shall not be exercised in the manner mentioned in subsection (4) in relation to any property:

Provided that nothing in the Companies Act shall be taken to restrict, or enable the restriction of, the exercise of the powers referred to in subsection (3).

(3) The powers mentioned in subsection (2) are—

- (a) the powers conferred on a court by sections 33 to 50; and
- (b) the powers of a receiver appointed under section 41.

(4) The powers shall not be exercised so as to—

- (a) inhibit the liquidator from exercising his functions for the purpose of distributing property to the company's creditors;
- (b) 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.

(5) A person is not a creditor for the purposes of a winding up under the Companies Act in so far as any sum due to that person by the company is due in respect of a forfeiture order or pecuniary penalty order.

(6) For the purposes of this section, the relevant time is—

- (a) if no order for the winding up of the company is made, the time of the passing of the resolution for voluntary winding up;
- (b) if an order for winding up is made, the time of the making of the order.

133.—(1) This section applies if—

- (a) under the Companies Act an order is made for the winding up of a company or the company passes a resolution for its voluntary winding up; and
- (b) the company has made a tainted gift, whether directly or indirectly.

Tainted gifts made by a company to be wound up

(2) Sections 225, 226, and 276 of the Companies Act (avoidance of certain transactions) shall not have effect in respect of the making of the gift at any time when—

- (a) any property of the recipient of the tainted gift is subject to a restraint order; or
- (b) an order under section 41 (appointment of Director's receiver) is in force in respect of such property.

(3) The Trustee shall, in respect of any transaction avoided under section 225, 226 or 276 of the Companies Act after an order referred to in subsection (2)(a) or (b) is discharged, take into account any realization under Part II of property held by the recipient of the tainted gift.

134.—(1) Where a company holds property that is subject to a floating charge, and a receiver is appointed by or on the application of the holder of the charge, the functions of the receiver are not exercisable in relation to the following property—

Floating charges.

- (a) property for the time being subject to a restraint order made before the appointment of the receiver;

- (b) any property in respect of which an order under section 41 (appointment of Director's receiver) is in force.

(2) Where a company holds property that is subject to a floating charge, and a receiver is appointed by or on the application of the holder of the charge, the powers referred to in subsection (3) shall not be exercised in the way mentioned in subsection (4) in relation to any property—

- (a) that is held by the company; and
- (b) in relation to which the functions of the receiver are exercisable.

(3) The powers mentioned in subsection (2) are—

- (a) the powers conferred on a court by sections 32 to 49;
- (b) the powers of a receiver appointed under section 41.

(4) The powers shall not be exercised—

- (a) so as to inhibit the receiver from exercising his functions for the purpose of distributing property to the company's creditors;
- (b) so as to prevent the payment out of any property of expenses (including the remuneration of the receiver) properly incurred in the exercise of his functions in respect of the property.

135.—(1) In this section, “insolvency practitioner” means the Trustee in Bankruptcy under the Bankruptcy Act or the official receiver entitled to act as receiver or manager of the property concerned.

(2) Subsections (3) and (4) apply if a person acting as an insolvency practitioner seizes or disposes of any property in relation to which his functions are not exercisable because the property is for the time being subject to—

- (a) a restraint order; or
- (b) an interim receiving order made pursuant to regulations under this Act,

Seizure or
disposal of
excluded
property by
insolvency
practitioner

and at the time of the seizure or disposal the insolvency practitioner believes on reasonable grounds that he is entitled (whether in pursuance of a court order or otherwise) to seize or dispose of the property.

(3) The insolvency practitioner is not liable to any person in respect of any loss or damage resulting from the seizure or disposal, except so far as the loss or damage is caused by his negligence.

(4) The insolvency practitioner has a lien on the property or the proceeds of its sale—

- (a) for such of his expenses as are incurred in connection with the liquidation, bankruptcy, sequestration or other proceedings in relation to which he purported to make the seizure or disposal; and
- (b) for so much of his remuneration as may reasonably be assigned to his acting in connection with those proceedings.

(5) Subsection (6) applies if property is subject to a restraint order and a person acting as an insolvency practitioner—

- (a) incurs expenses in respect of the property subject to the restraint order but does not know, and has no reasonable cause to believe, that the property is subject to the restraint order; or
- (b) incurs expenses—
 - (i) which are not expenses in respect of property subject to the restraint order; and
 - (ii) which might, but for the effect of the restraint order, have been met by taking possession of and realizing property subject to the restraint order.

(6) Whether or not the insolvency practitioner has seized or disposed of any property, he is entitled to payment of the remuneration and expenses mentioned in subsection (4).

Rules of
court.

136. Rules of court may make such provision as is necessary or expedient to give effect to regulations made under this Part (including provision relating to the exercise of functions of a judge conferred or imposed by the regulations).

Protection of
persons
exercising
functions
under this
Act.

137.—(1) No civil or criminal proceedings for breach of confidentiality may be brought, nor any professional sanction for such breach may be taken, against any person, or against a director or employee of an institution, who provides or transmits information requested by the enforcing authority under this Act or submits reports to the enforcing authority.

(2) No action, suit or other proceedings may be brought or instituted—

(a) personally against the Director or any officer of the Agency; or

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(b) against any financial institution, or business in the regulated sector, or any director, principal, employee or agent of that financial institution or business in the regulated sector, in respect of any act done or omission made in good faith, in the course of carrying out the provisions of this Act.

Regulations.

138. The Minister may, subject to affirmative resolution, make regulations generally for giving effect to the provisions and purposes of this Act.

FIRST SCHEDULE

(Section 3)

1. A Director shall exercise his functions in the way that he considers is best calculated to contribute to the reduction of crime and in so doing shall— Director's functions

(a) act effectively and efficiently; and

(b) have regard to the Agency's annual plan, approved pursuant to paragraph 11.

2.—(1) Anything that the Director is authorized or required to do may be done by— Delegation of duties

(a) a member of staff of the Agency; or

(b) a person providing services under arrangements made by the Director.

if authorized by the Director, generally or specifically, for that purpose.

(2) Notwithstanding sub-paragraph (1)(b), nothing that the Director or the Agency is authorized or required to do for the purposes of Part IV may be done by a constable.

3.—(1) The seal of the Agency shall be authenticated by the signature of the Director, or any other officer of the Agency duly authorized by the Director in that behalf, and shall be judicially noticed. Seal

(2) All documents, other than those required by law to be under seal, made by and all decisions of, the Agency shall be signed under the hand of the Director or any other officer of the Agency authorized to act in that behalf by the Director.

4.—(1) Every member, employee or agent of the Agency shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of the Agency that may come to his knowledge in the course of his duties. Secrecy

(2) A member, employee or agent of the Agency shall not, without lawful authority, publish or communicate to any person otherwise than in the ordinary course of his employment to the Agency any information acquired by him in the course of that employment.

(3) A person who contravenes this paragraph commits an offence and is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months.

FIRST SCHEDULE, *contd*Protection
of members

5.—(1) No proceedings shall be brought or instituted before any court or tribunal personally against any member of the Agency in respect of any act done *bona fide* in pursuance or execution or intended execution of this Act.

(2) Where any member is exempt from liability by reason only of the provisions of this paragraph, the Agency shall be liable to the extent that it would be if that member were an employee or agent of the Agency.

Funds and
resources of
the Agency

6. The funds and resources of the Agency shall consist of—

- (a) such sums as may be provided by Parliament for the Agency in the annual estimates of revenue and expenditure;
- (b) such sums as may be allocated from time to time to the Agency from loan funds;
- (c) sums borrowed by the Agency for the purpose of meeting any of its obligations or discharging any of its functions; and
- (d) all other sums or property which may in any manner become payable to or vested in the Agency in respect of any matter incidental to its functions.

Borrowing
powers

7.—(1) Subject to the provisions of paragraph (2), the Agency may borrow sums required by it for meeting any of its obligations or discharging any of its functions

(2) The power of the Agency to borrow shall be exercisable only with the approval of the Minister responsible for finance, as to the amount, as to the sources of borrowing and as to the terms on which borrowing may be effected.

(3) An approval given in any respect for the purposes of this section may be either general or limited to a particular borrowing or otherwise, and may be either unconditional or subject to conditions.

Advances and
grants to the
Agency

8.—(1) The Minister may from time to time make advances and grants to the Agency, out of sums placed upon the estimates of revenue and expenditure for the purpose and approved by the House of Representatives.

(2) With the approval of the House of Representatives, the Minister responsible for finance may guarantee, in such manner and on such conditions as he thinks fit, the payment of the principal and interest on any authorized borrowing of the Agency made otherwise than by way of advance under paragraph (1).

(3) Where the Minister responsible for finance is satisfied that there

FIRST SCHEDULE, *contd*

has been default in the repayment of any principal moneys or interest guaranteed under the provisions of this section, he shall direct the repayment out of the Consolidated Fund of the amount in respect of which there has been such default.

9. The Agency shall make to the Accountant-General, at such times and in such manner as the Minister responsible for finance may direct, payments of such amounts as may be so directed in or towards repayment of advances made to the Agency under paragraph 8, and of any sums issued in fulfilment of any guarantee given thereunder, and payments of interest on what is outstanding for the time being in respect of such advances and of any sums issued at such rate as the Minister aforesaid may direct, and different rates of interest may be directed as respects different advances or sums and as respects interest for different periods.

Repayment of, and interest on, advances and sums issued to meet guarantee

10.—(1) The Agency shall keep accounts and other records in relation to its business, and shall prepare annually a statement of accounts in a form satisfactory to the Minister, being a form which shall conform with established accounting principles.

Accounts and audit

(2) The accounts of the Agency shall be audited annually by auditors appointed by the Agency and approved by the Minister.

(3) So soon as the accounts of the Agency have been audited, the Agency shall send the statement of its accounts to the Minister together with a copy of the auditor's report thereon.

(4) The Auditor-General shall be entitled at all times to examine the accounts and other records in relation to the Agency

11 —(1) The Agency shall —

(a) in respect of each financial year, other than first year of the Agency's operation; and

(b) before a date specified by the Minister,

Annual plan, report and estimates

submit to the Minister in writing a plan (hereinafter called the annual plan) setting out how the Agency intends to exercise its functions during the financial year.

(2) The annual plan shall include a statement of—

(a) the Agency's objectives for the financial year;

(b) the Agency's performance targets for the financial year (whether or not relating to its objectives),

(c) the Agency's priorities for the financial year;

PROCEEDINGS OF CRIME.

FIRST SCHEDULE, *contd.*

- (d) the financial resources expected to be available to the Agency for the financial year; and
- (e) the proposed allocation of those resources.

(3) Where an annual plan is submitted to the Minister pursuant to this paragraph, the Minister may—

- (a) approve the plan and notify the Agency of the approval; or
- (b) disapprove the plan and—
 - (i) shall inform the Agency of the reasons for the disapproval; and
 - (ii) may require the Agency to revise the plan in the manner specified by Minister.

(4) Where sub-paragraph (3) (b) applies, the Agency shall revise the annual plan, incorporating the revisions (if any) specified by the Minister under sub-paragraph (ii), and submit the revised annual plan to the Minister.

(5) The Agency shall, within three months after the end of each financial year, or within such longer period as the Minister may in special circumstances allow, cause to be made and transmitted to the Minister a report dealing generally with the activities of the Agency during the preceding financial year.

(6) The Minister shall cause copies of the report together with copies of the statement of accounts and the auditor's report thereon to be laid on the Table of the House of Representatives and of the Senate.

Use of
information
by Agency.

12. Information obtained by or on behalf of the Agency in connection with the exercise of any of its functions may be used by the Agency in connection with the exercise of any of its other functions.

Disclosure of
information
to Agency.

13.—(1) Information which is held by or on behalf of a statutory body or any agency or department of government, whether it was obtained before or after the 30th May, 2007, shall be disclosed to the Agency for the purpose of the exercise by the Agency of its functions.

(2) A disclosure under this paragraph shall not be taken to breach any restriction on the disclosure of information, however imposed:

Provided that nothing in this paragraph authorizes the making of a disclosure that is prohibited by the Access to Information Act.

FIRST SCHEDULE, *contd.*

(3) This paragraph does not affect any power to disclose that exists apart from this section

(4) Information shall not be disclosed under this paragraph on behalf of the Commissioners of Inland Revenue or on behalf of the Commissioner of Customs unless the Commissioners concerned authorize the disclosure.

(5) The power to authorize a disclosure under subsection (4) may be delegated (either generally or for a specified purpose)—

(a) in the case of the Commissioners of Inland Revenue, to an officer of the Board of Inland Revenue;

(b) in the case of the Commissioner of Customs, to a customs officer.

14 —(1) Sub-paragraph (2) applies to information obtained under paragraph 13 from the Commissioners of Inland Revenue or from the Commissioner of Customs or from a person acting on behalf of either of them. Further disclosure

(2) The information referred to in sub-paragraph (1) shall not be further disclosed except—

(a) for a purpose connected with the exercise of the Agency's functions, and

(b) with the consent of the Commissioners concerned.

(3) Consent under sub-paragraph (2) may be given—

(a) in relation to a particular disclosure; or

(b) in relation to disclosures made in circumstances specified or described in the consent.

(4) The power to consent to further disclosure under sub-paragraph (2)(b) may be delegated, either generally or for a specified purpose—

(a) in the case of the Commissioners of Inland Revenue, to an officer of the Board of Inland Revenue;

(b) in the case of the Commissioner of Customs, to a customs officer.

(5) Sub-paragraph (6) applies to information obtained under paragraph 13 from a permitted person other than the Commissioners of Inland Revenue or the Commissioner of Customs or a person acting on behalf of either of them.

(6) A permitted person who discloses information referred to in paragraph 5 to the Agency may make the disclosure subject to such

FIRST SCHEDULE, *contd.*

conditions as to further disclosure by the Agency as the permitted person thinks appropriate, and the information shall not be further disclosed in contravention of the conditions.

Disclosure of
information
by Agency

15.—(1) Information obtained by the Agency in connection with the exercise of any of its functions may be disclosed by the Agency if the disclosure is for the purposes of—

- (a) any criminal investigation or criminal proceeding that is being, or may be, started or carried on in Jamaica;
- (b) any civil recovery investigation or civil recovery proceeding that is being, or may be, started or carried on in Jamaica;
- (c) the exercise of the Agency's functions;
- (d) the exercise by the Director of Public Prosecutions of functions under Part II;
- (e) the exercise by a customs officer or a constable of his functions under sections 72 to 83 of Part IV;
- (f) safeguarding national security;
- (g) investigations or proceedings outside Jamaica, in accordance with the provisions of the Mutual Assistance (Criminal Matters) Act; or
- (h) the exercise of a designated function.

(2) Where the Agency makes a disclosure of information for a purpose specified in sub-paragraph (1), the Agency may make any further disclosure of the information, by the person to whom the disclosure is made, subject to such conditions as the Agency thinks fit.

(3) A person referred to in sub-paragraph (2) shall not further disclose the information in contravention of the conditions.

(4) A disclosure under this paragraph is not to be taken to breach any restriction on the disclosure of information, however imposed:

Provided that nothing in this paragraph authorizes the making of a disclosure that contravenes the Access to Information Act.

(5) In sub-paragraph (1)(h), a designated function is a function that the Minister designates by order to be a function of a public nature for the purposes of this paragraph.

16.—(1) This paragraph applies to a member of staff of the Agency if—

FIRST SCHEDULE, *contd.*

- (a) he is authorized (generally or specifically) by the Director to do anything for the purposes of this Act; and
- (b) it is necessary or expedient for the purpose of doing the thing for the member of the staff of the Agency to identify himself by name.

(2) The Director may direct that such a member of the staff of the Agency may for that purpose identify himself by means of a pseudonym.

(3) For the purposes of any proceedings or application under this Act a certificate signed by the Director which sufficiently identifies the member of the staff of the Agency by reference to the pseudonym is conclusive evidence that the member of the staff of the Agency is authorized to use the pseudonym.

(4) In any proceedings or application under this Act, a member of staff of the Agency in respect of whom a direction under this paragraph is in force shall not be asked, and if asked is not required to answer, any question that is likely to reveal his true identity.

(5) For the purposes of this paragraph, "member of staff of the Agency" includes a Director's receiver or any person providing services under arrangements made by the Director.

SECOND SCHEDULE

(Section 6)

1. An offence under any of the following provisions of the Dangerous Drugs Act—

Drug trafficking.

- (a) section 3, 6, 7A or 8 (importing or exporting dangerous drug);
- (b) section 5, 7(a), 7B, 8A or 11 (cultivating, manufacturing, selling, dealing in or transporting dangerous drug);
- (c) section 16 or 17 (removal of or tampering with dangerous drug);
- (d) section 21A (traffic of dangerous drugs through the post).

2. An offence under section 92 or 93 of this Act.

Money laundering.

3.—(1) An offence under section 69 or 70 (child stealing, kidnapping) of the Offences Against the Person Act.

Murder, abduction, procurement, kidnapping, etc.
12/2009 Sch.

(2) Murder falling within section 2(1)(e) of the Offences Against the Person Act (murder pursuant to an arrangement for valuable consideration).

SECOND SCHEDULE, *contd.*Arms
trafficking.

4. Any of the following provisions of the Firearms Act—

- (a) section 4 (importing or exporting firearms or ammunition);
- (b) section 9 (manufacturing or dealing in firearms, ammunition or a prohibited weapon);
- (c) section 10 (purchase, acquisition, sale or transfer of firearms, ammunition or a prohibited weapon);
- (d) section 13 or 15 (repairing, testing or converting firearm, etc.).

Forgery.

5. An offence under any of the following provisions of the Forgery Act—

- (a) section 12 or 13 (making or having possession of paper or implements of forgery);
- (b) section 14 (imitation of currency notes).

Intellectual
property.

6. An offence under any of the following provisions—

- (a) section 46 (dealings which infringe copyright) or 134 (making, dealing with or using illicit recordings) of the Copyright Act;
- (b) section 38 of the Patents Act (making false marks).

Larceny
extortion.

7. An offence under any of the following provisions of the Larceny Act—

- (a) section 22 (larceny or embezzlement by clerks or servants);
- (b) section 42A (extortion).

Terrorism.

8. A terrorism offence as defined by section 2 of the Terrorism Prevention Act.

Child
pornogra-
phy.
13/2009
S. 14.
12/2009
Sch.

9. An offence under section 3 or 4 of the Child Pornography (Prevention) Act.

10. An offence under any of the following provisions of the Sexual Offences Act—

- (a) section 15—Abduction of child under sixteen;
- (b) section 17—Forcible abduction;
- (c) section 18—Procuration;
- (d) section 19—Procuring violation of person by threats or fraud or administering drugs;
- (e) section 20—Abduction of child with intent to have sexual intercourse, etc.;
- (f) section 21—Unlawful detention with intent to have sexual intercourse, etc.;
- (g) section 23—Living on earnings of prostitution.

SECOND SCHEDULE, *contd.*

11. An offence under Part II of the Cybercrimes Act. L.N.
105C/2013.
12. An offence under either of the following provisions of the Larceny Act—
 - (a) section 36—Obtaining credit by fraud;
 - (b) section 46—Receiving stolen property.
13. An offence of conspiracy to defraud.
14. An offence under the provisions of the Law Reform (Fraudulent Transactions) (Special Provisions) Act.
15. An offence under sections 14(1) and (5) of the Corruption Prevention Act.
16. An offence under section 4 of the Trafficking in Persons (Prevention, Suppression and Punishment) Act.
17. An offence of—
 - (a) attempting, conspiring or inciting, as the case may be, the commission of any of the offences specified in any of paragraph 1 to 16;
 - (b) aiding, abetting, counselling or procuring the commission of any such offence.

THIRD SCHEDULE

(Section 59)

1. Power to sell the property or any part of it or interest in it. Sale.
2. Power to incur expenditure for the purpose of— Expenditure.
 - (a) acquiring any part of the property, or any interest in it, which is not vested in the Agency;
 - (b) discharging any liabilities, or extinguishing any rights, to which the property is subject.
- 3.—(1) Power to manage property. Management.
 - (2) Managing property includes doing anything mentioned in section 42(13).
4. Power to start, carry on or defend any legal proceedings in respect of the property. Legal proceedings.

THIRD SCHEDULE, *contd.*

- | | |
|----------------|---|
| Compromise. | 5. Power to make any compromise or other arrangement in connection with any claim relating to the property. |
| Supplementary. | 6.—(1) For the purposes of, or in connection with, the exercise of any of its powers— <ul style="list-style-type: none"> (a) power by his official name to do any of the things mentioned in sub-paragraph (2); (b) power to do any other act that is necessary or expedient; (2) The things referred to in sub-paragraph (1)(a) are— <ul style="list-style-type: none"> (a) holding property; (b) entering into contracts; (c) suing and being sued; (d) employing agents; (e) executing a power of attorney, deed or other instrument. |

FOURTH SCHEDULE

(Section 94)

Regulated
sector.
26/2013
S. 16.

- 1.—(1) A business is in the regulated sector if the business is—
- (a) a financial institution or an entity that has corporate responsibility for the development and implementation of group wide anti-money laundering, or terrorism financing prevention, policies and procedures for the group of companies of which the entity forms a part;
 - (b) a designated non-financial institution.
- (2) In this Act, “designated non-financial institution” means a person who is—
- (a) not primarily engaged in carrying on financial business; and
 - (b) designated as a non-financial institution for the purposes of this Act by the Minister by order subject to affirmative resolution.

Supervisory
authorities.

2. Each of the following is a supervisory authority—
- (a) the Bank of Jamaica;
 - (b) the Financial Services Commission.