

Lesotho

## Money Laundering and Proceeds of Crime Act, 2008 Act 4 of 2008

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## Lesotho

# Money Laundering and Proceeds of Crime Act, 2008

## Act 4 of 2008

[Published in Lesotho Government Gazette Extraordinary 19 on 10 April 2008](#)

There are multiple commencements

Provisions	Status
Part I (section 1); Part II, section 11; Part III, section 16, section 19, section 36; Part IV (section 37, section 86); Part V (section 87, section 110); Part VI (section 111, section 113)	commenced on 1 April 2009 by <a href="#">Legal Notice 51 of 2009</a> .
Part II, section 14	commenced on 10 June 2011 by <a href="#">Legal Notice 68 of 2011</a> .
Part III, section 18	commenced on 1 July 2012 by <a href="#">Legal Notice 82 of 2012</a> .

*[This is the version of this document as it was from 25 September 2015 to 5 February 2017.]*

*[Amended by [Money Laundering and Proceeds of Crime Act 2008 \(Amendment of Schedule\) Notice, 2013 \(Legal Notice 30 of 2013\)](#) on 28 March 2013]*

*[Amended by [Money Laundering and Proceeds of Crime Act 2008 \(Amendment of Schedule\) Notice, 2015 \(Legal Notice 112 of 2015\)](#) on 25 September 2015]*

**An Act to establish an Anti-Money Laundering Authority and a Financial Intelligence Unit; to enable the unlawful proceeds of all serious crimes to be identified, traced, frozen, seized and eventually confiscated; and to require accountable institutions to take prudential measures to help combat money laundering.**

ENACTED by the Parliament of Lesotho.

## Part I – Preliminary

### 1. Short title and commencement

This Act may be cited as the Money Laundering and Proceeds of Crime Act, 2008 and shall come into operation on a date to be fixed by the Minister by notice in the *Gazette* and the Minister may fix different dates for the coming into operation of different sections of this Act.

### 2. Interpretation

(1) In this Act, unless the context otherwise requires—

"**account**" means any facility or arrangement by which a financial institution does any one or more of the following—

- (a) accepts deposits of currency;
- (b) allows withdrawals of currency or transfers into or out of the account;

- (c) pays cheques or payment orders drawn on a financial institution by, or collects cheques or payment orders on behalf of, a person;
- (d) supplies a facility or arrangement for a safety deposit box;

"**accountable institution**" means a person or institution referred to in Schedule 1 including branches, associates or subsidiaries outside of that person or institution and a person employed or contracted by such person or institution;

"**accused**" means a person charged with a serious offence, whether or not he or she has been convicted of the offence;

"**authorized officer**" for the purposes of this Act, means an officer of the Directorate of Corruption and Economic Offences or a person or class of persons as may be designated as such by the Director-General in writing and with the approval of the Minister;

"**Central Bank**" means the Central Bank of Lesotho;

"**collective investment scheme**" means a scheme, in whatever form, in pursuance of which, members of the public are invited or permitted to invest money or other assets in a portfolio, and which scheme has the following characteristics—

- (a) 2 or more investors contribute money or other assets to hold a participatory interest in a portfolio of the scheme through shares, units or any other form of participatory interest; and
- (b) the investors share the risk and the benefit of investment in proportion to their participatory interest in a portfolio of a scheme or on any other basis determined in the deed;

"**Commissioner**" means the Commissioner of Financial Institutions as defined in the Financial Institutions Act 1999;

"**court**" means a court of law in Lesotho;

"**currency**" means the coin and paper money of Lesotho or of a foreign country that is designated as legal tender and which is customarily used and accepted as a medium of exchange in the country of issue;

"**Directorate**" means Directorate of Corruption and Economic Offences as defined in the Prevention of Corruption and Economic Offences Act 1999;

"**Director-General**" means the Director-General of the Directorate of Corruption and Economic Offences;

"**document**" means any record of information and includes—

- (a) anything on which there is writing;
- (b) anything on which there are marks, figures, codes, symbols, or perforations having meaning for persons qualified to interpret them;
- (c) anything from which sounds, images or writing can be produced, with or without the aid of anything else;
- (d) a map, plan, drawing, photograph or similar thing;
- (e) any of the above generated, kept, maintained or transmitted in electronic form;

"**funds**" means assets of any kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instrument in any form, including electronic or digital, evidencing title in or interest in, such assets, including but not limited to, bank credits, bank cheques, travellers' cheques, money orders, shares, securities, bank drafts and letters of credit.

"**gift**" includes any transfer of property by a person to another person directly or indirectly—

- (a) after the commission of a serious crime by the first person;



- (b) for a consideration the value of which is significantly less than the value of the consideration provided by the first person;
- (c) to the extent of the difference between the market value of the property transferred and the consideration provided by the transferee;

"**Government**" means the Government of the Kingdom of Lesotho;

"**interest**" in relation to property, means—

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

"**Minister**" means the Minister responsible for finance;

"**money laundering**" means conduct which constitutes an offence as described under [section 25](#);

"**person**" means a natural or legal person;

"**police officer**" means a police officer holding the rank of a sergeant and above;

"**politically exposed person**" means an individual who is or has been entrusted with prominent public functions such as, Heads of other States or of Government, a Minister or Assistant Minister in the Government, a holder of a statutory position, a senior officer of the disciplined forces, a holder of an executive post in a political party, a Chief Magistrate or Resident Magistrate, Chief Accounting Officers, Members of Parliament, a Chief Executive of State-owned corporation, the Accountant-General, the Governor of the Central Bank and the Deputy Governor of the Central Bank;

"**proceedings**" means any procedure conducted by or under the supervision of a judge or judicial officer however described in relation to any alleged or proven offence, or property derived from such offence, and includes an inquiry, investigation, preliminary or final determination of facts;

"**proceeds of crime**" means any property derived or realised directly or indirectly from a serious offence and includes, on a proportional basis, property into which any property derived or realised directly from the offence was later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived or realised from such property at any time since the offence;

"**property**" means currency and any asset of every kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible, and legal documents or instruments in any form including electronic or digital, evidencing title to, or interest in, such assets, including but not limited to banks credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit, whether situated in Lesotho or elsewhere and includes any legal or equitable interest in any such property;

"**property of or in the possession or control of any person**" includes any gift made by that person;

"**realisable property**" means—

- (a) any property held by an accused;
- (b) any property possessed by a person to whom an accused has directly or indirectly made a gift under this Act;

"**serious offence**" means an offence against a provision of—

- (a) any law in Lesotho, for which the maximum penalty is death or imprisonment for life or other deprivation of liberty for a period of not less than 24 months and includes money laundering;

- (b) a law of a foreign State, in relation to acts or omissions, which had they occurred in Lesotho, would have constituted an offence for which the maximum penalty is death, or imprisonment for life or other deprivation of liberty for a period of not less than 24 months;

**"tainted property"** means property—

- (a) used in or intended for use in connection with the commission of a serious offence;
- (b) derived, obtained or realised as a result of or in connection with the commission of a serious offence.

**"terrorism"** means the commission of a terrorist act;

**"terrorist act"** means—

- (a) an act or omission in or outside Lesotho which constitutes an offence within the scope of Counter Terrorism Conventions listed in Schedule 2; or
- (b) an act or threat of action in or outside Lesotho, in relation to terrorism, which—
  - (i) involves serious bodily harm to a person;
  - (ii) involves serious damage to property;
  - (iii) endangers a person's life;
  - (iv) creates a serious risk to health or safety of the public or a section of the public;
  - (v) involves the use of firearms or explosives;
  - (vi) involves releasing into the environment or any part thereof or distributing or exposing the public or any part thereof to—
    - (a) a dangerous, hazardous, radioactive or harmful substance;
    - (b) a toxic chemical;
    - (c) a microbiological or other biological agent or toxin;
  - (vii) is designed or intended to disrupt any computer system or the provision of services directly related to communications infrastructure, banking or financial services, utilities, transportation or other essential infrastructure;
  - (viii) is designed or intended to disrupt the provision of essential emergency services such as police, civil defence or medical services;
  - (ix) involves prejudice to national security or public safety, and is intended, or by its nature and context, may reasonably be regarded as being intended to—
    - (a) intimidate the public or a section of the public; or
    - (b) compel a government or an international organisation to do, or refrain from doing, any act;
    - (c) an act which—
      - (i) disrupts any services; and
      - (ii) is committed in pursuance of a protest, demonstration or stoppage of work, shall be deemed not to be a terrorist act within the meaning of this definition, so long only as the act is not intended to result in any harm referred to in paragraphs (b) (i), (ii), (iii) or (iv);

**"terrorist organisation"** means any legal entity, or other entity owned or controlled directly or indirectly by a terrorist;

"**terrorist property**" means—

- (a) proceeds from the commission of a terrorist act;
- (b) property which has been, is being, or is likely to be used to commit a terrorist act;
- (c) property which has been, is being, or is likely to be used by a terrorist; or
- (d) property owned or controlled by or on behalf of a terrorist;

"**unit**" means the Financial Intelligence Unit established under [section 14](#);

"**unit trust**" means any arrangement made for the purpose or having the effect of providing, for a person having funds available for investment, facilities for the participation by the person as a beneficiary under a trust, in any profits or income arising from the acquisition, holding, management or disposal of any property pursuant to the trust.

(2) A reference in this Act to the law of—

- (a) Lesotho; or
- (b) any foreign State,

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

### 3. Charge in relation to a serious offence

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

### 4. Conviction in relation to a serious offence

For the purposes of this Act, a person shall be taken to be convicted of a serious offence if the person is convicted, whether summarily or on indictment, of the offence.

### 5. Quashing of conviction

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

- (a) if the conviction is quashed or set aside;
- (b) where the King, acting on the advice of the Pardons Committee, grants the person a pardon in respect of the person's conviction for the offence.

### 6. Value of property, etc

(1) Subject to subsections (2) and (3) and for the purposes of this Act, the value of property (other than cash) in relation to any person holding the property is—

- (a) its market value;
- (b) where any other person holds an interest in the property—
  - (i) the market value of the first mentioned person's beneficial interest in the property;
  - (ii) the amount required to discharge any encumbrance (other than a charging order) on that interest.

- (2) Subject to [section 8](#), references in this Act to the value, at any time referred to in subsection (3) as "the material time", of a gift or of any payment or reward, are references to—
- (a) the value of the gift, payment or reward to the recipient when he or she received it, adjusted to take account of subsequent changes in the value of money; or
  - (b) where subsection (3) applies, the value there mentioned, whichever is the greater.
- (3) Subject to [section 8](#), if at the material time the recipient holds—
- (a) the property which he or she received (not being cash); or
  - (b) property which in whole or in part indirectly represents, in the recipient's hands, the property which he or she received,
- the value referred to in subsection (2)(b) is the value to him or her at the material time of the property mentioned in subsection (2)(a) or, as the case may be, subsection (2)(b) so far as it represents the property which he or she received, but disregarding in either case any charging order.

## 7. Dealing with property

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

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

## 8. Gift covered under this Act

For the purposes of this Act—

- (a) the circumstances in which the accused is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration, the value of which is significantly less than the value of the consideration provided by the accused; and
- (b) in those circumstances, the provisions of [sections 6\(2\)](#) and (3) shall apply, as if the accused had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in subsection (2)(a) of the consideration provided by the accused.

## 9. Deriving a benefit

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

## 10. Benefiting from the proceeds of a serious offence

For the purposes of this Act—

- (a) a person has benefited from an offence if the person has at any time received any payment or other reward in connection with, or derived any pecuniary advantage from, the commission of a serious offence, whether committed by that person or another person;

- (b) a person's proceeds of a serious offence are any payments or other awards received by him or her in connection with, and any pecuniary advantage derived by him or her at any time from, the commission of the offence; and
- (c) the value of a person's proceeds of a serious offence is the aggregate of the values of the payments, rewards or pecuniary advantages received by him or her in connection with, or derived by him or her from, the commission of the offence.

## **Part II – The Anti-Money Laundering Authority and the Financial Intelligence Unit**

### **11. Anti-Money Laundering Authority**

- (1) There is established an Anti-Money Laundering Authority which is a juristic person responsible for the prevention, investigation, and with the consent of the Director of Public Prosecutions, prosecution of money laundering and terrorist financing offences and any other matters relating to money laundering and proceeds of crime.
- (2) The Directorate on Corruption and Economic Offences established by the Prevention of Corruption and Economic Offences Act 1999 shall for purposes of this Act be the Anti-Money Laundering Authority and accordingly the Director-General of the Directorate on Corruption and Economic Offences shall be the Director-General of the Authority.
- (3) The Authority—
  - (a) may conduct any investigation into money laundering and financing of terrorism;
  - (b) may instruct any accountable institution to take such steps as may be appropriate to facilitate any investigation anticipated by the Authority;
  - (c) may consult with any relevant person, institution or organization for the purpose of exercising its powers or duties under paragraph (a);
  - (d) may extend legal assistance to foreign jurisdictions with respect to property tracking, monitoring and confiscation orders.
- (4) No prosecution for an offence under this Act shall be instituted except with the consent of the Director of Public Prosecutions.

### **12. Powers of the Authority**

- (1) The Authority or a person it authorises may upon reasonable suspicion of commission of an offence examine the records and inquire into the business of an accountable institution for the purpose of investigating an offence under this Act or the regulations made thereunder, and for that purpose may—
  - (a) at any reasonable time, enter any premises, in which the authorised person believes on reasonable grounds, that there are records relevant to investigating an offence under this Act;
  - (b) use or cause to be used a computer system or data processing system on the premises to examine any data contained in, or available to, the system;
  - (c) reproduce any record, or cause it to be reproduced from the data, in the form of a print out, or other intelligible output and remove the print out or other intelligible output for examination or copying; and
  - (d) use or cause to be used any copying equipment on the premises to make copies of any record.
- (2) The owner or person responsible for the premises referred to in subsection (1) and any person found there shall give the Authority or any authorised person all reasonable assistance to enable them

to carry out their responsibilities and shall furnish them with any information that they may reasonably require with respect to administration of this Act or any regulations made thereunder.

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

### 13. Compliance

- (1) An officer of an accountable institution shall take all reasonable steps to ensure the compliance by the accountable institution with its obligations under this Act.
- (2) The Authority may issue a directive to an accountable institution which has, without reasonable excuse, failed to comply in whole or in part with its obligations under the Act to implement any action plan to ensure compliance with its obligations under this Act.
- (3) Where an accountable institution fails to comply with a directive under subsection (2), the Authority upon application to court and after satisfying the court that an accountable institution has failed, without reasonable excuse, to comply in whole or in part with any obligations under this Act, may obtain an order against any or all of the officers or employees of the accountable institutions on such terms as the court deems necessary to enforce compliance with the obligations.
- (4) In granting the order pursuant to subsection (3), the court may direct that should the accountable institution fail, without reasonable excuse, to comply with all or any of the provisions of the order, the accountable institution or an officer or employee thereof shall pay a monetary penalty in the sum not less than M100, 000 or imprisonment for a period not exceeding 10 years.

### 14. The Financial Intelligence Unit

There is established a Financial Intelligence Unit which shall be a juristic person responsible to the Minister.

### 15. Functions of the Unit

- (1) The Unit shall be the central agency responsible for receiving, requesting, analysing and disseminating to the investigatory and supervisory authorities disclosures of financial information—
  - (a) concerning suspected proceeds of crime and alleged money laundering offences;
  - (b) required by or under any law in order to counter money laundering; or
  - (c) concerning the suspected financing of terrorism and terrorist property.
- (2) For the purpose of sub-section (1), the Unit shall—
  - (a) receive, analyse and assess reports of suspicious transactions issued by accountable institutions pursuant to [section 18\(1\)](#);
  - (b) collect, process, analyse and interpret information disclosed to it and obtained by it under the relevant laws;
  - (c) inform, advise and co-operate with the investigatory and supervisory authorities, following consideration of reports received, where the Unit has reasonable grounds to suspect that a transaction involves proceeds of crime or terrorist financing or money laundering;
  - (d) supervise and enforce compliance by banks, accountable institutions and members of the relevant professions or occupations, with the provision of the relevant laws;

- (e) issue to banks, accountable institutions and members of relevant professions or occupations, such guidelines as it considers appropriate to combat money laundering and financing of terrorism activities;
  - (f) promote the appointment of persons by banks, accountable institutions and members of relevant professions or occupations to specialise in measures to detect and combat money laundering and financing of terrorism activities;
  - (g) provide assistance in the investigation or prosecution of money laundering offences to other countries;
  - (h) may compile statistics and records, disseminate information within Lesotho or elsewhere, make recommendations arising out of any information received, issue guidelines to accountable institutions and advise the Minister accordingly;
  - (i) may, upon reasonable suspicion of commission of an offence, enter the premises of an accountable institution during ordinary business hours to inspect any record kept pursuant to [section 18\(1\)](#), and ask any question relating to such record, make notes and take copies of whole or any part of the record;
  - (j) shall create training requirements and provide such training for any accountable institution in respect of transaction record-keeping and reporting obligations provided for in [sections 17\(1\) and 18\(1\)](#).
- (3) The Unit shall refer any matter or information derived from a report or information it so receives to the appropriate law enforcement agency in Lesotho if, on the basis of its analysis and assessment, it has reasonable grounds to suspect that the transaction would be relevant to the investigation or prosecution of a money laundering offence, a terrorist offence or serious offence, and in connection therein, the Unit shall send a copy of such referral or information to the relevant supervisory authority.

### Part III – Money laundering

#### 16. Accountable institution to verify customers identity

- (1) An accountable institution shall—
- (a) when establishing a business relationship, obtain information on the purpose and nature of the business relationship;
  - (b) if the transaction is conducted by a natural person, adequately identify and verify his or her identity including information relating to:
    - (i) the person's name, address and occupation;
    - (ii) the national identity card or passport or other applicable official identifying document.
  - (c) if the transaction is conducted by a legal entity, adequately identify and verify its legal existence and structure, including information relating to:
    - (i) the customer's name, legal status, address and directors;
    - (ii) the principal owners and beneficiaries and control structure;
    - (iii) provisions regulating the power to bind the entity; and to verify that any person purporting to act on behalf of the customer is so authorised, and identify those persons.
- (2) An accountable institution shall also require customer verification—
- (a) where a customer is carrying out an electronic funds transfer;

- (b) where there is a suspicion of a money laundering offence or the financing of terrorism; or
  - (c) where the accountable institution has doubts about the veracity or adequacy of the customer identification and verification documentation or information it had previously obtained.
- (3) If the customer is a politically exposed person, accountable institution shall—
- (a) adequately identify and verify his or her identity as set out in this section;
  - (b) have appropriate risk management systems to determine whether the customer is a politically exposed person;
  - (c) obtain the approval of senior management before establishing a business relationship with the customer;
  - (d) take reasonable measures to establish the source of wealth and source of property; and
  - (e) conduct regular enhanced monitoring of the business relationship.
- (4) An accountable institution shall take reasonable measures to ascertain the purpose of any transaction in excess of M100, 000 or any amount as may be prescribed by the Minister by notice published in the *Gazette*, in case of cash transactions, and the origin and ultimate destination of the funds involved in the transaction.
- (5) An accountable institution shall, in relation to its cross-border correspondent banking and other similar relationships—
- (a) adequately identify and verify the person with whom it conducts such a business relationship;
  - (b) gather sufficient information about the nature of the business of the person;
  - (c) determine from publicly available information the reputation of the person and the quality of supervision to which the person is subject to;
  - (d) assess the person's anti-money laundering and terrorist financing controls;
  - (e) obtain approval from senior management before establishing a new correspondent relationship;
  - (f) document the responsibilities of the accountable institution and the person.
- (6) Where the relationship is a payable-through account, an accountable institution shall ensure that the person with whom it has established the relationship—
- (a) has verified the identity of and performed on-going due diligence on such of that person's customers that have direct access to accounts of the accountable institution; and
  - (b) is able to provide the relevant customer identification data upon request to the accountable institution.
- (7) Where an accountable institution relies on an intermediary or third party to undertake its obligations under this section or to introduce business to it, it shall—
- (a) immediately obtain the information and documents required by subsections (1), and (2);
  - (b) ensure that copies of identification data and other relevant documentation relating to the requirements in subsections (1) and (2) will be made available to it from the intermediary or the third party upon request without delay;
  - (c) satisfy itself that the third party or intermediary is regulated and supervised for, and has measures in place to comply with the requirements set out in this Act.



- (8) The Minister may, acting on the advice of the Authority and the Central Bank, prescribe—
- (a) the official or identifying documents, or the reliable and independent source documents, data or information or other evidence that is required for identification or verification of any particular customer or class of customers;
  - (b) the threshold for, or the circumstances in which, the provisions of this section shall apply in relation to any particular customer or class of customers.
- (9) Nothing in this section shall require the production of any evidence of identity where—
- (a) the applicant is itself an accountable institution to which this Act applies or which has been licensed or registered, and is supervised by a regulatory authority for compliance with anti money laundering and combating the financing of terrorism measures undertaken;
  - (b) the transaction is part of an existing and regular business relationship with a person who has already produced satisfactory evidence of identity unless the accountable institution has reason to suspect that the transaction is suspicious or unusual;
  - (c) there is a transaction or a series of transactions taking place in the course of a business relationship, in respect of which the applicant has already produced satisfactory evidence of identity;
  - (d) the transaction is an occasional transaction not exceeding M100, 000 or any amount as may be prescribed by the Minister by notice in a *Gazette*, unless the accountable institution has reason to suspect that the transaction is suspicious or unusual; or
  - (e) in such other circumstances as may be prescribed by the Minister.
- (10) An accountable institution shall report any transaction in excess of M100, 000 or any amount as may be prescribed by the Minister by notice in a gazette in a format to be prescribed by the Minister.

## 17. Accountable institution to establish and maintain customer records

- (1) An accountable institution shall establish and maintain—
- (a) records of all suspicious transactions in any currency as may be specified from time to time by the Central Bank carried out by it, in accordance with the requirements of subsection (3);
  - (b) where evidence of a person's identity is obtained in accordance with [section 16](#), a record that indicates the nature of the evidence obtained, and which comprises either a copy of the evidence or such information as would enable a copy of it to be obtained.
- (2) Customer accounts of an accountable institution shall be kept in the true name of the account holder.
- (3) Records required under subsection (1)(a) shall contain particulars sufficient to identify—
- (a) the name, address and occupation or where appropriate, business or principal activity of each person conducting the transaction, or if known, on whose behalf the transaction is being conducted;
  - (b) the nature and date of the transaction;
  - (c) the type and amount of currency involved;
  - (d) the type and identifying number of any account with the accountable institution involved in the transaction;
  - (e) if the transaction involves a negotiable instrument other than currency, the name of the drawer of the instrument, the name of the institution on which it was drawn, the name of the payee, if any, the amount and date of the instrument, the number, if any, of the instrument and details of any endorsements appearing on the instrument;

- (f) the name and address of the accountable institution, and of the officer, employee or agent of the accountable institution who prepared the report.
- (4) Records required under subsection (1) shall be kept by the accountable institution for a period of at least 5 years from the date the relevant business or transaction was completed, or termination of business relationship, whichever is the later.

### **18. Accountable institution to report suspicious transactions**

- (1) Whenever an accountable institution has reasonable grounds to suspect that any transaction is related to the commission of money laundering offence or terrorist financing, it shall, within the prescribed period after forming that suspicion and wherever possible before the transaction is carried out—
  - (a) take reasonable measures to ascertain the purpose of the transaction, the origin and ultimate destination of the funds involved and the identity and address, of any ultimate beneficiary;
  - (b) prepare a report of the transaction in accordance with subsection (2);
  - (c) communicate the information contained therein to the Unit and Authority in writing or in such other form as the Minister, may from time to time, prescribe.
- (2) A report required under subsection (1) shall—
  - (a) contain particulars of the matters specified in subsection (1)(a) and in [section 16\(1\)](#);
  - (b) contain a statement of the grounds on which the accountable institution holds the suspicion;
  - (c) be signed or otherwise authenticated by the accountable institution; and
  - (d) shall be in the format to be prescribed by the Minister.
- (3) An accountable institution which has reported a suspicious transaction in accordance with this Part shall, if requested to do so by the Unit or Authority, give such further information as it has in relation to the transaction.

### **19. Accountable institution to establish and maintain internal reporting procedures**

- (1) An accountable institution shall establish and maintain internal reporting procedures to—
  - (a) identify persons to whom an employee is to report any information—
    - (i) which comes to the employee's attention in the course of employment; and
    - (ii) which gives rise to knowledge or suspicion of money laundering or terrorist financing by the employee;
  - (b) enable any person identified in accordance with paragraph (a) to have reasonable access to information that may be relevant to determining whether sufficient basis exists to report the matter pursuant to [section 16\(1\)](#); and
  - (c) require the identified person to report the matter, pursuant to [section 16\(1\)](#), in the event that he determines that sufficient basis exists.
- (2) The person identified in sub section (1) shall—
  - (a) be a senior officer with relevant qualifications and experience to enable him to respond sufficiently well to inquiries relating to the financial institution and the conduct of its business;
  - (b) be responsible for establishing and maintaining such manual of compliance procedures in relation to its business as the Commissioner may, from time to time require;

- (c) be responsible for ensuring compliance by staff of the financial institution with—
  - (i) this Act and any other law relating to money laundering; and
  - (ii) any manual of compliance procedures established pursuant to [section 20](#); and
- (d) act as the liaison between the accountable institution, the Unit and the Authority in matters relating to compliance with this Act and any other law or directive with respect to money laundering.

## 20. Further preventive measures by an accountable institution

An accountable institution shall establish and maintain internal reporting procedures to—

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

## 21. Attention to complex, unusual or large transactions

An accountable institution shall pay special attention to all complex, unusual or large transactions and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose.

## 22. Banks

- (1) An accountable institution which is a bank shall include accurate originator information and other related messages on electronic funds transfers and other forms of funds transfers and such information shall remain with the transfer.
- (2) Subsection (1) shall not apply to an electronic fund transfer, other than a money transfer effected from the use of a credit or debit card as means of payments, that results from a transaction carried out using a credit or debit card, provided that the credit or debit card number is included in the information accompanying such a transfer.
- (3) Subsection (1) shall not apply to electronic funds transfers and settlements between banks where the originator and beneficiary of the funds transferred are acting on their own behalf.

## 23. Supervisors and auditors

- (1) Where a supervisory authority or an auditor of an accountable institution suspects or has reasonable grounds to suspect that information that it has, concerning any transaction or attempted transaction may be—
  - (a) related to the commission of an offence; a money laundering offence or an offence of the financing of terrorism; or
  - (b) has information that its suspicion may be relevant to an act preparatory to an offence of the financing of terrorism, or an indication of money laundering,

the supervisory authority or the auditor shall, as soon as practicable after forming that suspicion or receiving the information, but within the prescribed period, report the transaction or attempted transaction or the information to the Authority and Unit.

## 24. Prohibition against tipping off

- (1) No accountable institution, or any director, officer or employee thereof shall disclose to their customer or a third party that information was provided to the Financial Intelligence Unit or that a report concerning suspected money laundering or financing of terrorism will be, is being or has been submitted to the financial intelligence unit or that a money laundering or financing of terrorism investigation is being or has been carried out.
- (2) Nothing in this section makes it an offence for a director, officer or employee of an accountable institution to disclose any information or other matter about an intended or actual suspicious transaction report to a professional legal adviser in connection with the performance of such director's, officer's or employee's responsibilities within the scope of his or her employment, but this subsection does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.
- (3) Nothing in this section makes it an offence for a professional legal adviser to disclose any information or other matter—
  - (a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client; or
  - (b) to any person—
    - (i) in contemplation of, or in connection with, legal proceedings; and
    - (ii) for the purpose of those proceedings,but this subsection does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

## 25. Money-laundering offences

- (1) A person commits the offence of money-laundering if the person—
  - (a) acquires, possesses or uses property; or
  - (b) converts or transfers property with the aim of concealing or disguising the illicit origin of that property or of aiding any person involved in the commission of an offence to evade the legal consequences thereof; or
  - (c) conceals or disguises the true nature, origin, location, disposition, movement or ownership of property,  
knowing or having reason to believe that such property is derived directly or indirectly from acts or omissions—
    - (i) in Lesotho which constitute an offence against this Part, or another law of Lesotho punishable by imprisonment for not less than 24 months;
    - (ii) outside Lesotho which, had they occurred in Lesotho, would have constituted an offence under Lesotho law, punishable by imprisonment for not less than 24 months.
- (2) A person who contravenes this section commits an offence and shall on conviction be liable to imprisonment for a period not less than 10 years or a maximum fine of not less than M50,000, or both, and in the case of a body corporate a fine of not less than M500,000.

## 26. Related offences

- (1) A person shall not open an account with an accountable institution using—
  - (a) a false name; or

- (b) a fraudulent document.
- (2) In determining whether a person has complied with any requirement of subsection (1), the Court shall have regard to all the circumstances of the case, including such custom and practice as may from time to time be current in the relevant trade, business, profession or employment, and may take account of any relevant guidance adopted, approved by a public authority acting in the public interest, supervisory functions in relation to the accountable institution, or any other body that regulates or is representative of any trade, business or profession, employment carried on by that person.
- (3) An accountable institution which, or a person who, fails to comply with any requirement of this Part for which no penalty is specified, commits an offence, and shall be liable on conviction to—
  - (a) in the case of a natural person imprisonment for a period not exceeding 10 years, or a fine of not less than M50,000 or both; and
  - (b) in the case of a legal person, a fine of not less than M250,000.
- (4) In addition or in the alternative to the fines imposed under subsection (3) the Court may order suspension or revocation of a business license.
- (5) A person who—
  - (a) knows or suspects that a report under [section 18\(1\)](#) is being prepared or has been sent to the Authority and the Unit and discloses this fact to another person;
  - (b) discloses to another person information or other matter which is likely to prejudice any investigation of an offence or possible offence of money-laundering under [section 25](#),
 commits an offence and shall be liable on conviction to imprisonment for a period not exceeding 10 years or a fine not less than M50, 000 or both.
- (6) In proceedings for an offence against subsection (5), it is a defence to prove that the person did not know or have reasonable grounds to suspect that the disclosure was likely to prejudice any investigation of an offence or possible offence of money laundering under [section 25](#).

## 27. Extraditable offences

Money laundering and the financing of terrorism are extraditable offences for the purposes of this Act and any other legislation dealing with extradition.

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

- (1) A person entering or leaving Lesotho shall, at the port of entry or departure, as the case may be, declare currency in his or her possession if it exceeds a sum prescribed by the Commissioner.
- (2) An authorized officer may seize any currency which is being imported into, or exported from Lesotho, if—
  - (a) the amount is not less than the sum prescribed by the Commissioner; or
  - (b) he or she has reasonable grounds for suspecting that it is—
    - (i) property derived from a serious offence;
    - (ii) intended by any person for use in a commission of a serious offence.
- (3) Currency seized under subsection (1) shall not be kept for more than 48 hours after seizure, excluding weekends and public holidays unless a Magistrate orders its continued seizure for a period not exceeding 3 months from the date of seizure, upon being satisfied that—
  - (a) there are reasonable grounds for the suspicion referred to in subsection (1)(b); and

- (b) its continued seizure is justified while—
  - (i) its origin or derivation is further investigated; or
  - (ii) consideration is given to the institution in Lesotho or elsewhere of criminal proceedings against any person for an offence with which the currency is connected.
- (4) A Magistrate may subsequently order continued seizure of the currency if satisfied of the matters mentioned in subsection (2), but total period of seizure shall not exceed 2 years from the date of the order made under that subsection.
- (5) Subject to subsection (6), currency seized under this section may be released in whole or in part to the person on whose behalf it was imported or exported—
  - (a) by order of a Magistrate that its continued seizure is no longer justified, upon application by or on behalf of that person and after considering any views of the Director-General of the Authority to the contrary; or
  - (b) by an authorized officer, if satisfied that its continued seizure is no longer justified.
- (6) No currency seized under this section shall be released where—
  - (a) an application is made under Part IV of this Act for the purpose of—
    - (i) the forfeiture or confiscation of the whole or any part of the currency; or
    - (ii) its restraint pending determination of its liability to forfeiture or confiscation; or
  - (b) proceedings are instituted in Lesotho or elsewhere against any person for an offence with which the currency is connected,

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

## 29. Authority's power to obtain search warrant

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

## 30. Property tracking and monitoring orders

For the purpose, of determining whether any property, reasonably suspected to be connected in the commission of an offence under this Act belongs to, or is in the possession or under the control of any person, the Authority may, upon application to the Court, obtain an order—

- (a) that any document relevant to—
  - (i) identifying, locating or quantifying any such property; or
  - (ii) identifying or locating any document necessary for the transfer of any such property, belonging to, or in the possession or control of that person be delivered forthwith to the Authority;

- (b) that the accountable institution produce forthwith to the Authority all information obtained about any transaction conducted by or for that person during such period before or after the order as the Court directs.

### **31. Orders to enforce compliance with obligations under this Part**

- (1) The Authority may, upon application to the Court, after satisfying the Court that an accountable institution has failed to comply with any obligation under sections [16](#), [17](#), [18](#) or [19](#), obtain an order against all or any officers or employees of the accountable institution in such terms as the Court deems necessary, in order to enforce compliance with such obligation.
- (2) In granting the order pursuant to subsection (1) the Court may order that should the accountable institution fail, without reasonable excuse, to comply with all or any provision of the order, the accountable institution, officer or employee shall pay a financial penalty in the sum and in the manner directed by the Court.

### **32. Secrecy obligations overridden**

- (1) This Act shall have effect notwithstanding any obligation as to secrecy or other restriction on disclosure of information imposed by law or otherwise.
- (2) Notwithstanding subsection (1), the common law privilege of communication between a legal advisor and a client is preserved concerning communication made in confidence between—
  - (a) the legal practitioner and his or her client for the purposes of legal advice or litigation which is contemplated or has commenced or is pending under or in connection with this Act; or
  - (b) the legal practitioner and a person (other than the legal practitioner's client) for the purposes of legal advice or litigation which is contemplated or has commenced or is pending involving the legal practitioner's client under or in connection with this Act.

### **33. Immunity where suspicious transaction is reported**

No action, suit or other proceedings shall lie against any accountable institution, or an officer, employee or other representative of the accountable institution acting in the ordinary course of the person's employment or representation in relation to any action taken in good faith by that institution or person pursuant to [section 18\(1\)](#).

### **34. Immunity where official powers or duties are exercised in good faith**

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

### **35. Restitution of restrained property**

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

- (a) the person is not charged in Lesotho with the serious offence;
- (b) the person is charged with the serious offence in Lesotho but not convicted of that offence,

then the restrained property may be returned to the person.

### 36. Damages

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

## Part IV – Confiscation

### Division 1 - Confiscation and pecuniary penalty orders

#### 37. Application for confiscation order or pecuniary penalty order

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

#### 38. Procedure for application for confiscation order

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

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

- (1) Where—
  - (a) information has been laid alleging the commission of an offence by a person;
  - (b) a warrant for the arrest of the person has been issued in relation to that information,the Authority may apply to Court for a confiscation order in respect of any tainted property if the accused has died or absconded.
- (2) For the purposes of subsection (1), a person is deemed to have absconded if reasonable attempts to arrest the person pursuant to the warrant have been unsuccessful during the period of 2 months



commencing on the day the warrant was issued, and the person shall be deemed to have so absconded on the last day of that period of 2 months.

- (3) Where the Authority applies under this section for a confiscation order against any tainted property the Court shall, before hearing the application—
  - (a) require notice of the application to be given to any person who, in the opinion of the Court, appears to have an interest in the property;
  - (b) direct the notice of the application to be published in the *Gazette* and in a newspaper published and circulating in Lesotho containing such particulars and for so long as the Court may require.

## Division 2 - Confiscation

### 40. Confiscation order on conviction

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

*[Please note: numbering as in original.]*

### 41. Effect of confiscation order on conviction

- (1) Subject to subsection (2), where a Court makes a confiscation order against any property, the property vests with the Government of the Kingdom of Lesotho by virtue of the order.

- (2) Where property ordered to be confiscated is registrable property—
- (a) the property vests with the Government of Kingdom of Lesotho in equity but does not vest with the Government of Kingdom of Lesotho at law until the applicable registration requirements have been complied with;
  - (b) the Government is entitled to be registered as owner of the property;
  - (c) the Attorney-General has power on behalf of the Government to do or authorise the doing of anything necessary or convenient to obtain the registration of the Government as owner, including the execution of any instrument to be executed by a person transferring an interest in property of that kind.
- (3) Where the Court makes a confiscation order against property—
- (a) the property shall not, except with the leave of Court and in accordance with any directions of the Court, be disposed of, or otherwise dealt with, by or on behalf of the Government before the relevant appeal date; and
  - (b) if after the relevant appeal date, the order has not been discharged, the property may be disposed of and the proceeds applied or otherwise dealt with in accordance with the directions of the Attorney-General.
- (4) In this section—
- "registrable property" means property the title to which is passed by registration in accordance with the provisions of the Land Act 1979 and the Deeds Registry Act 1967;
- "relevant appeal date" used in relation to a confiscation order made in consequence of a person's conviction of a serious offence means—
- (a) the date on which the period allowed by rules of court for the lodging of an appeal against a person's conviction or for the lodging of an appeal against the making of a confiscation order expires without an appeal having been lodged, whichever is the latter; or
  - (b) where an appeal against a person's conviction or against the making of a confiscation order is lodged, the date on which the appeal lapses in accordance with the rules of court or is finally determined whichever is the latter.

#### 42. Voidable transfers

The Court may—

- (a) before, making a confiscation order; and
- (b) in the case of property in respect of which a restraining order was made; where the order was served in accordance with [section 68](#),

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

#### 43. Protection of third parties

- (1) Where, an application is made, for a confiscation order against property, a person who claims an interest in the property may apply to Court, before the confiscation order is made, for an order under subsection (2).
- (2) If a person applies to the Court for an order under this section in respect of property and the Court is satisfied on a balance of probabilities—
  - (a) that he or she was not in any way involved in the commission of the offence; and

- (b) where he or she acquired the interest during or after the commission of the offence, that he or she acquired the interest—
  - (i) for sufficient consideration; and
  - (ii) without knowing, and in circumstances such as not to arouse a reasonable suspicion that the property was, at the time he or she acquired it, tainted property,the Court shall make an order declaring the nature, extent and value (at the time the order is made) of his or her interest.
- (3) Subject to subsection (4), where a confiscation order has already been made directing the confiscation of property, a person who claims an interest in the property may, before the end of the period of 6 months commencing on the day on which the confiscation order is made, apply under this subsection to the Court for an order under subsection (2).
- (4) A person who—
  - (a) had knowledge of the application for the confiscation order before the order was made; or
  - (b) appeared at the hearing of the application, shall not be permitted to make an application under subsection (3) except with leave of Court.
- (5) A person who makes an application under subsection (1) or (3) shall give no less than 14 days written notice of the making of the application to the Director-General who shall be a party to any proceedings in the application.
- (6) An applicant or the Authority may, in accordance with the rules of Court, appeal against an order made under subsection (2).
- (7) The Court shall, on application by any person who has obtained an order under subsection (2), and where the period allowed by the rules of court with respect to the making of appeals has expired and any appeal from that order has been determined—
  - (a) direct that the property or part thereof to which the interest of the applicant relates, be returned to the applicant; or
  - (b) direct that an amount equal to the value of the interest of the applicant, as declared in the order, be paid to the applicant.

#### **44. Discharge of confiscation order on appeal and quashing of conviction**

- (1) Where the Court makes a confiscation order against property in reliance on a person's conviction of a serious offence and the conviction is subsequently quashed, the quashing of the conviction discharges the order.
- (2) Where a confiscation order against property is discharged as provided for in subsection (1) or by the Court hearing an appeal against the making of the order, any person who claims to have an interest in the property immediately before the making of the confiscation order may apply to the Registrar-General, in writing, for the transfer of the interest to the person.
- (3) On receipt of an application under subsection (2) the Registrar-General shall—
  - (a) if the interest is vested in the Government of Lesotho, give directions that the property or part thereof to which the interest of the applicant relates be transferred to the person; or
  - (b) in any other case, direct that there be payable to the person an amount equal to the interest as at the time the order is made.
- (4) In the exercise of his or her powers under this section and [section 43\(7\)](#), the Registrar-General shall have the power to do or authorise the doing of any thing necessary or convenient to effect the transfer or return of the property, including the execution of any instrument and the making of any application for the registration of an interest in the property on any appropriate register.

#### 45. Payment instead of a confiscation order

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

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

the Court may, instead of ordering the property or part thereof or interest therein to be confiscated, order the person to pay to the Government of the Kingdom of Lesotho an amount equal to the value of the property, part or interest.

#### 46. Application of procedure for enforcing fines

Where the Court orders a person to pay an amount of money under [section 45](#), that amount of money shall be treated as if it were a fine imposed upon him or her in respect of a conviction for a serious offence, and the Court shall—

- (a) notwithstanding any other law, impose in default of the payment of that amount, a term of imprisonment—
  - (i) of not less than 60 months, where the amount does not exceed M10,000;
  - (ii) of not less than 2 years, where the amount exceeds M10,000 but does not exceed M20,000;
  - (iii) of not less than 4 years, where the amount exceeds M20,000;
- (b) direct that the term of imprisonment imposed pursuant to subsection (a) be served consecutively to any other form of imprisonment imposed on that person or that the person is then serving;
- (c) direct that the Criminal Procedure and Evidence Act 1981 regarding the remission of sentences of prisoners serving a term of imprisonment shall not apply in relation to a term of imprisonment imposed on a person pursuant to paragraph (a).

#### 47. Confiscation where a person dies or absconds

- (1) Subject to [section 39\(3\)](#), where an application is made to the Court under [section 41\(1\)](#) for a confiscation order against any tainted property in consequence of a person having died or absconded in connection with a serious offence and the Court is satisfied that—
  - (a) any property is tainted property in respect of the offence;
  - (b) proceedings in respect of a serious offence committed in relation to that property were commenced; and
  - (c) the accused charged with the offence referred to in paragraph (b) has died or absconded,the Court may order that the property or such property as is specified by the Court in the order be confiscated.
- (2) The provisions of sections [40](#), [41](#), [42](#) and [43](#) shall apply with such modifications as are necessary to give effect to this section.

### Division 3 - Pecuniary penalty orders

#### 48. Pecuniary penalty order on conviction

- (1) Subject to this section, where the Authority applies to Court for a pecuniary penalty order against a person in respect of that person's offence the Court shall, if it is satisfied that the person has benefited from that offence, order him to pay to the Government an amount equal to the value of his or her benefit from the offence or such lesser amount as the Court certifies in accordance with [section 51\(2\)](#) to be the amount that might be realised at the time the pecuniary penalty order is made.
- (2) The Court shall assess the value of the benefits derived by a person from the commission of an offence in accordance with sections [49](#), [50](#), [51](#), and [52](#).
- (3) The Court shall not make a pecuniary penalty order under this section—
  - (a) until the period allowed by the rules of court for the lodging of an appeal against conviction has expired without such appeal having been lodged; or
  - (b) where an appeal against conviction has been lodged until the appeal lapses in accordance with the rules of court or is finally determined, whichever is the latter date.

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

- (1) Where a person obtains property as the result of, or in connection with the commission of a serious offence, his or her benefit is the value of the property so obtained.
- (2) Where a person has derived an advantage as a result of or in connection with the commission of a serious offence, his or her advantage shall be deemed to be a sum of money equal to the value of the advantage so derived.
- (3) The Court, in determining whether a person has benefited from the commission of a serious offence or from the offence taken together with other serious offences shall, unless the contrary is proved, deem—
  - (a) all property appearing to the Court to be held by the person on the day on which the application is made; and
  - (b) all property appearing to the Court to be held by the person at any time—
    - (i) within the period between the day the serious offence, or the earliest serious offence, was committed and the day on which the application is made; or
    - (ii) within the period of 6 years immediately before the day on which the application is made, whichever is the longer,to be property that came into the possession or under the control of the person by the reason of the commission of that serious offence or those serious offences for which the person was convicted;
  - (c) any expenditure by the person since the beginning of that period to be expenditure met out of payments received by him or her as a result of, or in connection with, the commission of that serious offence or those serious offences; and
  - (d) any property received or deemed to have been received by the person at any time as a result of, or in connection with the commission by him or her of that serious offence or those serious offences as property received by him or her free of any interest therein.
- (4) Where a pecuniary penalty order has been previously made against a person, in assessing the value of any benefit derived by him or her from the commission of the serious offence, the Court shall

leave out of account any of the benefits that are shown to the Court to have been taken into account in determining the amount to be recovered under that order.

- (5) If evidence is given at the hearing of the application that the value of the person's property at any time after the commission of the serious offence exceeded the value of the person's property before the commission of the offence, then the Court shall, subject to subsection (6), treat the value of the benefit as being not less than the amount of that excess.
- (6) If, after evidence of the kind referred to in subsection (5) is given, the person satisfies the Court that the whole or part of the excess was due to causes unrelated to the commission of the serious offence, subsection (5) does not apply to the excess or, as the case may be, that part.

## 50. Statements relating to benefit from commission of serious offences

- (1) Where—
  - (a) a person has been convicted of a serious offence and the Authority tenders to the Court a statement as to any matters relevant to—
    - (i) determining whether the person has benefited from the offence or from any other serious offence of which he or she is convicted in the same proceedings or which is taken into account in determining his or her sentence; or
    - (ii) an assessment of the value of the person's benefit from the offence or any other serious offence of which he or she is convicted in the same proceedings or which is taken into account; and
  - (b) the person accepts to any extent an allegation in the statement,  
the Court may, for the purposes of so determining or making that assessment, treat his or her acceptance as conclusive of the matters to which it relates.
- (2) Where—
  - (a) a statement is tendered under subsection (1)(a); and
  - (b) the Court is satisfied that a copy of that statement has been served on the person,  
the Court may require the person to indicate to what extent he or she accepts each allegation in the statement and so far as he or she does not accept any allegation, to indicate any matters he or she proposes to reply on.
- (3) Where the person fails in any respect to comply with a requirement under subsection (2), he or she may be treated for the purposes of this section as having accepted every allegation in the statement other than—
  - (a) an allegation in respect of which he or she complied with the requirement; and
  - (b) an allegation that he or she has benefited from the serious offence or that any property or advantage was obtained by him or her as a result of or in connection with the commission of the offence.
- (4) Where—
  - (a) the person tenders to the Court a statement as to any matters relevant to determining the amount that might be realised at the time the pecuniary penalty order is made; and
  - (b) the Authority accepts to any extent any allegation in the statement,  
the Court may, for the purposes of that determination, treat the acceptance of the Authority as conclusive of the matters to which it relates.
- (5) An allegation may be accepted or a matter indicated for the purposes of this section either—
  - (a) orally before the Court; or

- (b) in writing in accordance with rules of Court.
- (6) An acceptance by a person under this section that he or she received any benefits from the commission of a serious offence is admissible in any proceedings for any offence.

### **51. Amount recovered under pecuniary penalty order**

- (1) Subject to subsection (2), the amount to be recovered in the person's case under a pecuniary penalty order shall be the amount which the Court assesses to be the value of the person's benefit from the serious offence or if more than one, all the offences in respect of which the order may be made.
- (2) Where the Court is satisfied as to any matter relevant for determining the amount which might be realised at the time the pecuniary penalty order is made, whether by acceptance under [section 50](#) or otherwise, the Court may issue a certificate giving its opinion as to the matters concerned, and shall do so if satisfied that the amount that might be realised at the time the pecuniary penalty order is made is less than the amount it assesses to be the value of the person's benefit from the offence, or if more than one, all the offences in respect of which the pecuniary penalty order may be made.

### **52. Variation of pecuniary penalty order**

Where—

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

the Authority may apply to the Court for a variation of the pecuniary penalty order to increase the amount of the order by the value of the property not so confiscated and the Court may, if it considers it appropriate to do so, vary the order accordingly.

### **53. Lifting the corporate veil**

- (1) In assessing the value of benefits derived by a person from the commission of a serious offence, the Court may treat as property of the person any property that, in the opinion of the Court, is subject to the effective control of the person whether or not he or she has—
  - (a) any legal interest in the property; or
  - (b) any right power or privilege in connection with the property.
- (2) Without prejudice to the generality of subsection (1), the Court may have regard to—
  - (a) shareholdings in, debentures over or directorships in any company that has an interest, whether direct or indirect, in the property, and for this purpose the Court may order the investigation and inspection of the books of a named company;
  - (b) any trust that has any relationship to the property;
  - (c) any relationship whatsoever between the persons having an interest in the property or in companies of the kind referred to in paragraph (a) or trust of the kind referred to in paragraph (b), and any other persons.
- (3) Where the Court, for the purposes of making a pecuniary order against a person, treats particular property as the person's property pursuant to subsection (1), the Court may, on application by the Authority make an order declaring that the property is available to satisfy the order.

- (4) Where, the Court declares that property is available to satisfy a pecuniary penalty order—
  - (a) the order may be enforced against the property as if the property were the property of the person against whom the order is made; and
  - (b) a restraining order may be made in respect of the property as if the property were property of the person against whom the order is made.
- (5) Where the Authority makes an application for an order under subsection (3) that property is available to satisfy a pecuniary penalty order against a person—
  - (a) the Authority shall give written notice of the application to the person and to any person who the Authority has reason to believe may have an interest in the property; and
  - (b) the person and any person who claims an interest in the property may appear and adduce evidence at the hearing.

#### **54. Enforcement of pecuniary penalty order**

Where the Court orders a person to pay an amount under a pecuniary penalty order the provisions of [section 41](#) shall apply with such modifications as the Court may determine for the purpose of empowering the Court to impose a term of imprisonment on a person in default of compliance by him or her with a pecuniary penalty order.

#### **55. Discharge of pecuniary penalty order**

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

### **Division 4 - Control of property in terms of the Criminal Procedure and Evidence Act 1981**

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

- (1) A police officer or an authorised officer may, upon reasonable suspicion of the commission of an offence—
  - (a) search a person for tainted property;
  - (b) enter upon land or upon or into premises and search the land premises for tainted property; and
  - (c) in either case, seize any property found in the course of the search that the police officer or an authorised officer believes, on reasonable grounds to be tainted property:

Provided that the search or seizure is made—

- (i) with the consent of the person or the occupier of the land or premises as the case may be;
- (ii) under warrant issued under [section 57](#); or
- (iii) under [section 59](#).



- (2) Where a police officer or an authorised officer may search a person under this Division, he or she may also search—
  - (a) the clothing that is being worn by the person; and
  - (b) any property in, or apparently in, the person's immediate control.

#### **57. Search warrant in relation to tainted property**

- (1) Where a police officer or an authorised officer has reasonable grounds for suspecting that there is, or may be within the next 72 hours, tainted property of a particular kind—
  - (a) on a person;
  - (b) in the clothing that is being worn by a person;
  - (c) otherwise in a person's immediate control;
  - (d) upon land or upon or in any premises,

the police officer or the authorised officer may lay before a Magistrate an information on oath setting out those grounds and apply for the issue of a warrant to search the person, the land or the premises as the case may be, for tainted property of that kind.
- (2) Where an application is made under subsection (1) for a warrant to search a person, land or premises, the Magistrate may, subject to subsection (4), issue a warrant authorising a police officer or an authorised officer, whether or not named in the warrant, with such assistance and by such force as is necessary and reasonable—
  - (a) to search the person for tainted property of that kind;
  - (b) to enter upon the land or in or upon any premises and to search the land or premises for tainted property of that kind; and to seize property found in the course of the search that the police officer or an authorised officer believes on reasonable grounds to be tainted property of that kind.
- (3) A warrant may be issued under subsection (2) in relation to tainted property whether or not information has been laid in respect of the relevant offence.
- (4) A Magistrate shall not issue a warrant under subsection (2) unless, where information has not been laid in respect of the relevant offence at the time when the application for the warrant is made, the Magistrate is satisfied that—
  - (a) information will be laid in respect of the relevant offence within 48 hours; and
  - (b) the property is tainted property.
- (5) A warrant issued under this section shall state—
  - (a) the purpose for which it is issued, including a reference to the nature of the relevant offence;
  - (b) the description of the kind of property authorised to be seized;
  - (c) the time at which the warrant ceases to be in force; and
  - (d) whether entry is authorised to be made at any time of the day or night or during specified hours.
- (6) If during the course of searching under a warrant issued under this section, a police officer or an authorised officer finds—
  - (a) property that the police officer or an authorised officer believes on reasonable grounds to be tainted property either of a type not specified in the warrant or tainted property in relation to another serious offence; or

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

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

#### **58. Search warrant may be granted by telephone**

- (1) Where by reason of urgency a police officer or an authorised officer considers it necessary to do so he or she may make application for a search warrant under [section 57](#) by electronic communication.
- (2) A Magistrate to whom an application for the issue of a warrant is made by electronic communication may sign a warrant if he or she is satisfied that it is necessary to do so and shall inform the police officer or an authorised officer of the terms of the warrant so signed. The police officer or an authorised officer shall complete a form of warrant in the terms furnished by the Magistrate.
- (3) The police officer or an authorised officer to whom a warrant is granted by electronic communication shall, not later than the next day following the execution of the warrant, give the Magistrate duly sworn information and the form of warrant completed by him or her.

#### **59. Record of property seized**

- (1) A police officer or an authorised officer who seizes property under [section 57](#) shall detain the property seized, taking reasonable care to ensure that the property is preserved and dealt with in accordance with section 53 of the Criminal Procedure and Evidence Act 1981.
- (2) The police officer or an authorised officer referred under subsection (1) shall be required to report to the Authority, on a monthly basis, on the status of all seized property.

#### **60. Return of seized property**

- (1) Where property has been seized under [section 59](#) otherwise than because it may afford evidence of the commission of an offence, a person who claims an interest in the property may apply to the Court for an order that the property be returned to the person.
- (2) Where a person makes an application under subsection (1) and the Court is satisfied that—
  - (a) the person is entitled to possession of the property;
  - (b) the property is not tainted property; and
  - (c) the person in respect of whom the conviction, charge or proposed charge and in relation to whom the seizure of the property was made has no interest in the property,

the Court shall order the return of the property to the person.

#### **61. Search for and seizure of tainted property in relation to foreign offences**

Where a foreign State requests assistance to locate or seize property suspected to be tainted property in respect of an offence within its jurisdiction, the provisions of [section 57](#) and [58](#) apply with necessary modification.

## Division 5 - Terrorist cash and terrorist property

### 62. Seizure and detention of terrorist cash etc

- (1) Where the Authority has reasonable grounds to suspect that any cash, funds or property—
  - (a) is intended to be used for the purposes of terrorism;
  - (b) belongs to, or is held on trust for, a proscribed organisation;
  - (c) is or represents property obtained through acts of terrorism,it may seize the cash, funds or property.
- (2) The Authority may seize cash, funds or property even if it reasonably suspects part only of the cash, funds or property to be terrorist cash, funds or property where it is not reasonably practicable to seize that part only of the cash, funds or property.
- (3) The Authority may exercise its powers under subsection (1), whether or not any proceedings have been brought for an offence in connection with the terrorist cash, funds or property.
- (4) The Authority shall, as soon as is reasonably practicable, apply to a Judge in Chambers for a detention order with respect to the cash, funds or property seized under subsection (1).
- (5) The Judge in Chambers shall not make an order for detention of the cash, funds or property unless he or she is satisfied that there are reasonable grounds for suspecting that the cash funds or property—
  - (a) is intended to be used for the purposes of terrorism;
  - (b) consists of resources of a proscribed organisation; or
  - (c) is or represents property obtained through terrorists activities.
- (6) Subject to subsection (8), any order made under subsection (5) shall remain valid for a period of 90 days, and may be renewed for further periods of 90 days by the Judge in Chambers, until production of the cash, funds or property before the court in proceedings against any person for an offence with which the cash funds or property is connected.
- (7) Any cash, or funds detained under this section shall be deposited by the Authority in an interest-bearing account.
- (8) The cash, or funds, with the interest, may be released by order of the Judge in Chambers—
  - (a) where the conditions under subsection (5) are no longer met; or
  - (b) where no proceedings are brought in connection with the cash, funds or property detained.
- (9) For the purposes of this section, "cash" means—
  - (a) coins and notes in any currency;
  - (b) postal orders;
  - (c) traveller's cheques;
  - (d) banker's drafts;
  - (e) bearer bonds and bearer shares; or
  - (f) such other monetary instruments as the Minister responsible for finance may, by notice published in the *Gazette*, specify.

**63. Terrorist funding**

A person who—

- (a) solicits, receives, provides or possesses funds or other property;
- (b) enters into, or becomes concerned in, an arrangement as a result of which money or other property is made available or is to be made available,

for the purposes of terrorism, or for a proscribed organisation, commits an offence and is liable on conviction to a fine not less than M100,000 or to imprisonment for a term not less than 10 years.

**64. Dealing in terrorist property**

- (1) A person who enters into, or becomes concerned in, an arrangement which facilitates the collection, retention or control by, or on behalf of, another person, of terrorist property, in any manner, including—

- (a) concealment;
- (b) removal from the jurisdiction; or
- (c) transfer to any other person,

commits an offence and is liable on conviction to a fine not less than M50,000 or to imprisonment for a term not less than 5 years.

- (2) It shall be a defence for a person charged under subsection (1) to prove that he or she did not know and had no reasonable cause to suspect that the arrangement related to terrorist property.

**65. Terrorist financing offence**

- (1) A person commits an offence of terrorist financing if he or she by any means, directly or indirectly, wilfully, provides or collects funds, or attempts to do so, with the intention that they should be used or in the knowledge that they are to be used in whole or in part—

- (a) to carry out a terrorist act;
- (b) by a terrorist organisation.

- (2) The offence is committed irrespective of an occurrence of a terrorist act referred to in paragraph (1), or whether the funds have actually been used to commit such act.

- (3) It shall also be an offence—

- (a) to participate as an accomplice in an offence within the meaning of subsection (1);
- (b) to organise or direct others to commit an offence within the meaning of subsection (1).

- (4) A person who contravenes this section commits an offence and shall be liable on conviction to a fine of not less than M10, 000 or imprisonment for a term of not less than 2 years and in case of a body corporate a fine not less than 10 times that amount.

**66. Directives**

- (1) Where the Commissioner has reason to believe or suspect that an accountable institution holds an account or property on behalf of a person or group involved in terrorist activities, the Commissioner shall issue a written directive to the accountable institution in Lesotho requiring it to restrain or freeze any account or other property held by that accountable institution on behalf of a person or group involved in terrorist activities and the accountable institution shall comply with the directive.

- (2) Subject to subsection (3), a directive given by the Commissioner pursuant to subsection (1) shall be effective for 3 months unless revoked by the Commissioner.
- (3) The High Court may, upon the application of the Director of Public Prosecutions, order the extension of a restraining or a freeze directive issued pursuant to subsection (1), pending investigations where it is satisfied that the account or property is owned by or on behalf of a terrorist.
- (4) The Commissioner may revoke any directive issued under subsection (1) and shall notify the accountable institution accordingly.
- (5) Where the Commissioner wishes to revoke a directive which has been extended by the High Court under subsection (4) the Commissioner shall apply to the High Court accordingly and the High Court may revoke the extension order.
- (6) Revocation of a directive or extension order shall not affect the validity of any action taken on the basis of the directive or order prior to revocation.
- (7) A person affected by a directive issued under subsection (1) may apply to the High Court for a revocation of the directive in relation to him or her.
- (8) The High Court may revoke the directive in relation to the applicant under subsection (7) if satisfied that the account or other property or the person's interest in it is not owned by or on behalf of a terrorist or proscribed organisation.
- (9) It shall be a defence against any action brought against the Commissioner or any person who complies with a direction issued under subsection (1) that the issuance of the direction or the compliance with it was in accordance with the provisions of this section.
- (10) No person shall be held liable in a Court for or with respect to anything done or omitted to be done in good faith in accordance with this section.

## **Division 6 - Restraining orders**

### **67. Application for restraining order**

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

- (h) the grounds for the belief that a confiscation order or a pecuniary penalty order may be or is likely to be made under this part in respect of the property.

## 68. Restraining orders

- (1) Subject to this section, where the Authority applies to the Court for a restraining order against property and the Court is satisfied that—
  - (a) the accused has been convicted of a serious offence or has been charged or is about to be charged with a serious offence;
  - (b) the accused has not been convicted of a serious offence;
  - (c) there is reasonable cause to believe that the property is tainted property in relation to an offence or that the accused derived a benefit directly or indirectly from the commission of the offence;
  - (d) where the application seeks a restraining order against property of a person other than the accused, there are reasonable grounds for believing that the property is tainted property in relation to an offence and that the property is subject to the effective control of the accused; and
  - (e) there are reasonable grounds for believing that a confiscation order or a pecuniary penalty order is likely to be made under this Part in respect of the property,the Court may make an order—
  - (i) prohibiting the accused or any person from disposing of, or otherwise dealing with, the property or such part thereof or interest therein as is specified in the order, except in such manner as may be specified in the order; and
  - (ii) at the request of the Authority, where the Court is satisfied that the circumstances so require—
    - (aa) directing the Registrar-General or such other person as the Court may appoint to take custody of the property or such part thereof as is specified in the order and to manage or otherwise deal with all or any part of the property in accordance with the directions of the Court; and
    - (bb) requiring a person having possession of the property to give possession thereof to the Registrar-General or to the person appointed under sub-paragraph (ii) to take custody and control of the property.
- (2) An order under subsection (1) may be made subject to such conditions as the Court thinks fit and, without limiting the generality of this sub-section, may make provision for meeting out of the property or a specified part of the property, any or all of the following:
  - (a) the person's reasonable living expenses (including the reasonable living expenses of the person's dependants, if any) and reasonable business expenses;
  - (b) the person's reasonable expenses in defending the criminal charge and any proceedings under this Division; and
  - (c) a specified debt incurred by the person in good faith.
- (3) In determining whether there are reasonable grounds for believing that property is subject to the effective control of the accused the Court may have regard to the matters referred to in [section 53](#).
- (4) Where the Registrar-General or any other person appointed under subsection (1)(e)(ii)(aa) is given a direction in relation to any property, he or she may apply to the Court for directions or any question respecting the management or preservation of the property under his or her control.

- (5) When the application is made under section (1) on the basis that a person is about to be charged, any order made by the Court shall lapse if the person is not charged—
  - (a) where the offence is an offence against the laws of Lesotho, within 21 days; and
  - (b) where the offence is an offence against the laws of a foreign State, within 60 days.

#### **69. Contravention of restraining order**

- (1) A person who, knowingly, contravenes a restraining order by disposing of or otherwise dealing with property that is subject to the restraining order commits a serious offence punishable upon conviction by—
  - (a) a fine of not less than M5,000 or imprisonment for a period of not less than 1 year or both, in the case of a natural person; or
  - (b) a fine of not less than M25,000 in the case of a body corporate.
- (2) Where a restraining order is made against property and the property is disposed of, or otherwise dealt with, in contravention of the restraining order, and the disposition or dealing was not for sufficient consideration or not in favour of a person who acted in good faith and without notice, the Authority may apply to the Court that made the restraining order for an order that the disposition or dealing be set aside.
- (3) Where the Authority makes an application under subsection (2) in relation to a disposition or dealing, the Court may—
  - (a) set aside the disposition or dealing as from the day on which the disposition or dealing took place; or
  - (b) set aside the disposition or dealing as from the day of the order under this subsection and declare the respective rights of any persons who acquired interests in the property on, or after the day on which the disposition or dealing took place, and before the day of the order - under this subsection.

#### **70. Duration of restraining order**

A restraining order remains in force until—

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

#### **71. Review of restraining order**

- (1) A person who has an interest in property in respect of which a restraining order was made may, at any time, apply to the Court for an order for a review of the restraining order.
- (2) On the application under subsection (1) the Court may revoke or vary the order or make the order subject to such conditions as the Court may think fit. For the purposes of this subsection the Court may—
  - (a) require the applicant to enter into recognisance;
  - (b) vary the order to permit the payment of reasonable living expenses of the applicant, including his dependants, if any, and reasonable legal or business expenses of the applicant.

- (3) An order under subsection (4) may only be made if the Court is satisfied that—
- (a) the applicant is the owner of the property or is entitled to lawful possession thereof and appears to be innocent of any complicity in the commission of a serious offence or any collusion in relation to such offence; and
  - (b) the property will no longer be required for the purposes of any investigation or as evidence in any proceedings.

## 72. Extension of restraining order

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

## Division 7 - Realisation of property

### 73. Realisation of property

- (1) Where—
- (a) a pecuniary penalty order is made;
  - (b) the order is not subject to appeal; and
  - (c) the order is not discharged,
- the Court may, on an application by the Authority, exercise the powers conferred upon the Court by this section.
- (2) The Court may—
- (a) appoint a liquidator in respect of realisable property;
  - (b) empower a liquidator appointed under paragraph (a) to take possession of any realisable property subject to such conditions or exceptions as may be specified by the Court;
  - (c) order any person having possession of realisable property to give possession of it to the liquidator;
  - (d) empower the liquidator to realise any realisable property in such manner as the Court may direct;
  - (e) order any person holding an interest in realisable property to make such payment to the liquidator in respect of any beneficial interest held by the accused or, as the case may be, the recipient of a gift covered by this Part as the Court may direct, and the Court may, on the payment being made, by order transfer, grant or extinguish any interest in the property.

### 74. Application of proceeds of realisation of property and other sums

- (1) Subject to subsection (2), the following property in the hands of a person appointed under sections [68](#) or [73](#), that is to say—
- (a) the proceeds of the realisation of any property under [section 76](#); and



- (b) any other sums, being property held by the accused,  
applied on the accused's behalf towards the satisfaction of confiscation order made against him or her, shall, after such payments, if any, as the Court may direct have been made out of those sums, be payable to the Registrar or the Clerk of the Court.
- (2) If after the amount payable under the confiscation order has been fully paid and any such sums remain in the hands of a liquidator, the liquidator shall distribute those sums—
- (a) among such of those persons who held property which has been realized under this Part; and
- (b) in such proportions, as the High Court may direct after giving a reasonable opportunity for those persons to make representations to the Court.
- (3) Property received by the Registrar or the Clerk of the Court on account of an amount payable under a confiscation order shall be applied as follows—
- (a) if received by him from a receiver under subsection (1), it shall first be applied in payment of the persons remuneration and expenses; and
- (b) the balance shall be paid or, as the case may be, transferred to the Government.

#### **75. Exercise of powers of public trustee**

- (1) The following provisions of this section apply to the powers conferred on the Court by sections 68, 71 and 73, or on a receiver appointed under section 68(1)(e)(ii)(aa) or section 73(2).
- (2) Subject to the following provisions of this section, the powers shall be exercised with a view to making available for satisfying the pecuniary penalty order or, as the case may be, any pecuniary penalty order that may be made in the accused's case the value for the time being of realisable property held by any person by the realisation of such property.
- (3) In the case of realisable property held by a person to whom the accused has directly or indirectly made a gift covered by this Part, the powers shall be exercised with a view to realising no more than the value for the time being of the gift.
- (4) The powers shall be exercised with a view to allowing any person other than the accused or the recipient to any such gift to retain or recover the value of any property held by him.
- (5) An order may be made or any other action taken in respect of a debt owed by the Government.
- (6) In exercising those powers, no account shall be taken of any obligations of the accused or of the recipient of any such gift which conflict with the obligation to satisfy the confiscation order.
- (7) A gift is covered under this Act if—
- (a) it was made by the accused at any time after the commission of the serious offence, or if more than one, the earliest of the offences, to which the proceedings for the time being relate; and
- (b) the Court considers it appropriate in all the circumstances to take the gift into account.

#### **76. Paramouncy of this Part in insolvency or winding up**

- (1) Where a person who holds realisable property is adjudged insolvent—
- (a) property for the time being subject to a restraining order made before the order adjudging him or her insolvent; and

- (b) any proceeds of property realised by virtue of [sections 73\(5\)](#) or (6) for the time, being in the hands of a person appointed under [section 68\(1\)\(e\)\(ii\)\(aa\)](#) or [73\(2\)](#),  
is excluded from the property of the insolvent for the purposes of the Insolvency Proclamation 1957.
- (2) Where a person has been declared insolvent, the powers conferred on the Court by [sections 68](#) and [73](#) or on a person appointed under [section 68\(1\)\(e\)\(ii\)\(aa\)](#) or [73\(2\)](#) shall not be exercised in relation to property for the time being comprised in the property of the insolvent for the purposes of the Insolvency Proclamation 1957.
- (3) Where, in the case of a debtor, a liquidator stands appointed under the Insolvency Proclamation 1957 and any property of the debtor is subject to a restraining order, the powers conferred on the liquidator by virtue of the Proclamation do not apply to property for the time being subject to a restraint order.
- (4) Where a person is declared insolvent and has directly or indirectly made a gift covered by this Part—
- (a) no order shall be made by virtue of the Insolvency Proclamation 1957 in respect of the making of the gift at any time when the person has been charged with a drug trafficking offence and the proceedings have not been concluded by the acquittal of the accused or discontinuance of the proceedings, or when property of the person to whom the gift was made is subject to a restraint order or a charging order; and
- (b) any order made by virtue of those sections after the conclusion of the proceedings shall take into account any realisation under this Part of property held by the person to whom the gift was made.

#### **77. Winding up of company holding realisable property**

- (1) Where realisable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for its voluntary winding up, the functions of the liquidator or any provisional liquidator shall not be exercisable in relation to—
- (a) property for the time being subject to a restraining order made before the relevant time; or
- (b) any proceeds of property realised by virtue of [section 73\(2\)\(c\)](#) or (d) or for the time being in the hands of a person appointed under [section 68\(1\)\(e\)\(ii\)\(aa\)](#) or [73\(2\)](#),  
but there shall be payable out of such property any expenses, including the remuneration of the liquidator or provisional liquidator, property incurred in the winding up in respect of the property.
- (2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the Court by [section 68](#) or [73](#) shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable—
- (a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or
- (b) so as to prevent the payment out of any property of expenses including the remuneration of the liquidator or any provisional liquidator properly incurred in the winding up in respect of the property.
- (3) Subsection (2) does not affect the enforcement of a winding up order—
- (a) made before the relevant time; or
- (b) on property which was subject to a restraint order at the relevant time.
- (4) Nothing in the Companies Act 1967 shall be taken as restricting, or enabling the restriction of the powers conferred on the Court by [section 70](#) or [79](#).

- (5) In this section—
- (a) "company" means any company which may be wound up under the Companies Act 1967;
  - (b) "liquidator" includes any person appointed to the office of liquidator (whether provisionally or otherwise) under the Companies Act 1967; and
  - (c) "the relevant time" means—
    - (i) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
    - (ii) where such an order has been made and, before the presentation of the petition for the winding up of the company by the Court, such a resolution had been passed by the company, the time of the passing of the resolution; and
    - (iii) in any other case where such an order has been made, the time of the making of the order.

## **Division 8 - Production orders and other information gathering powers**

### **78. Production orders**

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

## 79. Evidential value of information

- (1) Where a person produces a document pursuant to an order under this section, the production of the document, or any information document or things obtained as a direct or indirect consequence of the production of the document is not admissible against the person in any criminal proceedings except proceedings under [section 80](#).
- (2) For the purposes of subsection (1), proceedings on an application for a restraining order, a confiscation order or a pecuniary penalty order are not criminal proceedings.

## 80. Failure to comply with a production order

Where a person is required by a production order to produce a document to a police officer or an authorised officer, the person commits an offence against this section if he—

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

and on conviction shall be liable, in the case of a natural person to a fine of not less than M10,000 or imprisonment for a period not exceeding 30 months or both, and in the case of a body corporate a fine of not less than M50,000.

## 81. Production orders in relation to foreign offences

Where a foreign State requests assistance to locate or seize property suspected to be tainted property in respect of an offence within its jurisdiction, the provisions of apply [section 82](#) with necessary modifications.

## 82. Power to search for and seize documents relevant to locating property

A police officer or an authorised officer may—

- (a) enter upon land or upon or into premises;
- (b) search the land or premises for any document of the type described in [section 78\(1\)](#); and
- (c) seize any document found in the course of that search, that the police officer or the authorised officer believes, on reasonable grounds, to be a relevant document in relation to a serious offence,

on condition that the entry, search and seizure is made—

- (i) with the consent of the occupier of the land or the premises; or
- (ii) under warrant issued under [section 83](#).

## 83. Search warrant for location of documents relevant to locating property

- (1) Where—
  - (a) a person has been charged or convicted of a serious offence; or
  - (b) a police officer or an authorised officer has reasonable grounds for suspecting that there is, or may be within the next 72 hours, upon any land or upon or in any premises, a document of the type described in [section 57\(1\)](#) in relation to the offence,

the police officer or an authorised officer may make application supported by information on oath to a Judge or Magistrate for a search warrant in respect of that land or those premises.

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

#### **84. Search warrants in relation to foreign offences**

Where a foreign State requests assistance to locate or seize property suspected to be tainted property in respect of an offence within its jurisdiction, the provisions of [section 83](#) apply with necessary modification.

### **Division 9 - Monitoring orders**

#### **85. Monitoring orders**

- (1) A police officer or an authorised officer may apply *ex parte* and in writing to a Judge or a Magistrate in chambers for an order (in this section called a monitoring order) directing an accountable

institution to give information to a police officer or an authorised officer. An application under this subsection shall be supported by an affidavit.

- (2) A monitoring order shall—
  - (a) direct an accountable institution to disclose information obtained by the accountable institution about transactions conducted through an account held by a particular person with the accountable institution;
  - (b) not have retrospective effect; and
  - (c) only apply for a period of a maximum of 3 months from the date of making.
- (3) A Judge or a Magistrate shall not issue a monitoring order unless he or she is satisfied that there are reasonable grounds for suspecting that the person in respect of whose account the order is sought—
  - (a) has committed or was involved in the commission, or is about to commit or be involved in the commission of, a serious offence; or
  - (b) has benefited directly or indirectly, or is about to benefit directly or indirectly from the commission of a serious offence.
- (4) A monitoring order shall specify—
  - (a) the name or names in which the account is believed to be held; and
  - (b) the class of information that the accountable institution is required to give.
- (5) Where an accountable institution, which has been given notice of a monitoring order, knowingly—
  - (a) contravenes the order; or
  - (b) provides false or misleading information in purported compliance with the order,the accountable institution commits an offence against this subsection and shall be liable on conviction, in the case of a natural person, to imprisonment for a period not exceeding 5 years or a maximum fine of not less than M5,000 or both, and in the case of a body corporate M25,000.

## 86. Monitoring orders not to be disclosed

- (1) An accountable institution that is, or has been, subject to a monitoring order shall not disclose the existence or operation of the order to any person except—
  - (a) an officer or agent of the accountable institution for the purpose of ensuring compliance with the order;
  - (b) a legal adviser for the purpose of obtaining legal advice or representation in respect of the order; or
  - (c) a police officer or an authorised officer to receive the information.
- (2) A person described in subsection (1) shall not disclose the existence or operation of a monitoring order except to another person described in that subsection and may do so only for the purposes of the performance of the person's duties or functions.
- (3) Nothing in this section prevents the disclosure of information concerning a monitoring order for the purposes of or in connection with legal proceedings or in the course of proceedings before a court, provided that nothing in this section shall be construed as requiring a legal adviser to disclose to any court the existence or operation of a monitoring order.

## Part V – Civil recovery of property

### Division 1 - Proceedings

#### 87. Proceedings are civil, not criminal

- (1) For the purpose of this Part all proceedings under this Part are civil proceedings, and are not criminal proceedings.
- (2) The rules of evidence applicable in civil proceedings apply to proceedings under this Part.
- (3) A rule of construction applicable only in criminal proceedings shall not apply to proceedings under this Part.

### Division 2 - Preservation of property

#### 88. Preservation of property orders

- (1) The Authority may by way of an *ex parte* application apply to the High Court for an order prohibiting a person, subject to such conditions and exceptions as may be specified in the order, from dealing in any manner with any property referred to in subsection (2).
- (2) The High Court shall make an order referred to in subsection (1) if there are reasonable grounds to believe that the property concerned—
  - (a) is an instrumentality of a serious offence; or
  - (b) is the proceeds of unlawful activities.
- (3) The High Court making a preservation of property order may, when it makes the order or at any time thereafter, make any ancillary orders that the court considers appropriate for the proper, fair and effective execution of the order, including an order authorising the seizure of the property concerned by a police officer or an authorised officer.
- (4) Property seized under subsection (3) shall be dealt with in accordance with the directions of the High Court which made the relevant preservation of property order.

#### 89. Notice of preservation of property orders

- (1) If the High Court makes a preservation of property order, the Authority shall, as soon as practicable after the making of the order—
  - (a) give notice of the order to all persons known to the Authority to have an interest in property which is subject to the order; and
  - (b) publish a notice of the order in the *Gazette*.
- (2) A notice under subsection (1)(a) shall be served in the manner in which a summons whereby civil proceedings in the High Court are commenced, is served.
- (3) A person who has an interest in the property which is subject to the preservation of property order may enter an appearance giving notice of his or her intention to oppose the making of a forfeiture order or to apply for an order excluding his or her interest in the property concerned from the operation thereof.
- (4) An appearance under subsection (3) shall be delivered to the Authority within, in the case of—
  - (a) a person upon whom a notice has been served under subsection (1)(a), 14 days after such service; or

- (b) any other person, 14 days after the date upon which a notice under subsection (1)(b) was published in the *Gazette*.
- (5) An appearance under subsection (3) shall contain full particulars of the chosen address for the delivery of documents concerning further proceedings under this Part and shall be accompanied by an affidavit stating—
  - (a) full particulars of the identity of the person entering the appearance;
  - (b) the nature and extent of his or her interest in the property concerned; and
  - (c) the basis of the defence upon which he or she intends to rely in opposing a forfeiture order or applying for the exclusion of his or her interests from the operation thereof.

#### **90. Duration of preservation of property orders**

A preservation of property order shall expire 90 days after the date on which notice of the making of the order is published in the *Gazette* unless—

- (a) there is an application for a forfeiture order pending before the High Court in respect of the property, subject to the preservation of property order;
- (b) there is an unsatisfied forfeiture order in force in relation to the property subject to the preservation of property order; or
- (c) the order is rescinded before the expiry of that period.

#### **91. Seizure of property subject to preservation of property order**

- (1) In order to prevent property subject to a preservation of property order from being disposed of or removed contrary to that order, a police officer or an authorised officer may seize the property if he or she has reasonable grounds to believe that the property will be so disposed of or removed.
- (2) Property seized under subsection (1) shall be dealt with in accordance with the directions of the High Court which made the relevant preservation of property order.

#### **92. Appointment of curator *bonis* in respect of property subject to preservation of property order**

- (1) Where the High Court has made a preservation of property order, the High Court may at anytime—
  - (a) appoint a curator *bonis* to do, subject to the directions of the High Court, any one or more of the following on behalf of the person against whom the preservation of property order has been made, namely—
    - (i) to assume control over the property;
    - (ii) to take care of the said property;
    - (iii) to administer the said property and to do any act necessary for that purpose; and
    - (iv) where the said property is a business or undertaking, to carry on with due regard to any law which may be applicable, the business or undertaking; and
  - (b) order any person holding property subject to the preservation of property order to surrender forthwith, or with in such period as that Court may determine, any such property into the custody of the curator *bonis*.



- (2) The High Court which made an order under subsection (1) may make such order relating to the fees and expenditure of the curator *bonis* as it deems fit, including an order for the payment of the fees of the curator *bonis*—
  - (a) from the forfeited property if a forfeiture order is made; or
  - (b) by the Government if no forfeiture order is made.

### 93. Orders in respect of immovable property subject to preservation of property order

- (1) The High Court which has made a preservation of property order in respect of immovable property may, at any time, with a view to ensuring the effective execution of a subsequent order, order the Registrar of Deeds to endorse any one or more of the restrictions referred to in subsection (2) on the title deed of the immovable property.
- (2) An order under subsection (1) may be made in respect of the following restrictions, namely—
  - (a) that the immovable property shall not without the consent of the High Court be mortgaged or otherwise encumbered;
  - (b) that the immovable property shall not without the consent of the High Court be attached or sold in execution; and
  - (c) that the immovable property shall not without the consent of the High Court—
    - (i) vest in the Master of the High Court or trustee concerned, as the case may be, when the estate of the owner of that immovable property is sequestrated; or
    - (ii) where the owner of that immovable property is a company or other corporate body which is being wound up, form part of the assets of such company or corporate body.
- (3) In order to give effect to subsection(2)(c)(i), the Registrar of Deeds shall—
  - (a) make the necessary entries in his or her registers and the necessary endorsement on the office copy of the title deed, and thereupon any such restriction shall be effective against all persons except, in the case of a restriction contemplated in subsection (2)(b), against any person in whose favour a mortgage bond or other charge was registered against the title deed of immovable property prior to the endorsement of the restriction on the title deed of the immovable property, but shall lapse on the transfer of ownership of immovable property concerned;
  - (b) when the original of the title deed is produced to him or her, make the necessary endorsement thereon.
- (4) Unless the High Court directs otherwise, the custody of immovable property on the title deed of which a restriction contemplated in subsection (2)(c) was endorsed shall vest as from the date on which—
  - (a) the estate of the owner of the immovable property is sequestrated; or
  - (b) where the owner of the immovable property is a company or other corporate body, such company or corporate body is being wound up in the person in whom the said custody would have vested if such a restriction were not so endorsed.
- (5) Where the High Court granted its consent in respect of a restriction contemplated in subsection (2)(c) and endorsed on the title deed of the immovable property, the immovable property shall be deemed—
  - (a) if the estate of the owner of the immovable property was sequestrated to have vested in the Master of the High Court or trustee concerned as the case may be, as if such a restriction were not so endorsed; or

- (b) if the owner of the immovable property is a company or other juristic person which is being wound up to have formed part of the assets of such company or juristic person as if such a restriction were not so endorsed.
- (6) A person affected by an order contemplated in subsection (1) may, at any time, apply for the rescission of the order.

#### 94. Provision of expenses

- (1) A preservation of property order may make provision as the High Court deems fit for—
  - (a) reasonable living expenses of a person holding an interest in property subject to a preservation of property order and his or her family or household; and
  - (b) reasonable legal expenses of such a person in connection with any proceeding instituted against him or her in terms of this Act or any other related criminal proceedings.
- (2) The High Court shall not make provision for any expenses under subsection (1) unless it is satisfied that—
  - (a) the person cannot meet the expenses concerned out of his or her property which is not subject to the preservation of property order; and
  - (b) the person has disclosed under oath all his or her interests in the property and has submitted to that Court a sworn and full statement of all his or her assets and liabilities.

#### 95. Maximum legal expenses that can be met from preserved property

- (1) Despite provision in a preservation of property order for the meeting of legal expenses out of any property to which the order applies, a legal expense is not to be met out of that property to the extent that the amount payable for any legal service concerned exceeds any prescribed maximum allowable cost for that service.
- (2) This section operates only to limit the amount of the legal expenses that a High Court may provide for under [section 94](#) to be met out of property that is subject to a preservation of property order and does not limit or otherwise affect any entitlement of a legal practitioner to be paid or to recover for a legal service any amount that exceeds any applicable maximum.

#### 96. Variation and rescission of orders

- (1) A person affected by a preservation of property order may at anytime apply for the variation or rescission of the order.
- (2) The High Court which made a preservation of property order—
  - (a) may at any time vary or rescind the preservation or property order if it deems it necessary in the interests of justice; or
  - (b) shall rescind the preservation of property order if the proceedings against the defendant concerned are concluded.
- (3) Any person affected by an order for the appointment of the curator *bonis* may at any time apply—
  - (a) for the variation or rescission of the order;
  - (b) for the variation of the terms of the appointment of the curator *bonis* concerned; or
  - (c) for the discharge of the curator *bonis*.

- (4) The High Court which made an order for the appointment of a curator *bonis*—
  - (a) may, if it deems it necessary in the interests of justice, at any time—
    - (i) vary or rescind the order;
    - (ii) vary the terms of the appointment of the curator *bonis* concerned; or
    - (iii) discharge that curator *bonis*;
  - (b) shall rescind the order and discharge the curator *bonis* concerned if the relevant preservation of property order is rescinded.
- (5) A person affected by an order in respect of immovable property may at any time apply for the rescission of the order.
- (6) The High Court which made an order in respect of immovable property—
  - (a) may, if it deems it necessary in the interests of justice, at any time rescind the order; or
  - (b) shall rescind the order if the relevant preservation of property order is rescinded.
- (7) If an order in respect of immovable property is rescinded the High Court shall direct the Registrar of Deeds to cancel any restriction endorsed by virtue of that order on the title deed of immovable property, and that Registrar of Deeds shall give effect to any such direction.

### **Division 3 - Forfeiture of property**

#### **97. Application for forfeiture order**

If a preservation of property order is in force the Authority may apply to the High Court for an order forfeiting to the Crown all or any of the property that is subject to the preservation of property order.

#### **98. Making of a forfeiture order**

- (1) The High Court shall, subject to [section 103](#), make an order applied for under [section 97](#) if the court finds on a balance of probabilities that the property concerned—
  - (a) is an instrumentality of an offence; or
  - (b) is the proceeds of unlawful activities.
- (2) The High Court may when it makes a forfeiture order or at any time thereafter, make any ancillary orders that it considers appropriate including orders for and with respect to facilitating the transfer to the state of property forfeited under such an order.
- (3) The absence of a person whose interest in property may be affected by a forfeiture order does not prevent the High Court from making the order.
- (4) The validity of an order under subsection (1) is not affected by the outcome of the proceedings, or of an investigation with a view to institute such proceedings, in respect of an offence with which the property concerned is in some way associated.
- (5) The Registrar of the Court making a forfeiture order shall publish a notice thereof in the *Gazette* as soon as practicable after the order is made.
- (6) A forfeiture order shall not take effect—
  - (a) before the period allowed for an application under [section 59](#) or an appeal under [section 60](#) has expired;
  - (b) before such an application or appeal has been disposed of.

## 99. Application to notify interested parties

- (1) The Authority may apply to a Judge in chambers or a Magistrate for an order notifying a person having an interest in or control over property that there are reasonable grounds to believe that the property concerned is an instrumentality of a money laundering or terrorist funding offence under this Act.
- (2) The Judge or the Magistrate shall make an order referred to in subsection (1) if the property concerned is an instrumentality of a money laundering or terrorist funding offence under this Act.
- (3) When the Judge or the Magistrate makes an order under subsection (1), the Registrar of the High Court concerned or Clerk of the magistrate's court for the district concerned shall issue a notice in the prescribed form to the person referred to in the order, informing him or her that there are reasonable grounds to believe that property in which he or she has an interest or over which he or she has control is an instrumentality of a money laundering or terrorist funding offence under this Act.
- (4) A notice issued under subsection (3) shall be served on the person concerned in the manner in which a summons whereby civil proceedings in the High Court are commenced is served.

## 100. Exclusion of interest in property

- (1) The High Court may, on application make an order excluding certain interest in property which is subject to the forfeiture order, from the operation thereof.
- (2) The High Court may make an order under subsection (1) if it finds on a balance of probabilities that the applicant for such an order—
  - (a) had acquired the interest concerned legally; and
  - (b) neither knew nor had reasonable grounds to suspect that the property in which the interest is held—
    - (i) is an instrumentality of a money laundering or financing of terrorism offence under this Act; or
    - (ii) is the proceeds of unlawful activities.
- (3) The High Court making an order for the exclusion of an interest in property under subsection (1) may, in the interest of the administration of justice or in the public interest, make that order upon the conditions that the court deems appropriate including a condition requiring the person who applied for the exclusion to take all reasonable steps, within a period that the court may determine, to prevent the future use of the property as an instrumentality of a money laundering or terrorist funding offence under this Act.

## 101. Forfeiture Order by default

- (1) If the Authority applies for a forfeiture order by default and the High Court is satisfied that no person has appeared on the date upon which an application under [section 97](#) is to be heard and, on the grounds of sufficient proof or otherwise, that all persons who have interest in or over the property have knowledge of notices given by Court may—
  - (a) make any order by default which the Court could have made under [sections 98\(1\)](#) and (2);
  - (b) make such order as the court may consider appropriate in the circumstances; or
  - (c) make no order.
- (2) The High Court may, before making an order in terms of subsection (1), call upon the Authority to adduce such further evidence, either in writing or orally, in support of his or her application as the Court may consider necessary.

- (3) A person whose interest in the property concerned is affected by the forfeiture order or other order made by the Court under subsection (1) may, within 20 days after he or she has acquired knowledge of such order or direction, set the matter down for variation or rescission by the court.
- (4) The Court may, upon good cause shown, vary or rescind the default order or give some other direction on such terms as it deems appropriate.

## 102. Exclusion of interests in forfeited property

- (1) A person affected by a forfeiture order who was entitled to receive notice of the application for the order, but did not receive notice, may, within 45 days after the notice of the making thereof is published in the *Gazette*, apply for an order excluding his or her interest in the property concerned from the operation of the order, or varying the operation of the order in respect of such property.
- (2) The application shall be accompanied by an affidavit setting forth—
  - (a) the nature and extent of the applicant's right, title or interest in the property concerned;
  - (b) the time and circumstances of the applicants acquisition of the right, title, or interest in the property;
  - (c) any additional facts supporting the application; and
  - (d) the relief sought.
- (3) The High Court may make an order under subsection (1) if it finds on a balance of probabilities that the applicant for such an order—
  - (a) had acquired the interest concerned legally; and
  - (b) neither knew nor had reasonable grounds to suspect that the property in which interest is held—
    - (i) is an instrumentality of a money laundering or terrorist funding offence under this Act; or
    - (ii) is the proceeds of unlawful activities.
- (4) When a person who furnishes an affidavit under subsection (2) makes a false statement in the affidavit knowing that statement to be false or not believing it to be true, he or she commits an offence.
- (6) A person convicted of an offence under this subsection shall be liable to the penalty prescribed by law for perjury.

*[Please note: numbering as in original.]*

## 103. Effect of forfeiture order

- (1) Where the High Court has made a forfeiture order and a curator *bonis* has not been appointed in respect of any of the property concerned, the High Court may appoint a curator *bonis* to perform any of the functions referred to in [section 92](#) in respect of such property.
- (2) On the date when a forfeiture order takes effect the property subject to the order is forfeited to the state and vests in the curator *bonis* on behalf of the Crown.
- (3) Upon a forfeiture order taking effect the curator *bonis* may take possession of that property on behalf of the state from any person in possession, or entitled to possession, of the property.

#### 104. Fulfilment of forfeiture order

- (1) The curator *bonis* shall, subject to any order for the exclusion of interests in forfeited property under section 100(2)(a) or 102(3), dispose of property forfeited under section 103(2) by sale or any other means subject to the directions of the High Court.
- (2) Any right or interest in forfeited property not exercisable by or transferable to the state, shall expire and shall not revert to the person who has possession, or was entitled to possession, of the property immediately before the forfeiture order took effect.
- (3) No person who has possession or was entitled to possession, of forfeited property immediately before the forfeiture order took effect, or any person acting in concert with or on behalf of that person shall be eligible to purchase forfeited property at any sale held by the curator *bonis*.
- (4) The curator *bonis* shall deposit into the criminal assets recovery account any proceeds of any sale or disposition of forfeited property and any moneys forfeited.
- (5) The expenses incurred in connection with the forfeiture and the sale including expenses of seizure, maintenance and custody of the property pending its disposition advertising and court costs shall be defrayed out of moneys appropriated by Parliament for that purpose.

### Division 4 - General provisions relating to preservation and forfeiture of property

#### 105. Offence may form the basis of multiple orders

The fact that a preservation of property order or a forfeiture order has been made on the basis of a money laundering or terrorist funding offence under this Act in which a specific person has been involved does not prevent the making of another preservation of property orders or forfeiture orders on the basis of the same offence.

#### 106. Application of part to deceased estates

- (1) Any notice authorized or required to be given to a person under this Part is in the case of deceased person, sufficiently given to the executor of that person's estate.
- (2) A reference in this Part to property of a person is, in the case of a person who is deceased, a reference to property that the person held immediately before his or her death.
- (3) An order may be applied for and made under this Part—
  - (a) in respect of property which forms part of deceased estate; and
  - (b) on evidence adduced concerning the activities of a person who is deceased.

#### 107. Effect of death of joint owner of preserved property

- (1) If a person has an interest in property as joint owner of the property the person's death after a preservation of property order is made in respect of the interest does not, while the order is in force, operate to vest the interest in the surviving joint owner or owners and the preservation of property order continues to apply to the interest as if the person had not died.
- (2) A forfeiture order made in respect of that interest applies as if the order took effect in relation to the interest immediately before the person died.
- (3) Subsection (1) does not apply to an interest in property if preservation of property order ceases to apply to that interest without a forfeiture order being made in respect of that property.

### 108. Expedition of applications

- (1) In any application instituted under this Part by the Crown, the Authority may file with the Registrar of the High Court a certificate stating that in his or her opinion the case is of general public importance.
- (2) A copy of the certificate shall be furnished immediately by the Registrar to the Chief Justice.
- (3) Upon receipt of such copy, the Chief Justice shall designate immediately a Judge of the High Court to hear and determine the application.

## Division 5 - Criminal Asset Recovery "Fund"

### 109. Establishment of Criminal Assets Recovery "Fund"

The Minister shall establish a fund to be known as the Criminal Assets Recovery Fund.

### 110. Finances of account

The fund shall consist of—

- (a) all moneys derived from the execution of confiscation and forfeiture orders contemplated in this Act;
- (b) the balance of all moneys derived from the execution of foreign confiscation orders after payments have been made to requesting states in terms of that Act;
- (c) any moneys appropriated by Parliament or paid into the fund in terms of any other Act;
- (d) domestic and foreign grants;
- (e) any amount of money received or acquired from any source; and
- (f) all moneys transferred to the fund in terms of this Act.

## Part VI – Miscellaneous

### 111. Regulations

The Minister may make regulations for the carrying into effect the provisions of this Act.

### 112. Amendment of list of accountable institutions

The Minister may by notice in the *Gazette*, amend the list of accountable institutions in Schedule 1 and the list of international or regional instruments against terrorism in schedule 2.

### 113. General penalty

A person who fails to comply with a provision of this Act commits an offence and where no penalty is provided, shall be liable on conviction to a fine not less than M10,000.00 or to imprisonment for a period not less than 30 months and in the case of a juristic person a fine of not less than M100,000.

- (2) Notwithstanding subsection (1) or any other penalty section, the Court may, where circumstances so warrant, impose a lesser penalty than that stipulated but the Court shall, in writing, give reasons for so doing.

## Schedule 1 (Section 2)

### List of accountable institutions

*[Schedule 1 amended by [Legal Notice 30 of 2013](#) and by [Legal Notice 112 of 2015](#)]*

- (a) a legal practitioner as defined in the Legal Practitioners Act 1983;
- (b) an accountant as defined in the Accountants Act 1977;
- (c) a financial institution as defined in the Financial Institutions Act 1999,  
and includes a person who carries on the business of:
  - (i) acceptance of deposits and other repayable funds from the public;
  - (ii) lending, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions;
  - (iii) financial leasing;
  - (iv) money transmission services;
  - (v) issuing and administering means of payment (such as credit cards, traveller's cheques and bankers' drafts);
  - (va) bureau of exchange;  
*[subparagraph (va) inserted by [Legal Notice 30 of 2013](#)]*
  - (vb) providers of money; or  
*[subparagraph (vb) inserted by [Legal Notice 30 of 2013](#)]*
  - (vc) value transfer services;  
*[subparagraph (vc) inserted by [Legal Notice 30 of 2013](#)]*
  - (vi) guarantee and commitments;
  - (vii) trading for own account or for account of customers in money market instruments (such as cheques, bills, certificates of deposit), foreign exchange, financial futures and options, exchange and interest rate instruments, and transferable securities;
  - (viii) underwriting share issues and participation in such issues;
  - (ix) advice to undertakings on capital structure, industrial strategy and related questions, and advice and services relating to mergers and the purchase of undertakings;
  - (x) money-broking;
  - (xi) portfolio management and advice;
  - (xii) an estate agent;
  - (xiii) money lenders as provided for by the Money Lenders Order 1989<sup>7</sup>
  - (xiv) Corporative Societies and similar bodies registered in terms of the Corporatives' Act 2000<sup>8</sup> or the Societies Act 1966;<sup>9</sup>

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- (xv) safekeeping and administration of securities;
- (xvi) safe custody services;
- (xvii) gambling house;
- (xviii) a person who carries out an insurance business;
- (xix) casino and lottery;
- (xx) buying or selling of gold bullion;
- (xxi) dealers in precious stones;
- (xxia) motor vehicle dealership;  
*[subparagraph (xxia) inserted by [Legal Notice 112 of 2015](#)]*
- (xxii) company service providers; and
- (xxiii) any other person or institution who may be declared as such by the Minister by notice in the *Gazette*.

## Schedule 2 (section 2)

### List of universal instruments against terrorism

1. Convention on Offences and Certain Other Acts Committed on Board Aircraft (1963)
2. Convention for the Suppression of Unlawful Seizure of Aircraft (1970)
3. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971)
4. International Convention against the Taking of Hostages (1979)
5. International Convention for the Suppression of Terrorist Bombings (1997)
6. International Convention for the Suppression of the Financing of Terrorism (1999)
7. International Convention for the Suppression of Acts of Nuclear Terrorism (2005).

[No. 6 of 2000](#)

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[No. 20 of 1966](#)