

THE PROCEEDS OF CRIME ACT, 2005
(Act of 2005)

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**A BILL
ENTITLED**

**AN ACT to Provide for the investigation, identification and recovery
of the proceeds of crime and for connected matters.**

[]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

Preliminary

1. This Act may be cited as the Proceeds of Crime Act, 2005, Short title. and shall come into operation on a day appointed by the Minister by notice published in the *Gazette* (hereinafter referred to as the appointed day).

2. In this Act—

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

Inter-
pretation.

- (ii) performs services as an insurance intermediary within the meaning of the Insurance Act,

but does not include an insurance consultant or an adjuster;

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

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

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

“general criminal conduct” in relation to a defendant means all the defendant’s criminal conduct occurring after the appointed day;

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

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

- (a) making a request to an authority in another country or territory (including Jamaica) to prohibit dealing with relevant property; or
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“restraint order” means an order made under section 33.

(2) A gift, whether made before or after the appointed day, is tainted if—

- (a) where a court has decided that the defendant has a criminal lifestyle—
 - (i) it was made by the defendant at any time after the first day of the period of six years ending with—
 - (A) the day when proceedings for the offence concerned were started against the defendant; or
 - (B) if there are two or more offences and proceedings for those offences were started on different days, the earliest of those days; or
 - (ii) it was made by the defendant at any time and was of property which—
 - (A) was obtained by the defendant as a result of or in connection with the defendant’s general criminal conduct; or
 - (B) in whole or in part, directly or indirectly, represented in the defendant’s hands, property obtained by the defendant as a result of or in connection with the defendant’s general criminal conduct; or
- (b) where a court has decided that the defendant does not have a criminal lifestyle, the gift was made by the defendant at any time after—
 - (i) the date on which the offence concerned was committed; or
 - (ii) the date of the earliest offence concerned, where the defendant’s particular criminal conduct consists of two or more offences committed on different dates.

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

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

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

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

(10) Nothing in section 5 (making of order), 6 (criminal lifestyle), 7 (conduct and benefit), 8 (assumptions for determining benefit from general criminal conduct), 9 (effect of forfeiture order), 10 (voidable transfers), 20 (reconsideration of case where no order made), 21 (reconsideration of benefit where no order made), 22

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

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

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

PART II. *Forfeiture Orders and Pecuniary Penalty Orders*

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

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

(2) The Court shall—

- (a) determine whether or not the defendant has a criminal lifestyle and has benefited from his general criminal conduct; *balance of p.*
- (b) if the Court determines that the defendant does not have a criminal lifestyle, determine whether or not the defendant has benefited from his particular criminal conduct; and
- (c) identify any property used in or in connection with the offence concerned and make an order that that property be forfeited to the Crown.

(3) Where pursuant to subsection (2) the Court determines that the defendant has benefited from criminal conduct, the Court *b of p.*

amount equal to the value of the property, part or interest, as the case may be.

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

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

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

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

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

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

- (a) as to the matters referred to in subsection (1)(a);
- (b) that no application under subsection (1) has been made to the Court in respect of the case; and
- (c) it is appropriate to act under this subsection,

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

(11) The enforcing authority shall—

- (a) give no less than fourteen days written notice of an application for a forfeiture order or pecuniary penalty order to the

*14 days
notice of
app. for a
forfeiture*

by the Court in sentencing the defendant for an offence mentioned in sub-paragraph (i) or (ii);

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

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

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

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

Conduct and benefit.

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

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

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

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

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

Assumptions for determining benefit from general criminal conduct.

- (a) determining whether the defendant has benefited from his general criminal conduct; and

from general criminal conduct, the “relevant day” is the first day of the period of ten years ending with—

- (i) the day when proceedings for the offence concerned were started against the defendant; or
 - (ii) if there are two or more offences and proceedings for them were started on different days, the earliest of those days;
- (b) where a previous forfeiture order or pecuniary penalty order has been made against the defendant in relation to benefit from general criminal conduct—
- (i) the “relevant day” is the day when the defendant’s benefit was calculated for the purposes of the last such order; and
 - (ii) subsection (2)(b) does not apply to any property that was held by the defendant on or before the relevant day;
- (c) the date of conviction is—
- (i) the date on which the defendant was convicted of the offence concerned; or
 - (ii) if there are two or more offences and the convictions were on different dates, the date of the latest conviction.

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

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

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

- (a) the property vests in the Crown in equity but not at law until the applicable registration requirements have been complied with;

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

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

10. The Court may—

Voidable transfers.

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

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

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

Value of property for the purposes of pecuniary penalty order.

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

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

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

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

(5) The Court shall not grant additional time under subsection (2), or an extension under subsection (4), unless the Court gives the enforcing authority an opportunity to make representations.

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

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

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

(2) Interest payable under this section shall be—

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

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

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

15.—(1) The Court may—

- (a) proceed under section 5 before sentencing the defendant for the offence concerned; or
- (b) postpone proceedings under section 5 for a specified period (hereinafter referred to as the postponement period).

(2) The Court may extend the postponement period:

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

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

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

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

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

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

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

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

- (a) imposed a fine;

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

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

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

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

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

Recon-
sideration of
case where no
order was
made.

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

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

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

- (a) conduct occurring before the relevant date;

- (d) any order for restitution or the payment of compensation, made against the defendant in respect of the offence concerned under any other law.

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

(8) For the purposes of this section—

- (a) the relevant date is—
- (i) if the Court made a decision not to proceed under section 5, the date of that decision; or
 - (ii) if the Court did not make such a decision, the date of conviction;
- (b) the date of conviction is—
- (i) the date on which the defendant was convicted of the offence concerned; or
 - (ii) if there are two or more such offences and the convictions were on different dates, the date of the latest conviction.

21.—(1) This section applies where—

- (a) in proceeding under section 5 the Court decides that —
- (i) the defendant has a criminal lifestyle but has not benefited from his general criminal conduct; or
 - (ii) the defendant does not have a criminal lifestyle and has not benefited from his particular criminal conduct;
- (b) there is evidence that was not available to the enforcing authority when the Court decided that the defendant had not benefited from the criminal conduct;
- (c) before the end of the period of ten years starting with the date of the conviction, the enforcing authority applies to the Court to consider the evidence; and

Recon-
sideration of
benefit where
no order was
made.

- (c) section 8(2)(d), shall not apply to property obtained, or assumed to have been obtained, by the defendant on or after that date.

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

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

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

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

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

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

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

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

Recon-
sideration of
benefit after
order is made.

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

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

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

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

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

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

(9) In this section and section 23, for the purpose of deciding whether one amount exceeds another, the Court shall take account of any change in the value of money.

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

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

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

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

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

(5) In this section—

- (a) the relevant amount is —
 - (i) the amount found as the available amount for the purposes of the pecuniary penalty order, if this section has not been applied previously; or
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- 25.—(1) The Court may discharge a pecuniary penalty order if—
- (a) the enforcing authority applies to the Court for the discharge of the order; and
 - (b) the amount remaining to be paid under the order is fifty thousand dollars or less.

Discharge of order with small sum outstanding.

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

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

(a) the defendant absconds—

- (i) after being convicted of an offence in proceedings before a Court; or
- (ii) after being committed to the Court pursuant to section 52 (committal from Resident Magistrate's Court with a view to making a forfeiture order or pecuniary penalty order); and

Making of order where defendant absconds after committal or conviction.

(b) the enforcing authority applies to the Court to proceed under this section and the Court is satisfied that it is appropriate to do so.

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

- (a) any person who the Court believes is likely to be affected by an order under section 5 shall be entitled to appear before the Court and make representations;
- (b) the Court shall not make an order under section 5 unless the enforcing authority has taken reasonable steps to contact the defendant; and
- (c) sections 8 (assumptions for determining benefit), 17(2)(a)(iv) and (v) (statement of information), 18 (defendant's response to statement) and 19 (acceptance of allegations) shall not apply.

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

(a) in the case of a forfeiture order—

(i) shall identify the property that ought not to be included in the order; and

(ii) may vary the order by excluding the property and order the property to be returned to the defendant or such other person as the Court determines to be the true owner of the property; or

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

(i) shall find the amount which should have been the amount required to be paid in the circumstances prevailing at the time when the amount was found for the purposes of the order; and

(ii) may vary the order by substituting for the amount required to be paid, such other amount as the Court thinks is just.

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

(a) the date on which the defendant was convicted of the offence mentioned in section 27(1) (a); or

(b) If there are two or more offences and the convictions for those offences are on different dates, the date of the latest conviction.

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

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

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

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

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

(a) the Court shall have regard to that order; and

(b) section 14 (4) and (5) shall not apply.

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

(a) conduct occurring before the relevant date;

(b) property obtained before that date; and

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

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

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

(a) section 8(2)(a) or (b), shall not apply to property first held by the defendant on or after the relevant date;

(b) section 8(2)(c), shall not apply to expenditure incurred by the defendant after the relevant date; and

(c) section 8(2)(d), shall not apply to property obtained by the defendant on or after the relevant date.

31.—(1) Any term of imprisonment or detention that a defendant is liable to serve for default in payment of an amount ordered to be paid

Provisions re
imprisonment
on detention.

or the Court believes that such an application is to be made; and

- (ii) there is reasonable cause to believe that the Court will decide under that section that—
 - (a) in the case of a forfeiture order, the property identified under the fresh identification of the defendant's benefit exceeds the property found by the Court that made the order; or
 - (b) in the case of a pecuniary penalty order, the amount found under the new calculation of the defendant's benefit exceeds the relevant amount as defined in that section;
- (c) where—
 - (i) the enforcing authority has made an application under section 23 (reconsideration of available amount after order is made), which has not been determined, or the Court believes that such an application is to be made; and
 - (ii) there is reasonable cause to believe that the Court will decide under that section that the amount found under the new calculation of the available amount exceeds the relevant amount as defined in that section; or
- (d) where the enforcing authority has made an application under section 58 (recovery orders), which has not been determined or the Court believes that such an application is to be made.

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

- (a) provide for reasonable living expenses and reasonable legal expenses, other than any legal expenses that—
 - (i) relate to an offence which falls within subsection (5); and
 - (ii) are incurred by the defendant or by a recipient of a tainted gift;
- (b) make provision for the purpose of enabling any person to carry on any trade, business, profession or occupation;
- (c) be made subject to conditions.

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

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

(6) Where—

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

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

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

(b) make such order as it considers appropriate.

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

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

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

- (a) a constable;
- (b) a customs officer;
- (c) an officer of the Agency; or
- (d) any other person so designated by the Minister by order for the purposes of this Part.

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

(2) For the purposes of this section—

- (a) restraint proceedings are proceedings—
 - (i) for a restraint order;
 - (ii) for the discharge or variation of a restraint order; or
 - (iii) on an appeal under section 35;
- (b) hearsay is a statement that is made otherwise than by the person giving oral evidence in the proceedings and is tendered as evidence of the matters stated.

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

38.—(1) A copy of a restraint order that affects registered land in Jamaica shall be registered with the Registrar of the Supreme Court and with the Registrar of Titles who shall record the particulars of the order in the Register Book of titles.

the party who applied for the restraint order may apply to the Judge for an order that the disposition or dealing be set aside.

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

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

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

Registration
of restraint
order.

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

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

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

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

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

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

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

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

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

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

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

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

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

- (b) sums in which the defendant holds an interest, other than sums mentioned in paragraph (a).

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

- (a) first, in payment of such remuneration and expenses as are payable under section 135 (remuneration and expenses of insolvency practitioner);
- (b) second, in making any payments directed by the Court; and
- (c) third, on the defendant's behalf towards satisfaction of the pecuniary penalty order, by being paid to the Agency on account of the amount payable under such order.

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

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

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

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

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

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

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

- (a) if the Agency received the sums under section 43, first, in the payment of the remuneration and expenses payable under

46. If a Director's receiver—

- (a) takes action in relation to property which is not realizable property;
- (b) would be entitled to take the action if it were realizable property; and
- (c) believes on reasonable grounds that he is entitled to take the action,

Protection
of
Director's
receiver.

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

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

Application
for
directions.

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

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

48.—(1) The following persons may apply to the Court to vary or discharge an order made under section 41 or 42—

Discharge or
variation of
order.

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

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

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

- (a) proceedings were started or an application was made, the Court shall discharge the order on the conclusion of the proceedings or of the application, as the case may be;

- (d) any person affected by the Court's decision.
- (6) On an appeal under this section, the Court of Appeal may—
- (a) confirm the decision; or
 - (b) make such order as it considers appropriate.

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

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

Seized
money.

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

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

- (a) a restraint order has effect in relation to money to which this section applies;
- (b) a forfeiture order or a pecuniary penalty order is made against—
 - (i) the person by whom the money is held, in any case falling within subsection (1)(a); or
 - (ii) the person from whom the money is seized, in any case falling within subsection (1)(b) or (c); and

(ii) securing that there is no diminution in the value of realizable property, in a case where a forfeiture order or pecuniary penalty order has not been made;

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

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

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

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

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

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

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

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

52.—(1) A Resident Magistrate's Court shall act in accordance with subsection (2) if—

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

Committal by
Resident
Magistrate's
Court.

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

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

*Part IV. Civil Recovery of the Proceeds,
etc. of unlawful conduct*

55.—(1) In this Part—

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

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

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

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

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

- (a) notes and coins in any currency;

Interpreta-
tion.

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

“respondent” means—

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

“unlawful conduct” means—

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

(2) For the purposes of this Part—

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

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

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

- (a) any matters alleged to constitute unlawful conduct have occurred; or
- (b) any person intended to use any cash in unlawful conduct.

Civil recovery in the Supreme Court

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

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

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

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

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

- (a) the respondent obtained the recoverable property in good faith;
- (b) the respondent took steps after obtaining the property, which he would not have taken if he had not obtained it, or he took steps before obtaining the property, which he would not have taken if he had not believed he was going to obtain it;
- (c) when the respondent took the steps mentioned in paragraph (b), he had no notice that the property was recoverable; and

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

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

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

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

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

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

- (a) the person in whom the property is vested were the same person in law as the person who held the property; and
- (b) no transfer of the property had taken place.

(4) For the purposes of this section—

- (a) a right of return means any right under a provision for the return of property in specified circumstances;
- (b) references to rights in subsections (2) and (3) do not include any rights in respect of which the recovery order was made.

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

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

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

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

Associated
and joint
property.

Provided that if—

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

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

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

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

shall be agreed between both (or all) of them and the Agency.

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

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

- (b) the Court is satisfied that the person who holds the associated property or who is an excepted joint owner has suffered loss as a result of that order,

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

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

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

Payments in respect of rights under pension schemes.

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

- (a) to pay to the Agency within a prescribed period, the amount determined by the trustees or managers of the pension scheme to be the value of the rights; and

- (b) to give effect to any other provision made, by virtue of this section or section 65 or 66, in respect of the scheme.

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

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

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

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

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

- (2) The Agency shall make out of the sums—
- (a) first, any payment required to be made by it by virtue of section 63;
 - (b) second, any payment of remuneration or expenses that are payable by virtue of section 135 (remuneration and expenses of insolvency practitioner),

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

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

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

- (3) The conditions are that—
- (a) the applicant was deprived of the property he claims, or of property which it represents, by unlawful conduct;
 - (b) the property he was deprived of was not recoverable property immediately before he was deprived of it; and
 - (c) the property he claims belongs to him.

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

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

69.—(1) If, in the case of any property to which an interim receiving order or interim administration order has at any time applied, the Court does not in the course of the proceedings decide that the property is Compensation.

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

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

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

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

(4) This section does not affect the continuation of proceedings which have been properly started for a recovery order, or the making or continuing effect of an interim receiving order or interim administration order that has been properly applied for.

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

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

(3) For the purposes of this section—

(a) proceedings are brought when—

(i) a claim form is issued; or

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

whichever first occurs

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

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

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

- (a) to permit a search of any article found in that person's possession; or
- (b) to permit a search of his person.

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

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

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

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

Prior approval.

(b) “a senior officer” means—

- (i) in relation to the exercise of the power by a customs officer, a customs officer of a rank designated by the Commissioner of Customs as equivalent to that of a senior police officer;
- (ii) in relation to the exercise of the power by a constable, a senior police officer;
- (iii) in relation to the exercise of the power by any other authorised officer, the Director or a senior officer of the Agency;

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

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

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

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

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

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

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

(3) A justice of the peace may also exercise the power of a Resident Magistrate's Court to make an order first extending the period mentioned in subsection (1).

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

(5) On an application under subsection (4), the court or justice of the peace, as the case may be, may make the order if satisfied,

be deposited in an interest-bearing account and held there, and the interest accruing on it shall be added to it on its forfeiture or release.

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

(3) Subsection (1) does not apply if the cash or, as the case may be, the part to which the suspicion relates is required as evidence of an offence in proceedings under this Part.

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

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

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

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

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

- (a) is recoverable property; or
- (b) is intended by any person for use in unlawful conduct.

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

(4) Where an application for the forfeiture of any cash is made under this section, the cash shall be detained, and may not be released

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

(c) the cash belongs to the applicant,

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

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

(a) it appears to the court that the cash belongs to the applicant;

(b) the court is satisfied that the conditions in section 76 for the detention of the cash are no longer met or, if an application has been made under section 79, the court decides not to make an order under that section in relation to that cash; and

(c) no objection to the making of an order under this subsection has been made by the person from whom that cash was seized,

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

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

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

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

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

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

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

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

88.—(1) Where—

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

General exceptions.

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

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

(3) Recoverable property ceases to be recoverable if—

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

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

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

- (a) the property is an asset of a company being wound up in pursuance of a resolution for voluntary winding up;
- (b) the property is an asset of any entity and a deed of arrangement under section 52 of the Bankruptcy Act has effect in relation to the entity;
- (c) an order under section 23 of the Bankruptcy Act (appointment of receiver) has effect in relation to the property;
- (d) the property is an asset of an individual in respect of whom a provisional or absolute order for bankruptcy has effect under the Bankruptcy Act.

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

- (a) the appropriate court gives leave; and
- (b) the proceedings are taken or continued, as the case may be, in accordance with any terms imposed by that court.

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

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

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

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

- (e) “authorised disclosure” means a disclosure made under section 100(4);
- (f) “authorised officer” means—
- (i) a constable;
 - (ii) a customs officer; or
 - (iii) an officer of the Agency;
- (g) “competent authority” means the authority from time to time authorized in writing by the Minister to—
- (i) monitor compliance by any type of business in the regulated sector, with the requirements of this Part and any regulations made under this Part; and
 - (ii) issue guidelines to businesses in the regulated sector regarding effective measures to prevent money laundering;
- (h) “designated authority” means the Chief Technical Director of the Financial Investigations Division of the Ministry responsible for finance, or such other person as may be designated by the Minister by order.
- (2) For the purposes of sections 92, 93 and 99—
- (a) the appropriate consent is—
- (i) if an authorised disclosure is made to a nominated officer, the consent of the nominated officer to do a prohibited act;
 - (ii) if an authorised disclosure is made to a constable, the consent of the constable to do a prohibited act;
 - (iii) if an authorised disclosure is made to a customs officer, the consent of the customs officer to do a prohibited act;
 - (iv) if an authorised disclosure is made to an officer of the Agency, the consent of that officer to do a prohibited act;
-

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

- (a) before doing any act described in subsection (1), the person makes an authorised disclosure and has the appropriate consent to act;
- (b) the person—
 - (i) intended to make such a disclosure before doing the act and has a reasonable excuse for not doing so; and
 - (ii) does make such a disclosure on his own initiative as soon as is reasonably practicable after doing the act; or
- (c) the person acts in good faith in the exercise of a function relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

93.—(1) Subject to subsections (2) and (4), a person commits an offence if that person acquires, uses or has possession of criminal property and the person knows or has reasonable grounds to believe that the property is criminal property.

Acquisition
use and
possession of
criminal
property.

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

- (a) before doing any act described in subsection (1), the person makes an authorised disclosure and receives the appropriate consent to act;
- (b) the person—
 - (i) intended to make such a disclosure but has a reasonable excuse for not doing so; and
 - (ii) makes such a disclosure on his own initiative as soon as is reasonably practicable after doing the act;
- (c) the person acquired, used or had possession of the property as a *bona fide* purchaser for valuable consideration and without notice that the property is criminal property; or

(4) The required disclosure is a disclosure of the information or other matter—

- (a) to a nominated officer; or
- (b) to the designated authority in the form and manner prescribed for the purposes of this subsection by regulations made under section 102.

(5) A person does not commit an offence under this section if—

- (a) he has a reasonable excuse for not disclosing the information or other matter;
- (b) he is an attorney-at-law and the information or other matter came to him in privileged circumstances; or
- (c) subsection (6) applies to him.

(6) This subsection applies to a person if the person—

- (a) does not know or suspect that another person is engaged in money laundering; and
- (b) has not been provided by his employer with such training as is specified by the Minister by regulations made for the purposes of this section.

(7) In deciding whether a person committed an offence under this section or section 95, the court shall consider whether the person followed—

- (a) any relevant guidance that was at the time concerned—
 - (i) issued by a supervisory authority or any other body that regulates, or is representative of, any trade, profession, business or employment carried on by the alleged offender;
 - (ii) approved by the Minister; and
 - (iii) published in the *Gazette*; and

(2) For the purposes of subsection (1)(c), the required disclosure is a disclosure of the information or other matter—

- (a) to the designated authority; and
- (b) in such form and manner as may be prescribed for the purposes of this subsection by regulations made under section 102.

96.—(1) An authorised officer commits an offence if—

- (a) that officer knows or has reasonable grounds to believe that another person has engaged in money laundering;
- (b) the information or other matter on which that knowledge or reasonable grounds for belief is based came to the authorised officer in the consequence of a disclosure made under section 100; and
- (c) the authorised officer fails, without reasonable excuse, to make the required disclosure as soon as is reasonably practicable, or in any event within fifteen days, after the information or other matter comes to him.

Non-disclosure by other nominated officers.

(2) For the purposes of subsection (1)(c), the required disclosure is a disclosure of the information or other matter—

- (a) to the designated authority; and
- (b) in such form and manner as may be prescribed for the purposes of this subsection by regulations made under section 102.

97.—(1) A person commits an offence if—

- (a) knowing or having reasonable grounds to believe that a disclosure falling within section 100 has been made, he makes a disclosure which is likely to prejudice any investigation that might be conducted following the first mentioned disclosure; or
- (b) knowing or having reasonable grounds to believe that the enforcing authority is acting or proposing to act in connection

Tipping off.

(ii) in the case of a body corporate, to a fine not exceeding five million dollars;

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

(i) in the case of an individual, to a fine or imprisonment for a term not exceeding twenty years or to both such fine and imprisonment;

(ii) in the case of a body corporate, to a fine.

(2) A person who commits an offence under section 94, 95, 96 or 97 is liable—

(a) on conviction before a Resident Magistrate, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment;

(b) on conviction on indictment before a Circuit Court, to a fine or imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

(3) Subject to affirmative resolution, the Minister may by order amend any penalty imposed under this section or section 99.

99.—(1) A nominated officer shall not give the appropriate consent to the doing of a prohibited act unless the officer makes a disclosure that property is criminal property to the designated authority, and—

Appropriate consent by nominated officer.

(a) the designated authority gives consent to the doing of the act;

(b) before the end of the notice period, the officer is not notified by the designated authority that consent to the doing of the act is refused; or

(c) before the end of the notice period, the officer is so notified, but thirty one days have passed since the officer received the notice.

(2) A nominated officer commits an offence if—

(a) he gives consent to a prohibited act in circumstances where none of the provisions of subsection (1)(a)(b) or (c) is satisfied; and

- (b) it is made in such form and manner as may be prescribed for the purposes of this section by regulations made under section 102; and
- (c) the first or second condition referred to in subsection (5) is satisfied.

(5) The conditions mentioned in subsection (4)(c) are as follows—

- (a) firstly, that the disclosure is made before the person making the disclosure does the prohibited act;
- (b) secondly, that—
 - (i) the disclosure is made after the person making the disclosure does the prohibited act;
 - (ii) the person has a reasonable excuse for failing to make the disclosure before doing the act; and
 - (iii) the disclosure is made on the person's own initiative and as soon as it is reasonably practicable for him to make it.

(6) An authorised disclosure shall not be taken to breach any restriction on the disclosure of information, however imposed.

101.—(1) In this section, references to “cash” shall be construed as including references to bearer – negotiable instruments. Cross border movement of funds.

(2) A person who transports or causes the transportation of cash into or out of Jamaica, exceeding ten thousand dollars in United States currency or its equivalent in any other currency or such other amount as may be prescribed, shall (in such form and manner as may be prescribed by the Minister by order and before the transportation takes place) report to the designated authority—

- (a) the fact and the amount being transported;
- (b) particulars about the carrier;
- (c) the source of the funds;

Part VI. Investigations

103. For the purposes of this Part—

Interpre-
tation.

“appropriate officer” means—

- (a) in relation to a forfeiture investigation, the Director, an authorised financial investigator, or an authorised officer;
- (b) in relation to a civil recovery investigation, the Director;
- (c) in relation to a money laundering investigation, an authorised financial investigator or an authorised officer;

“authorised officer” means—

- (a) a constable;
- (b) a customs officer; or
- (c) an officer of the Agency or any other person so designated by the Minister by order for the purposes of this Part;

“civil recovery investigation” is an investigation into—

- (a) whether property is recoverable property or associated property;
- (b) who holds the property; or
- (c) the extent or whereabouts of the property;

Provided that an investigation is not a civil recovery investigation if—

- (i) proceedings for a recovery order have been started in respect of the property in question;
- (ii) an interim receiving order applies to the property in question; or
- (iii) the property in question is detained under section 76;

- (b) in relation to a civil recovery investigation, the Director;
- (c) in relation to a money laundering investigation—
 - (i) a member of the Constabulary Force who is not below the rank of superintendent;
 - (ii) a customs officer who is not below such grade as is designated by the Commissioner of Customs as equivalent to the rank referred to in sub-paragraph (i);
 - (iii) an authorised financial investigator;
 - (iv) any other person designated by the Minister by order for the purposes of this Part.

104.—(1) This section applies if a person knows or has reasonable grounds to believe that an appropriate officer is acting, or proposing to act, in connection with a forfeiture investigation, a civil recovery investigation or a money laundering investigation that is being or is about to be conducted. Offences prejudicing investigation.

(2) The person commits an offence if—

- (a) he makes a disclosure that is likely to prejudice the investigation; or
- (b) he falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents that are relevant to the investigation.

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

- (a) he does not know or have reasonable grounds to believe that the disclosure is likely to prejudice the investigation;
- (b) the disclosure is made in the exercise of a function under this Act or any other enactment relating to criminal conduct or benefit from criminal conduct or in compliance with a requirement imposed under or by virtue of this Act;

Disclosure orders

105.—(1) A Judge may, on an application made to him by an appropriate officer, make a disclosure order if he is satisfied that each of the requirements for the making of the order is fulfilled. Disclosure orders.

(2) The application for a disclosure order shall state that—

- (a) a person specified in the application is subject to a forfeiture investigation or a money laundering investigation, or that property specified in the application is subject to a civil recovery investigation;
- (b) the order is sought for the purposes of the investigation;
- (c) the order is sought in relation to information or material, or information or material of a description, specified in the application;
- (d) a person specified in the application appears to be in possession or control of the information or material.

(3) A disclosure order is an order—

- (a) requiring the person specified under subsection (2)(d) to produce the information or material to an appropriate officer for the officer to take the information or material away;
- (b) requiring that person to give an appropriate officer access to the information or material, within the period stated in the order; or
- (c) requiring that person to answer questions, either at a time specified in the order or at once, at a place so specified.

(4) The period stated under subsection (3)(b) shall be a period of seven days beginning with the day on which the order is made:

Provided that the Judge by whom the order is made may specify a shorter or longer period if satisfied that such shorter or longer period would be appropriate in the particular circumstances.

(2) An order under section 105(3)(a) shall not be made in respect of accounting records used in the ordinary business of banking, including ledgers, day-books, cash books and account books.

(3) A person who is required to produce any records referred to in subsection (2) may apply to a Judge in Chambers for a variation of the order and if the Judge is satisfied that the records are essential to the business activities of that person, the Judge may vary the disclosure order so that it requires the person to give the appropriate officer access to the record.

107.—(1) This section applies if a Judge makes a disclosure order requiring a person to give an appropriate officer access to information or material on any premises. Order to grant entry.

(2) The Judge may, on an application made to him by an appropriate officer and specifying the premises, make an order to grant entry in relation to the premises.

(3) An order to grant entry is an order requiring any person who appears to an appropriate officer to be entitled to grant entry to the premises, to allow the officer to enter the premises to obtain access to information or material that is the subject of a disclosure order.

108.—(1) A disclosure order does not require a person to produce, or to give access to— Production copying and retention of information or material.

- (a) any information or material which the person would be entitled to refuse to produce on the grounds of legal professional privilege in proceedings in the Supreme Court; or
- (b) excluded material.

(2) Subject to subsection (1), a disclosure order has effect notwithstanding any restriction on the disclosure of information, however imposed.

(3) An appropriate officer may take copies of any information or material that is produced, or to which access is given, in compliance with a disclosure order.

(4) Information or material produced in compliance with a disclosure order may be retained for so long as it is necessary to retain

(5) Subject to subsection (6), a person to whom a disclosure order is addressed—

- (a) shall be entitled to use any key in his possession to obtain access to the protected information; and
- (b) in accordance with the order, shall produce the protected information in an intelligible form.

(6) Where a disclosure order requires the person to whom it is addressed to produce protected information in an intelligible form, that person shall be taken to have complied with the requirement if—

- (a) he makes, instead, a disclosure of any key to the protected information that is in his possession; and
- (b) the disclosure is made in accordance with the order, with respect to the person to whom, and in the time in which, he was requested to disclose the information.

(7) In this section and section 110—

“electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities;

“electronic data” includes—

- (a) material in whatever form stored electronically;
- (b) the whole or part of a computer program; and
- (c) a representation suitable for processing electronically;

“information” includes data, text, images, sounds, codes, computer programs, software and databases.

110.—(1) Where an appropriate officer has reasonable grounds to believe that— Ancillary order.

- (a) a key to protected information is in the possession of any person; and

(b) has not in fact been used for any other purpose.

(6) In subsection (5), “electronic signature” means anything in electronic form that—

- (a) is incorporated into, or otherwise logically associated with, any electronic information;
- (b) is generated by the signatory or other source of the information; and
- (c) is used for the purpose of facilitating, by means of a link between the signatory or other source and the information, the establishment of the authenticity of the information, the establishment of its integrity, or both.

(7) In granting an ancillary order, the Judge shall—

- (a) take into account—
 - (i) the extent and nature of any other information in addition to the information in question, to which the key is also a key; and
 - (ii) any adverse effect that complying with the order might have on a business carried on by the person to whom the order is addressed; and
- (b) require only such disclosure as is proportionate to what is sought to be achieved, allowing, where appropriate, for disclosure in such manner as would result in the putting of the information in intelligible form other than by disclosure of the key itself.

(8) An ancillary order shall not require the making of any disclosure to a person other than the appropriate officer or such other person as may be specified in the order.

(9) Where an ancillary order requiring access to protected information or the putting of protected information into intelligible form is addressed to a person who is—

- (a) not in possession of the protected information to which the order relates; or

(13) An appropriate officer who obtains an ancillary order shall ensure that such arrangements are made as are necessary for securing that—

- (a) a key disclosed in pursuance of the order is used to obtain access or to put into intelligible form only the protected information in relation to which the order was made;
- (b) every key disclosed in pursuance of the order is stored, for so long as it is retained, in a secure manner, and any records of such key are destroyed as soon as no longer needed to access the protected information or put it into intelligible form; and
- (c) the number of—
 - (i) persons to whom the key is disclosed or otherwise made available; and
 - (ii) copies made of the key,

is limited to the minimum that is necessary for the purpose of enabling the protected information to be accessed or put into an intelligible form.

(14) An appropriate officer who knowingly contravenes subsection (13) commits an offence and, upon conviction before a Resident Magistrate, is liable to a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment.

111.—(1) A disclosure order may be made in relation to information or material in the possession or control of a Government department. Government departments.

(2) In this section—

“Government company” means a company registered under the Companies Act, being a company in which the Government or an agency of the Government, by the holding of shares or otherwise, is in a position to direct the policy of that company;

“Government department” or “department” means—

- (a) a Ministry, department or agency of Government;
- (b) a Parish Council, municipality or the Kingston and Saint Andrew Corporation;

- (b) recklessly makes a statement that is false or misleading in a material particular.

(4) A person who commits an offence under subsection (3) is liable —

- (a) upon conviction before a Resident Magistrate, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment;
- (b) upon conviction on indictment before a Circuit Court, to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

113.—(1) Subject to subsection (2), a statement made by a person in response to a requirement imposed on that person under a disclosure order may not be used in evidence against him in criminal proceedings. Restriction on use of statements in evidence.

(2) Subsection (1) does not apply—

- (a) to proceedings under Part II (confiscation proceedings);
- (b) on a prosecution for an offence under section 112 (1) or (3);
- (c) on a prosecution for an offence under the Perjury Act; or
- (d) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement referred to in subsection (1).

(3) A statement may not be used by virtue of subsection (2)(d) against a person unless—

- (a) evidence relating to the statement is adduced; or
- (b) a question relating to the statement is asked, by that person, or on his behalf, in the proceedings arising out of the prosecution.

114.—(1) An application for a disclosure order or an order to grant entry may be made to a Judge in Chambers. Supplementary.

grounds for believing that there is information or material falling within section 116(6) on the premises.

(3) A search and seizure warrant is a warrant authorising an appropriate person—

- (a) to enter and search the premises specified in the application for the warrant; and
- (b) to seize and retain any information or material found there which is likely to be of substantial value, whether or not by itself, to the investigation for the purposes of which the application is made.

(4) For the purposes of this section and section 116, an appropriate person is—

- (a) an authorised officer, if the warrant is sought for the purposes of a forfeiture investigation or a money laundering investigation;
- (b) a named member of the staff of the Agency, if the warrant is sought for the purposes of a civil recovery investigation.

116.—(1) This section is satisfied in relation to a search and seizure warrant if—

- (a) subsection (2) applies; and
- (b) either of the conditions set out in subsection (3)(a) or (b) is complied with.

(2) This subsection applies if there are reasonable grounds for believing that—

- (a) in the case of a forfeiture investigation, the person specified in the application for the warrant has benefited from his criminal conduct;
- (b) in the case of a civil recovery investigation, the property specified in the application for the warrant is recoverable property or associated property;

Requirements where disclosure order not available.

- (b) the investigation might be seriously prejudiced unless an appropriate person is able to secure immediate access to the information or material.

(5) For the purposes of subsection (3)(b), the requirements are that—

- (a) it is not reasonably practicable to communicate with any person entitled to grant entry to the premises;
- (b) entry to the premises will not be granted unless a warrant is produced; or
- (c) the investigation might be seriously prejudiced unless an appropriate person arriving at the premises is able to secure immediate entry to them.

(6) For the purposes of subsection (3)(b)(i), information or material falls within this subsection if the information or material cannot be identified at the time of the application and -

- (a) in the case of a forfeiture investigation, the information or material—

- (i) relates to—

- (a) the person specified in the application; or
 - (b) any question whether that person has benefited from his criminal conduct or as to the extent or whereabouts of his benefit from his criminal conduct; and

- (ii) is likely to be of substantial value, whether or not by itself, to the investigation for the purposes of which the warrant is sought;

- (b) in the case of a civil recovery investigation, the information or material—

- (i) relates to—

- (A) the property specified in the application;
- or

- (c) may include provision authorising a person who is exercising powers under it to do other things that—
 - (i) are specified in the warrant; and
 - (ii) are necessary in order to give effect to the warrant;
- (d) authorises the person exercising powers under the warrant to take copies of any information or material seized under the warrant.

(4) Where a warrant authorises the person named in it to search, seize and retain any information which is held in a computer and is accessible from the premises specified in the application for the warrant, and which the person believes relates to any matter relevant to the investigation, the warrant authorises the person to obtain the information in a form—

- (a) that can be taken away by the person; and
- (b) which is visible, legible and intelligible.

(5) The provisions of sections 109(4) to (7) and 110 shall apply, with the necessary modifications, with respect to obtaining information in an intelligible form under this section.

(6) Where the Director gives written authority for any member of staff of the Agency to accompany the person named in the warrant for the purpose of executing the warrant, the members so authorised have the same powers under the warrant as the person named in the warrant.

(7) A person exercising powers under a warrant may secure from other persons such assistance as is reasonably necessary for the purpose of executing the warrant.

(8) Information or material seized under a warrant may be retained for so long as is necessary to retain it, in its original form, in connection with the investigation for the purposes of which the warrant was issued:

(4) A customer information order is an order that a financial institution covered by the order shall, on being required to do so by notice in writing given by an appropriate officer, provide any such customer information as it has relating to the person specified in the application.

(5) A financial institution that is required to provide information under a customer information order shall provide the information to an appropriate officer in such manner, and at or by such time, as the appropriate officer requires.

(6) If a financial institution, on which a requirement is imposed by a notice given under a customer information order, requires the production of evidence of authority to give the notice, the financial institution is not bound to comply with the requirement unless evidence of the authority has been produced to it.

120.—(1) In this Part, “customer information” is information as to whether a person holds, or has held, (whether solely or jointly with another) any account at, or has during a specified period conducted any transaction with, the financial institution concerned and, if so, information as to—

Meaning for
customer
information.

- (a) the matters specified in subsection (2), if the person is an individual; or
- (b) in the case of any other person, the matters specified in subsection (3).

(2) The matters specified for the purposes of subsection (1)(a) are—

- (a) the account or transaction number, as the case may require;
- (b) the individual’s full name and date of birth;
- (c) the individual’s taxpayer registration number;
- (d) the individual’s most recent address and any previous addresses;

- (g) the date on which the entity began to hold the account and, if the entity has ceased to hold the account, the date of cessation;
- (h) such evidence of the entity's identity as was obtained by the financial institution under or for the purposes of any legislation relating to money laundering;
- (i) the full name, date of birth and most recent address and any previous addresses of any person who is a signatory to the account.

(4) The Minister may by order, subject to affirmative resolution, amend the provisions of subsection (2) or (3).

(5) For the purposes of this section, money laundering is an act that—

- (a) constitutes an offence under section 92 or 93; or
- (b) has been committed outside of Jamaica and would constitute an offence specified in paragraph (a) if done in Jamaica.

121. The requirements for making a customer information order are that—

Requirements
for making a
customer
information
order.

- (a) in the case of a forfeiture investigation, there are reasonable grounds for believing that the person specified in the application for the order has benefited from his criminal conduct;
- (b) in the case of a civil recovery investigation, there are reasonable grounds for believing that—
 - (i) the property specified in the application for the order is recoverable property or associated property; and
 - (ii) the person specified in the application holds all or some of the property;
- (c) in the case of a money laundering investigation, there are reasonable grounds for believing that the person specified in

(2) Subsection (1) does not apply to—

- (a) proceedings under Part II (forfeiture proceedings);
- (b) a prosecution for an offence under section 122(1) or (3); or
- (c) a prosecution for some other offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement referred to in subsection (1).

(3) A statement may not be used by virtue of subsection (2)(c) against a financial institution unless—

- (a) evidence relating to it is adduced; or
- (b) a question relating to it is asked,

by or on behalf of the financial institution in proceedings arising out of the prosecution.

124. A customer information order has effect notwithstanding any restriction on the disclosure of information, however imposed. Disclosure of information.

125.—(1) An application for a customer information order may be made to a Judge in Chambers. Supplementary.

(2) An application under subsection (1) may be made without notice and shall be in writing accompanied by an affidavit.

(3) An application to discharge or vary a customer information order may be made to the Court by—

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

and the Court may discharge or vary the order.

(4) Where an authorised financial investigator or an authorised officer applies for a customer information order—

- (a) an application to discharge or vary the order need not be by the same authorised financial investigator or authorised officer; and

value, whether or not by itself, to the investigation for the purposes of which the order is sought; and

- (e) in the case of any investigation, there are reasonable grounds for believing that it is in the public interest for the account information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

(3) An application for an account monitoring order shall state that—

- (a) the order is sought for the purposes of—
 - (i) a forfeiture investigation or a money laundering investigation being carried on in relation to a person specified in the application; or
 - (ii) a civil recovery investigation being carried on in respect of property specified in the application, and a person specified in the application appears to hold the property; and
- (b) the order is sought against a financial institution specified in the application in relation to the account information of the description so specified.

(4) For the purposes of this section, account information is information relating to an account held at, or a transaction conducted with, the financial institution specified in the application, by the person so specified, whether solely or jointly with another.

(5) An account monitoring order under this section—

- (a) is an order that the financial institution specified in the application for the order shall, for the period stated in the order, provide account information of the description specified in the order to an appropriate officer in the manner and at or by the time or times stated in the order; and
 - (b) may specify information relating to—
 - (i) all accounts held, or transactions conducted within a specified period, by the person specified in the the application for the order at the financial institution so specified;
-

(2) An application under subsection (1) may be made without notice and shall be in writing accompanied by an affidavit.

(3) An application to discharge or vary an account monitoring order may be made to the Court by—

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

and the Court may discharge or vary the order.

(4) If an authorised financial investigator or an authorised officer applies for an account monitoring order, an application to discharge or vary the order need not be made by the same authorised financial investigator or authorised officer, and for the purposes of subsection (3), references to a person who applied for an account monitoring order shall be construed accordingly.

Part VII. General

129.—(1) Where a person is adjudged bankrupt in Jamaica, the following property is excluded from the person's estate for the purposes of section 104 of the Bankruptcy Act—

- (a) property for the time being subject to a restraint order made before the order adjudging the person bankrupt; and
- (b) any property in respect of which an order under section 41 (appointment of Director's receiver) is in force.

Property excluded from operation of Bankruptcy Act.

(2) If in the case of a debtor (within the meaning of the Bankruptcy Act)—

- (a) a receiver is appointed under section 23 of the Bankruptcy Act; and
- (b) any property of the debtor is at that time subject to a restraint order,

the powers conferred on the receiver under the Bankruptcy Act do not apply to property then subject to the restraint order.

130.—(1) Where a person is adjudged bankrupt in Jamaica, the powers referred to in subsection (2) shall not be exercised in relation to the property referred to in subsection (3).

Restriction of powers in case of bankruptcy.

provisional liquidator) are not exercisable in relation to the following property—

- (a) property for the time being subject to a restraint order made before the relevant time;
- (b) any property in respect of which an order under section 41 (appointment of Director's receiver) is in force.

(2) Where under the Companies Act an order for the winding up of a company is made or the company passes a resolution for its voluntary winding up, the powers referred to in subsection (3) shall not be exercised in the manner mentioned in subsection (4) in relation to any property:

Provided that nothing in the Companies Act shall be taken to restrict, or enable the restriction of, the exercise of the powers referred to in subsection (3).

(3) The powers mentioned in subsection (2) are—

- (a) the powers conferred on a court by sections 33 to 50; and
- (b) the powers of a receiver appointed under section 41.

(4) The powers shall not be exercised so as to—

- (a) inhibit the liquidator from exercising his functions for the purpose of distributing property to the company's creditors;
- (b) prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

(5) A person is not a creditor for the purposes of a winding up under the Companies Act in so far as any sum due to that person by the company is due in respect of a forfeiture order or pecuniary penalty order.

(6) For the purposes of this section, the relevant time is—

- (a) if no order for the winding up of the company is made, the time of the passing of the resolution for voluntary winding up;

exercisable.

(3) The powers mentioned in subsection (2) are—

- (a) the powers conferred on a court by sections 33 to 50;
- (b) the powers of a receiver appointed under section 41.

(4) The powers shall not be exercised—

- (a) so as to inhibit the receiver from exercising his functions for the purpose of distributing property to the company's creditors;
- (b) so as to prevent the payment out of any property of expenses (including the remuneration of the receiver) properly incurred in the exercise of his functions in respect of the property.

135.—(1) In this section, “insolvency practitioner” means the Trustee in Bankruptcy under the Bankruptcy Act or the official receiver entitled to act as receiver or manager of the property concerned.

Seizure or disposal of excluded property by insolvency practitioner.

(2) Subsections (3) and (4) apply if a person acting as an insolvency practitioner seizes or disposes of any property in relation to which his functions are not exercisable because the property is for the time being subject to—

- (a) a restraint order; or
- (b) an interim receiving order made pursuant to regulations under this Act,

and at the time of the seizure or disposal the insolvency practitioner believes on reasonable grounds that he is entitled (whether in pursuance of a court order or otherwise) to seize or dispose of the property.

(3) The insolvency practitioner is not liable to any person in respect of any loss or damage resulting from the seizure or disposal, except so far as the loss or damage is caused by his negligence.

(4) The insolvency practitioner has a lien on the property or the proceeds of its sale—

- (a) for such of his expenses as are incurred in connection with the liquidation, bankruptcy, sequestration or other proceedings in relation to which he purported to make the seizure or disposal; and

139. The Drug Offences (Forfeiture of Proceeds) Act and the Money Laundering Act are hereby repealed.

Repeal of
Drug
Offences
(Forfeiture of
Proceeds) Act
and Money
Laundering
Act.

140.—(1) The Mutual Assistance (Criminal Matters) Act is amended—

Amendments
to other Acts.

- (a) in section 2 in the definition of “prescribed offence” and “realizable property”, and in section 13(1)(b), by deleting the words “Drug Offences (Forfeiture of Proceeds) Act” and substituting therefor in each case the words “Proceeds of Crime Act”;
- (b) in section 27(8)(a) by deleting the words “Drug Offences (Forfeiture of Proceeds) Act” and substituting therefor the words “Proceeds of Crime Act”.

(2) The Judicature (Resident Magistrates) Act is amended by inserting the following as section 292A—

“Committal
to Supreme
Court re
proceedings
under the
Proceeds of
Crime Act

292A. A Resident Magistrate's Court shall act in accordance with section 52 of the Proceeds of Crime Act in any case where—

- (a) a person is convicted of an offence by the Court; and
- (b) the Director of Public Prosecutions asks the Court to commit the person to the Supreme Court with a view to making an application under section 5 of the Proceeds of Crime Act.”.

(3) The Sharing of Forfeited Property Act is amended—

- (a) in section 2 in the definition of “forfeited property” by—
 - (i) deleting paragraphs (a) to (c) and substituting therefor the following as paragraphs (a) and (b)—
 - “(a) any property which is forfeited property pursuant to a forfeiture order or a

- Seal. 3.—(1) The seal of the Agency shall be authenticated by the signature of the Director, or any other officer of the Agency duly authorized by the Director in that behalf, and shall be judicially noticed.
- (2) All documents, other than those required by law to be under seal, made by and all decisions of, the Agency shall be signed under the hand of the Director or any other officer of the Agency authorized to act in that behalf by the Director.
- Secrecy. 4.—(1) Every member, employee or agent of the Agency shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of the Agency that may come to his knowledge in the course of his duties.
- (2) A member, employee or agent of the Agency shall not, without lawful authority, publish or communicate to any person otherwise than in the ordinary course of his employment to the Agency any information acquired by him in the course of that employment.
- (3) A person who contravenes this paragraph section commits an offence and is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months.
- Protection of members. 5.—(1) No proceedings shall be brought or instituted before any court or tribunal personally against any member of the Agency in respect of any act done *bona fide* in pursuance or execution or intended execution of this Act.
- (2) Where any member is exempt from liability by reason only of the provisions of this paragraph, the Agency shall be liable to the extent that it would be if that member were an employee or agent of the Agency.
- Funds and resources of the Agency. 6. The funds and resources of the Agency shall consist of—
- (a) such sums as may be provided by Parliament for the Agency in the annual estimates of revenue and expenditure;
 - (b) such sums as may be allocated from time to time to the Agency from loan funds;
 - (c) sums borrowed by the Agency for the purpose of meeting any of its obligations or discharging any of its functions; and

Accounts
and audit.

10.—(1) The Agency shall keep accounts and other records in relation to its business, and shall prepare annually a statement of accounts in a form satisfactory to the Minister, being a form which shall conform with established accounting principles.

(2) The accounts of the Agency shall be audited annually by auditors appointed by the Agency and approved by the Minister.

(3) So soon as the accounts of the Agency have been audited, the Agency shall send the statement of its accounts to the Minister together with a copy of the auditor's report thereon.

(4) The Auditor-General shall be entitled at all times to examine the accounts and other records in relation to the Agency.

Annual plan, report and estimates.

11.—(1) The Agency shall—

- (a) in respect of each financial year, other than the first year of the Agency's operation; and
- (b) before a date specified by the Minister,

submit to the Minister in writing a plan (hereinafter called the annual plan) setting out how the Agency intends to exercise its functions during the financial year.

(2) The annual plan shall include a statement of—

- (a) the Agency's objectives for the financial year;
- (b) the Agency's performance targets for the financial year (whether or not relating to its objectives);
- (c) the Agency's priorities for the financial year;
- (d) the financial resources expected to be available to the Agency for the financial year; and
- (e) the proposed allocation of those resources.

(3) Where an annual plan is submitted to the Minister pursuant to this paragraph, the Minister may—

- (a) approve the plan and notify the Agency of the approval; or
- (b) disapprove the plan and—
 - (i) shall inform the Agency of the reasons for the disapproval; and

(5) The Minister—

- (a) may by order designate as permitted persons such other persons who exercise functions which the Minister believes are of a public nature; and
- (b) shall specify in the order the functions in respect of which the designation is made.

(6) Information shall not be disclosed under this paragraph on behalf of the Commissioners of Inland Revenue or on behalf of the Commissioner of Customs unless the Commissioners concerned authorise the disclosure.

(7) The power to authorise a disclosure under subsection (6) may be delegated (either generally or for a specified purpose)—

- (a) in the case of the Commissioners of Inland Revenue, to an officer of the Board of Inland Revenue;
- (b) in the case of the Commissioner of Customs, to a customs officer.

Further disclosure.

14.—(1) Subsection (2) applies to information obtained under paragraph 13 from the Commissioners of Inland Revenue or from the Commissioner of Customs or from a person acting on behalf of either of them.

(2) The information referred to in sub-paragraph (1) shall not be further disclosed except—

- (a) for a purpose connected with the exercise of the Agency's functions; and
- (b) with the consent of the Commissioners concerned.

(3) Consent under sub-paragraph (2) may be given—

- (a) in relation to a particular disclosure; or
- (b) in relation to disclosures made in circumstances specified or described in the consent.

(4) The power to consent to further disclosure under sub-paragraph (2)(b) may be delegated, either generally or for a specified purpose—

- (a) in the case of the Commissioners of Inland Revenue, to an officer of the Board of Inland Revenue;

(4) A disclosure under this paragraph is not to be taken to breach any restriction on the disclosure of information, however imposed:

Provided that nothing in this paragraph authorises the making of a disclosure that contravenes the Access to Information Act.

(5) In sub-paragraph (1)(h), a designated function is a function that the Minister designates by order to be a function of a public nature for the purposes of this paragraph.

Pseudonyms. 16.—(1) This paragraph applies to a member of staff of the Agency if—

- (a) he is authorised (generally or specifically) by the Director to do anything for the purposes of this Act; and
- (b) it is necessary or expedient for the purpose of doing the thing for the member of the staff of the Agency to identify himself by name.

(2) The Director may direct that such a member of the staff of the Agency may for that purpose identify himself by means of a pseudonym.

(3) For the purposes of any proceedings or application under this Act a certificate signed by the Director which sufficiently identifies the member of the staff of the Agency by reference to the pseudonym is conclusive evidence that the member of the staff of the Agency is authorised to use the pseudonym.

(4) In any proceedings or application under this Act, a member of staff of the Agency in respect of whom a direction under this section is in force shall not be asked, and if asked is not required to answer, any question that is likely to reveal his true identity.

SECOND SCHEDULE

(Section 6)

Drug trafficking.

1. An offence under any of the following provisions of the Dangerous Drugs Act—

- (a) section 3, 6, 7A or 8 (importing or exporting dangerous drug);

(b) section 14 (imitation of currency notes).

- Intellectual property.** 6. An offence under any of the following provisions—
- (a) section 46 (dealings which infringe copyright) or 134 (making, dealing with or using illicit recordings) of the Copyright Act;
 - (b) section 38 of the Patents Act (making false marks).
- Larceny extortion.** 7. An offence under any of the following provisions of the Larceny Act—
- (a) section 22 (larceny or embezzlement by clerks or servants);
 - (b) section 43 (demanding money, etc, with menaces);
 - (c) section 45 (threatening to publish with intent to extort).
- Inchoate offences.** 8. An offence of—
- (a) attempting, conspiring or inciting the commission of any of the offences specified in any of paragraphs 1 to 7;
 - (b) aiding, abetting, counselling or procuring the commission of such an offence.

THIRD SCHEDULE (Section 59)

- Sale.** 1. Power to sell the property or any part of it or interest in it.
- Expenditure.** 2. Power to incur expenditure for the purpose of—
- (a) acquiring any part of the property, or any interest in it, which is not vested in the Agency;
 - (b) discharging any liabilities, or extinguishing any rights, to which the property is subject.
- Management.** 3.—(1) Power to manage property.
- (2) Managing property includes doing anything mentioned in section 42(13).

MEMORANDUM OF OBJECTS AND REASONS

The Drug Offences (Forfeiture of Proceeds) Act contains provisions for forfeiture, aimed at divesting criminals of the illegal fruits of their criminal acts. However, that Act has significant limitations on its scope and effectiveness, which require urgent remedial action. In terms of the offences targeted, experience has shown that there is a vast array of serious crimes in which criminals are engaged that are outside the scope of that Act. In particular, organized crime networks are now increasingly involved in such diverse activities as arms and human trafficking, terrorism, extortion, blackmail and sophisticated kinds of fraud. The ease with which crime now crosses international borders makes it imperative that domestic legislation respond to these developments.

The Drug Offences (Forfeiture of Proceeds) Act also fails to take account of the practical reality that organized crime is structured as an ongoing business, not a "one-off" operation. Typically, therefore, the assets accumulated over time by a person engaged in serious crime are a product of his general career in illegal activity. Jamaican courts, however, have no power to authorise the confiscation of assets or benefits that are derived from the general criminal lifestyle of the defendant, as opposed to specific criminal acts evidenced by a conviction.

Another area of deficiency concerns the lack of legislative authority to forfeit property reasonably suspected to be derived from criminal conduct, where no one has been held criminally liable for that conduct. There are serious practical implications of this restriction. The law enforcement agencies may have cogent evidence of the tainted origins of particular property, yet be unable to effect forfeiture proceedings because a criminal charge cannot be brought against a specific person. This is especially true of criminal masterminds, who through a sophisticated network are often adept at insulating themselves against specific criminal charges. The consequence of this is that the law enforcement agencies, to the extent that they are successful, are usually only able to proceed against persons at the lower levels of the criminal hierarchy.

A decision was therefore taken to enact legislation to address these deficiencies. A decision has also been taken to repeal the Money Laundering Act and to enact more comprehensive legislation to deal with money laundering.

This Bill seeks to give effect to those decisions.

DR. PETER PHILLIPS,
Minister of National Security.

SECTIONS 2 AND 13 OF THE MUTUAL ASSISTANCE
(CRIMINAL MATTERS) ACT WHICH IT IS PROPOSED TO AMEND

2. In this Act—

... ..
“prescribed offence” means—

- (a) a prescribed offence as defined in the Drug Offences (Forfeiture of Proceeds) Act;
- (b) an offence against the law of a relevant foreign state which involves—
 - (i) the production, manufacture, supply of or other dealing in dangerous drugs;
 - (ii) the transportation, storage, importation or export of dangerous drugs;
 - (iii) money laundering, and aiding, abetting, counselling, procuring or conspiring as to, the commission of any such offence;

“realizable property” has the same meaning as in the Drug Offences (Forfeiture of Proceeds) Act;

... ..

13.—(1) The Central Authority may, in its discretion, request an appropriate authority of a foreign state to make arrangements for the enforcement of—

- (a) an order made by a court in Jamaica under a law in force in Jamaica with regard to the forfeiture of property that is believed to be located in the foreign state;
- (b) a pecuniary penalty order or other order made by a court in Jamaica under the Drug Offences (Forfeiture of Proceeds) Act where some or all of the property available to satisfy the order is believed to be located in the foreign state;

... ..

- (c) any amount paid under a pecuniary penalty order made under section 14 of that Act;
- (d) any property which, pursuant to a request by a convention state is the subject of—
 - (i) a foreign forfeiture order or a foreign pecuniary penalty order registered in the Supreme Court and having effect, pursuant to section 27(3) and (4) of the Mutual Assistance (Criminal Matters) Act; or
 - (ii) a forfeiture order or a pecuniary penalty order under the Drug Offences (Forfeiture of Proceeds) Act made and enforced under section 27(8) of the Mutual Assistance (Criminal Matters) Act;
- (e) any property located in a convention state—
 - (i) in relation to which a request is made to that state, under section 13 of the Mutual Assistance (Criminal Matters) Act, for the enforcement of a forfeiture order or pecuniary penalty order made under the Drug Offences (Forfeiture of Proceeds) Act; or
 - (ii) which is forfeited in a convention state under the laws of that state;

SECTION 4 AND 5 OF THE SHARING OF FORFEITED PROPERTY ACT
WHICH IT IS PROPOSED TO AMEND

4.—(1) Forfeited property may be shared with a convention state only if the Attorney-General certifies in writing that it is proper for the property to be so shared.

(2) The Attorney General shall, in issuing a certificate under subsection (1), have regard to the provisions of the Drug Offences (Forfeiture of Proceeds) Act and any other relevant law.