

## **THE ASSET RECOVERY BILL**

(No. II of 2011)

### **Explanatory Memorandum**

1. The main object of this Bill is to prescribe the procedure to enable the State to recover assets which are proceeds or instrumentalities of crime or terrorist property, where a person has been convicted of an offence or where there has been no prosecution but it can be proved on a balance of probabilities that property represents proceeds or instrumentalities of an unlawful activity.

2. The Bill provides that the Enforcement Authority who shall be the Director of Public Prosecutions –

- (a) may, before applying to the Supreme Court for a Confiscation or Recovery Order, seek a Restraining or Restriction Order from the Judge in Chambers in relation to property or other economic advantage; and
- (b) may seek from the Judge in Chambers an Ancillary Order, which may be a Production Order, a Search and Seizure Order, a Disclosure Order, a Customer Information Order or an Account Monitoring Order.

3. The Bill applies to any offence committed in a foreign State which, if committed in Mauritius, would constitute an offence here and to any offence committed and property obtained after the commencement of the Act.

4. The Bill also contains provision for co-operation between public sector agencies in Mauritius and with Enforcement Authorities in foreign States.

**Y. N. VARMA**  
*Attorney-General*

25 March 2011

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*Clause*

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## A BILL

### To provide for conviction-based and non-conviction-based recovery of assets and for related matters

ENACTED by the Parliament of Mauritius, as follows –

#### PART I – PRELIMINARY

##### 1. Short title

This Act may be cited as the Asset Recovery Act 2011.

##### 2. Interpretation

In this Act–

“account information” means information relating to an account held in a financial institution by a person solely or jointly with another;

“Account Monitoring Order” means an Order made under section 49;

“Ancillary Order” means an Order referred to in Part V;

“Asset Manager” means a person appointed as such under section 27 (2);

“benefit” –

- (a) means an advantage, gain, profit, benefit or payment of any kind that a person derives or obtains or that accrues to him; and
- (b) includes the benefit that another person derives or obtains, or that otherwise accrues to such other person, where the other person is under the control of, or is directed or requested by, the first person;

“civil recovery investigation” means an investigation into –

- (a) whether property is proceeds, an instrumentality or terrorist property;
- (b) who holds the property; and
- (c) the extent or whereabouts of the property;

“Compensation Order” means an Order made under section 60;

“confiscation investigation” means an investigation into –

- (a) whether a person has benefited from his criminal conduct; or
- (b) the extent or whereabouts of his benefit from his criminal conduct;

“Confiscation Order” means an Order made under section 19;

“Court” means the Supreme Court;

“criminal enquiry” means an enquiry conducted by the Police or any other person or authority for the purpose of detecting whether a criminal offence has been committed, and, if so, by whom;

“customer information” means information as to whether a person holds or has held an account at a financial institution solely or jointly with another person and, if so, information relating to each account holder as to –

- (a) the account number;
- (b) the person's full name;

- (c) in the case of an individual, his date of birth;
- (d) his most recent address and any previous addresses;
- (e) the date on which he began or ceased to hold the account;
- (f) a description of any business which the person carries on;
- (g) such evidence as was obtained by the financial institution under or for the purposes of an enactment relating to money laundering;
- (h) any other account held; and
- (i) in the case of a body corporate, the State in which it is incorporated or otherwise established, and the address of its registered office;

“Customer Information Order” means an Order made under section 48;

“dealing with property” includes –

- (a) a transfer or disposition of property;
- (b) making or receiving a gift of the property;
- (c) removing the property from Mauritius;
- (d) where the property is a debt owed to a person, making a payment to that person in reduction or full settlement of the amount of the debt;
- (e) using the property to obtain or extend credit, or using credit that is secured by the property; or
- (f) where the property is an interest in a partnership, doing anything to diminish the value of the partnership;

“defendant” means a person against whom an Order is sought or is made under Sub-Part B of Part III;

“Disclosure Order” means an Order made under section 47;

“Enforcement Authority” means the Authority referred to in section 4;

“financial institution” has the same meaning as in the Banking Act;

“Fund” means the Recovered Assets Fund established under section 6;

“gift” –

(a) means property given by one person to another person; and

(b) includes any direct or indirect transfer of property –

(i) after the commission of an offence by the first person;  
and

(ii) to the extent of the difference between the market value of the property at the time of its transfer and –

(A) the consideration provided by the second person;  
or

(B) the consideration paid by the first person,

whichever is greater;

“instrumentality” means any property used or intended to be used in any manner to commit an offence;

“interest”, in relation to property, means –

(a) a legal or equitable estate or interest in the property; or

(b) a right, power or privilege in connection with the property;

“Investigation” –

(a) in sections 5, 43 and 60, means a civil recovery investigation or a confiscation investigation; and

(b) in Part V, does not include an investigation where –

(i) proceedings for a Recovery Order have been started in respect of the property in question;

- (ii) a Restraining Order applies to the property in question; or
- (iii) the property in question is money or money's worth which has been the subject of seizure or attachment;

"Investigative Agency" means the Agency referred to in section 5;

"law enforcement agent" means –

- (a) a police officer; or
- (b) a public officer or a person employed by a statutory corporation who, pursuant to any enactment, is authorised to detect offences and to enquire into suspected offences;

"material" includes any document, object or thing or electronic or digital record;

"offence" means –

- (a) an offence against the law of Mauritius which is punishable by a maximum term of imprisonment of not less than 12 months; or
- (b) an offence under the law of a foreign State in relation to an act which, if committed in Mauritius, would constitute an offence punishable by a maximum term of imprisonment of not less than 12 months;

"privileged material" means any material which a person is entitled to refuse to divulge or produce in legal proceedings on the ground of privilege;

"proceeds" means any property or economic advantage, wherever situated, derived from or obtained, directly or indirectly, through or in connection with the commission of an offence;

"Production Order" means an Order made under section 45;

"property" –

- (a) means an asset of any kind, whether tangible or intangible, corporeal or incorporeal, moveable or immovable, however acquired;
- (b) includes a legal document or instrument in any form, including electronic or digital, evidencing title to or interest in such asset, including but not limited to currency, bank credits, deposits and other financial resources, travellers' cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit, wherever situated; and
- (c) includes a real or equitable interest, whether full or partial, in any such asset;

"recoverable", in relation to any property, means that may be recovered from a person for the purpose of a Recovery Order;

"Recovery Order" means an Order made under section 35;

"Restraining Order" means an Order made under section 10;

"Restriction Order" means an Order made under section 27;

"Search and Seizure Order" means an Order made under section 46;

"terrorist property" has the same meaning as in the Prevention of Terrorism Act;

"Trustee" means a person referred to in sections 7, 11 and 12 or appointed under section 10, 25 or 39.

### **3. Application of Act**

(1) This Act shall apply with respect to any act, done after the commencement of this Act that constitutes an unlawful activity.

(2) This Act shall apply to any proceeds or instrumentality derived or used or intended to be used after the commencement of this Act.



(3) Nothing in this Act shall affect the power of a Court to order the estreatment or forfeiture of any property in pursuance of its power under any other enactment.

(4) Any application to the Court under this Act shall be by way of motion supported by affidavit.

(5) The Court or a Judge in Chambers required to determine any application under this Act shall do so on a balance of probabilities.

## **PART II – THE ENFORCEMENT AUTHORITY**

### **4. Enforcement Authority**

(1) There shall be an Enforcement Authority which may exercise any of the powers vested in it by this Act.

(2) Subject to subsection (3), the Enforcement Authority shall be the Director of Public Prosecutions or any law officer to whom he shall have delegated his powers under this Act in writing.

(3) The powers of the Enforcement Authority specified in sections 7(2), 17 and 33 shall be exercised by the Director of Public Prosecutions to the exclusion of any other person.

(4) The Enforcement Authority may do anything which it considers is –

- (a) appropriate for facilitating; or
- (b) incidental or conducive to,

the exercise of its functions.

### **5. Investigative Agency**

(1) There shall be, in the office of the Director of Public Prosecutions, an Investigative Agency which shall, with the approval of the Director, comprise such law officers as he may designate and such law enforcement agents as the Secretary to the Cabinet or, as the case may be, the controlling body of a statutory corporation, may designate.

(2) A law enforcement agent shall have and exercise, for the purposes of this Act, such powers and duties as the Enforcement Authority may determine, and shall be responsible for conducting an Investigation where this is required.

## **6. Recovered Assets Fund**

There is established, for the purposes of this Act, under section 9 of the Finance and Audit Act, a Fund to be known as the Recovered Assets Fund.

## **7. Receipts and disbursements**

- (1) There shall be credited to the Fund –
- (a) all moneys derived from the enforcement of a Recovery Order or a Confiscation Order or from the proceeds of sale of property which is the subject of an Order under Part III or Part IV;
  - (b) any sums allocated to the Fund by parliamentary appropriation;
  - (c) any voluntary payment, grant or gift made by any person for the purposes of the Fund; and
  - (d) any income derived from the investment of any amount standing to the credit of the Fund.
- (2) The Enforcement Authority may authorise payments out of the Fund to –
- (a) compensate victims who suffered losses as a result of an unlawful activity;
  - (b) satisfy a Compensation Order;
  - (c) transfer recovered property to a foreign State or share it pursuant to any treaty or arrangement;
  - (d) pay expenses relating to the recovery, management or disposition of property under this Act, including mortgages and liens against relevant property, and the

fees of receivers, Trustees or Asset Managers or other professionals providing assistance;

- (e) pay third parties for interests in property as appropriate; and
- (f) pay the costs associated with the administration of the Fund, including the costs of external audit.

## **8. Annual report**

The Attorney-General shall, from information which shall be supplied to him by the Enforcement Authority not later than 30 days after the end of the financial year, table a report in the Assembly, not later than the first sitting day after the expiry of 90 days from the end of every financial year, detailing –

- (a) the amounts credited to the Fund;
- (b) the investments made with the amounts credited to the Fund; and
- (c) the payments made from the Fund, including the specific purpose for which each payment was made and to whom it was made.

## **PART III – CONVICTION-BASED ASSET RECOVERY**

### **Sub-Part A – Restraining Order**

## **9. Application for Restraining Order**

Where a person has been charged with or convicted of an offence or a criminal enquiry is ongoing, the Enforcement Authority may apply to a Judge for a Restraining Order in order to protect –

- (a) specified property that is reasonably believed to be proceeds or an instrumentality of the offence, or terrorist property; or
- (b) any other property in which the person has an interest other than a lawful interest.

## **10. Grant of Restraining Order**

(1) Where the Enforcement Authority applies to a Judge for a Restraining Order, and the Judge is satisfied, having regard to any relevant evidence, that there is reasonable ground to believe that –

- (a) the alleged offender is the subject of a criminal enquiry or has been charged with or convicted of an offence; and
- (b) the property the subject of the application is proceeds or an instrumentality or terrorist property, or the alleged offender derived a benefit from the commission of an offence and has an interest in that property,

the Judge may order that –

- (i) the property shall not be disposed of, or otherwise dealt with, by any person, except in such manner and in such circumstances as are specified in the Order;
- (ii) the property, or such part of the property as is specified in the Order, shall be seized, taken into possession, delivered up for safekeeping or otherwise secured by a named law enforcement agent; or
- (iii) a Trustee shall be appointed to take custody of and manage the property in accordance with any direction from the Judge.

(2) Where a Judge makes a Restraining Order, the Enforcement Authority shall, within 21 days of the making of the Order, or such other period as the Judge may direct, give notice of the Order to every person known to the Enforcement Authority to have an interest in the property and to such other person as the Judge may direct.

## **11. Powers of Trustee**

(1) Subject to subsection (2), a Trustee may do anything which he considers reasonably necessary or appropriate to preserve or protect the property to which the Restraining Order applies and its value, and may, in particular –

- (a) become a party to any civil proceedings that affect the property;

- (b) ensure that the property is insured;
- (c) realise or otherwise deal with the property if it is perishable, subject to wasting or other forms of loss, its value is volatile or the cost of its storage or maintenance is likely to exceed its value;
- (d) with a Judge's approval, incur any necessary capital expenditure in respect of the property;
- (e) where the property consists of a trade or business –
  - (i) employ persons in the business or terminate their employment;
  - (ii) do any other thing that is necessary or convenient for carrying on the trade or business on a sound commercial basis; and
  - (iii) with the Judge's approval, sell, liquidate or wind up the trade or business if it is not a viable, going concern or it is otherwise commercially advantageous to do so; or
- (f) where the property includes shares in a company, exercise rights attaching to the shares as if he was the registered holder of the shares.

(2) A Trustee shall not exercise the power set out in subsection (1)(c) without a Judge's approval unless –

- (a) every person known by the Trustee to have an interest in the property consents to the realisation or other dealing with the property;
- (b) the delay involved in obtaining approval is likely to result in a significant diminution in the value of the property; or
- (c) the cost of obtaining approval would, in the opinion of the Trustee, be disproportionate to the value of the property concerned.

## 12. Judge's further powers

- (1) Where a Restraining Order has been made, a Judge may make –
- (a) an order revoking the Restraining Order or varying the property to which it relates;
  - (b) an order varying any condition to which the Order is subject;
  - (c) an order directing any person who holds or has dealt with the property to give to the Enforcement Authority or to a Trustee, a sworn statement setting out such particulars of the property or dealings with the property, as the Judge thinks fit;
  - (d) where the Restraining Order directed a Trustee to take custody of property, an order –
    - (i) regulating the manner in which the Trustee may exercise his powers or perform his duties;
    - (ii) determining any question relating to the property; or
    - (iii) directing the owner of the property or any other person to do any act necessary or convenient to enable the Trustee to take custody of the property in accordance with the Restraining Order; or
  - (e) subject to subsection (2), an order to provide for meeting out of the property –
    - (i) reasonable living expenses of a person having an interest in the property;
    - (ii) any such person's reasonable expenses in defending a criminal charge or any proceedings under this Act; and
    - (iii) the Trustee's remuneration and expenses.

(2) A Judge shall not make an order under subsection (1)(e)(i) or (ii) unless he is satisfied that the person cannot meet the expenses out of

property that is not subject of the Restraining Order and he determines that it is in the interests of justice to do so.

(3) An application for an order under subsection (1)(a) or (b) may be made by any person affected by the Restraining Order.

### **13. Exclusion of property from Order**

Any person who has an interest in any property that is subject of a Restraining Order may apply to a Judge to exclude his interest from the Order, and the Judge shall grant the application where he is satisfied that –

- (a) the property is not proceeds or an instrumentality or terrorist property;
- (b) the applicant was not in any way involved in the commission of the offence in relation to which the Order was made;
- (c) where the applicant acquired the interest before the commission of the offence, he did not know that any person would use, or intended to use, the property in or in connection with the commission of the offence; or
- (d) where the applicant acquired the interest at the time of or after the commission of the offence, the interest was acquired in circumstances which would not arouse a reasonable suspicion that the property was proceeds, an instrumentality or terrorist property.

### **14. Registration of Order**

(1) Where a Restraining Order applies to property of a particular kind and an enactment provides for the registration of title to, or charges over, property of that kind, the Registrar-General shall, on application by the Enforcement Authority, record on the register kept pursuant to that enactment the particulars of the Order.

(2) Where those particulars are so recorded, a person who subsequently deals with the property shall, for the purposes of section 10(2), be deemed to have notice of the Order at the time of the dealing.

(3) Where those particulars are so recorded, a Judge may, on the application of the Enforcement Authority, direct that the property shall not, without the consent of a Judge –

- (a) be mortgaged or otherwise burdened;
- (b) be attached or sold in execution;
- (c) vest in the liquidator where the estate of the owner of the property is sequestrated; or
- (d) form part of the assets of a body corporate where that body is the owner of the immovable property and it is wound up.

(4) Where the Restraining Order is revoked or varied pursuant to section 12(1)(a) or (b), the Registrar-General shall cancel or, as the case may be, amend the particulars recorded in his register in accordance with such order as the Judge may make.

#### **15. Contravention of Order**

(1) Any person who knowingly contravenes a Restraining Order by disposing of, or otherwise dealing with, property that is subject of the Order shall commit an offence.

(2) Where –

- (a) a Restraining Order is made in relation to property;
- (b) the property is disposed of or otherwise dealt with in contravention of the Order; and
- (c) the disposition was not for sufficient consideration or not in favour of a person who acted in good faith,

the Enforcement Authority may apply to a Judge for an order that the disposition or dealing be set aside.

(3) Where the Enforcement Authority makes an application under subsection (2), the Judge may make an order –

- (a) setting the disposition or dealing aside from the day on which it took place; or
- (b) setting the disposition or dealing aside from the day of the order under this subsection, and declaring the respective rights of any person who acquired an interest



in the property on or after the day on which the disposition or dealing took place and before the order was made under this subsection.

## **16. Duration of Order**

(1) Subject to subsection (3), where a Restraining Order was made on the basis that the alleged offender was the subject of a criminal enquiry, a Judge shall, on application made to him pursuant to subsection (2), discharge the Order if the alleged offender is not charged with that offence, or an offence arising from the same conduct or course of conduct, within 12 months of the date on which the Order was made.

(2) (a) Where subsection (1) applies, the Enforcement Authority shall make the necessary application to a Judge as soon as reasonably practicable.

(b) Where no application pursuant to paragraph (a) is made by the Enforcement Authority within 7 days of the expiry of the period referred to in subsection (1), any person affected by the Order may apply under this subsection for the discharge of the Order.

(3) Where an Order is likely to be discharged by reason of the operation of subsection (1), a Judge may, on the application of the Enforcement Authority, extend the operation of the Order for a specified period not exceeding 3 years if he is satisfied that it is in the interests of justice to do so.

## **Sub-Part B – Confiscation Order**

### **17. Application for Order under this Sub-Part**

(1) (a) Where a person is convicted of an offence, the Enforcement Authority may apply to the Court for a Confiscation Order in respect of the benefit derived by the person from that offence.

(b) The Enforcement Authority shall attach to the application a statement setting out an assessment of the value of the benefit obtained by the defendant.

(c) The Court may require a defendant served with a copy of a statement under paragraph (b) to respond to each averment in it and, in so

far as he does not accept any averment, to indicate on oath any facts upon which he proposes to rely.

(2) Except with the leave of the Court, the Enforcement Authority shall make an application under subsection (1) within 6 months of the date on which a person was convicted of the offence.

(3) The Court shall only grant leave under subsection (2) where it is satisfied that –

- (a) the benefit to which the application relates was derived, realised or identified after the period referred to in subsection (2); or
- (b) the application is based on evidence that could not reasonably have been obtained by the Enforcement Authority before the period referred to in subsection (2); and
- (c) it is in the interests of justice to do so.

(4) The Enforcement Authority may amend an application for a Confiscation Order at any time before the final determination of the application by the Court, provided that reasonable notice of the amendment is given to every person on whom the application has been served.

(5) Where an application is made for a Confiscation Order, the Court may, in determining the application, have regard to any evidence received in the course of the proceedings against the person convicted before the trial court.

(6) (a) Where an application under this section has been finally determined, the Enforcement Authority may not make a further application for a Confiscation Order in respect of the same offence without the leave of the Court.

(b) The Court shall not grant leave under paragraph (a) unless

–

- (i) the further application is made not more than 6 years after the final determination; and

- (ii) the benefit to which the new application relates was identified after the determination of the previous application; or
- (iii) the Court is satisfied that –
  - (A) necessary evidence became available after the previous application was determined; or
  - (B) the benefit to which the further application relates was identified after the final determination; or
  - (C) it is otherwise in the interests of justice to do so.

(7) For the purposes of this section, a person shall be deemed to be convicted of an offence where he is charged with, and found guilty of, the offence but is found not to be criminally responsible.

#### **18. Service of application**

(1) Where the Enforcement Authority makes an application for a Confiscation Order –

- (a) it shall serve a copy of the application and of the statement referred to in section 12(1)(b) on the defendant and on such other person as the Court may direct; and
- (b) every person who has been served may appear and adduce evidence at the hearing of the application.

(2) The absence of the defendant, or of any other person on whom service has been effected, shall not prevent the Court from making a Confiscation Order in his absence.

(3) The Court may waive the requirements of service under subsection (1) on the defendant where he is already before the Court.

#### **19. Confiscation Order**

(1) Where the Enforcement Authority makes an application under section 17, and the Court is satisfied that the defendant has benefited from

an offence, it shall, subject to section 21, make a Confiscation Order, ordering him to pay to the State an amount equal to the value of his benefit from that offence.

(2) The Court shall assess the value of the benefit which the defendant has derived from the commission of an offence in accordance with sections 20 and 21.

(3) Where the Court makes a Confiscation Order –

- (a) the Order shall not, except with the leave of the Court and in accordance with any directions of the Court, be enforced before the relevant appeal date; and
- (b) if, after the relevant appeal date, the Order has not been set aside or discharged, the Order may be enforced and any amount recovered applied in accordance with this Sub-Part and any directions given by the Court.

(4) In subsection (3), "relevant appeal date" means –

- (a) the date on which the period prescribed for the lodging of an appeal against the defendant's conviction before a trial court, or for the lodging of an appeal against the making of a Confiscation Order, expires without an appeal having been lodged, whichever is the later; or
- (b) where an appeal against the defendant's conviction before the trial court or against the making of a Confiscation Order is lodged, the date on which the appeal lapses in accordance with the law or is finally determined, whichever is the later.

## **20. Determination of value of benefit**

(1) For the purposes of this Sub-Part, the value of the benefit derived by a defendant from an offence may include –

- (a) any money received by the defendant, or by another person at the request or by the direction of the defendant, as a result of the commission of the offence;
- (b) the value of any property that was derived or realised, directly or indirectly, by the defendant or by another

person at the request or by the direction of the defendant, as a result of the commission of the offence;

- (c) the value of any service or financial advantage provided for the defendant or another person, at the request or by the direction of the defendant, as a result of the commission of the offence; or
- (d) unless the Court is satisfied that the increase was due to causes unrelated to the commission of the offence, any increase in the total value of property in which the defendant has an interest in the period beginning immediately before the commission of the offence and ending at some time after the commission of the offence.

(2) In calculating the value of the benefit –

- (a) any expenditure of the defendant in connection with the commission of the offence shall be disregarded; and
- (b) the Court shall make any adjustment necessary to prevent a benefit from being counted more than once.

(3) For the purposes of subsection (1)(d), where an offence is committed between 2 dates, the period begins immediately before the earlier of the 2 dates and ends at some time after the later of the 2 dates.

(4) Where the benefit derived by a defendant was in the form of property, including dangerous drugs or some other form of unlawfully obtained property, the Court may, in determining the value of that property, have regard to evidence given by a law enforcement agent or such other person whom the Court considers has expert knowledge of the value of that kind of property.

(5) The Court may, for the purposes of determining whether there was a benefit and the value of the benefit, treat any acceptance by the defendant of the averments set out in the statement referred to in section 17(1)(b) as conclusive of the matters to which it relates.

(6) The Court may treat a defendant's failure to respond to the statement or to indicate the facts upon which he will rely as an acceptance of every averment in the statement other than –

- (a) an averment regarding whether he complied with the requirement; and
- (b) an averment that he has benefited from the offence or that he obtained any property or advantage as a result of or in connection with the commission of the offence.

## **21. Amount recoverable**

(1) The amount to be recovered under a Confiscation Order shall be the amount specified in the Order or, if a certificate is issued pursuant to subsection (4), such lesser amount as may be specified in the certificate.

(2) An application for a certificate referred to in subsection (4) may be made by the defendant to the Court.

(3) An application pursuant to subsection (2) –

- (a) shall not be made more than 30 days after the date on which the application for a Confiscation Order was made;
- (b) shall be supported by an affidavit of the defendant and of any other person on whose evidence the defendant proposes to rely; and
- (c) shall be served on the Enforcement Authority, together with any supporting affidavit.

(4) The Court shall grant a certificate pursuant to this section where, having regard to written or oral testimony, it is satisfied that –

- (a) it has been provided with an accurate assessment of the total value of the financial resources held by the defendant, irrespective of whether they are subject to any other Order under this Act; and
- (b) the total value of the financial resources held by the defendant is less than the amount ordered to be paid under the Confiscation Order.

(5) Where a certificate is granted pursuant to subsection (4), it shall specify a monetary amount equal to the total value of the financial resources held by the defendant.

(6) The Court may, on the application of the Enforcement Authority within 2 years after the grant of the certificate, vary or revoke it or issue a Confiscation Order in a new amount, where –

- (a) it is made aware of facts that would have led it to a different conclusion regarding the granting of a certificate or the amount specified in a certificate; or
- (b) the defendant acquires possession of additional assets which, had they been available at the date of the certificate, would have resulted in the certificate not being granted or being granted for a higher amount.

## **22. Contravention of Confiscation Order**

A defendant who wilfully makes default in the payment of any amount recoverable on a Confiscation Order shall commit an offence.

## **23. Discharge of Confiscation Order**

(1) A Confiscation Order shall be discharged –

- (a) on the satisfaction of the Order by payment of the amount due under the Order;
- (b) if the conviction for the offence in reliance on which the Order was made is, or is taken to be, quashed and no conviction for the offence is substituted; or
- (c) if the Order is quashed.

(2) For the purposes of subsection (1)(b), a person's conviction for an offence shall be taken to be quashed in any case where –

- (a) the conviction is quashed or set aside;
- (b) the person is charged with and found guilty of the offence but is discharged, without any conviction being recorded, or is found not to be criminally responsible; or

- (c) the person is granted a pardon in respect of his conviction for the offence.

#### **24. Appeal under this Sub-Part**

(1) Any person aggrieved by the grant of, or the refusal to grant, a Confiscation Order, who appeared at the hearing of the application for the Order, may appeal to the Court of Civil Appeal in accordance with the Court of Civil Appeal Act.

(2) Where a Confiscation Order has been made, it shall remain in force until the determination of an appeal made under subsection (1).

#### **25. Realisation of property**

(1) Where a Confiscation Order is made and the Order is not subject to appeal, nor discharged, the Court may, on an application by the Enforcement Authority, exercise the powers conferred on it by this section.

(2) The Court may appoint a Trustee to take possession and control of and realise –

- (a) property in which the defendant has an interest which he acquired before or after the making of the Confiscation Order; or
- (b) property protected by a Restraining Order; or
- (c) specified items of property in which the defendant has an interest.

(3) Where a Trustee has already been appointed pursuant to section 10 to take possession or control of property in which the defendant has an interest, any order made pursuant to subsection (2) shall be made in respect of that Trustee.

(4) The Court may make such further order to assist the Trustee in the discharge of his duties as the Court considers is reasonably necessary.

#### **26. Application of monetary sums**



(1) Monetary sums in the hands of a Trustee from his receipt of the property of the defendant or from the realisation of any property under section 25 shall, after any such payments as the Court may direct are made out of those sums, be paid to the Official Receiver and applied on the defendant's behalf towards the satisfaction of the Confiscation Order in the manner provided by subsection (3).

(2) If, after full payment of the amount payable under the Confiscation Order, any sums referred to in subsection (1) remain in the hands of a Trustee, the Trustee shall distribute those sums among such of those persons who held property which has been realised under this Sub-Part and in such proportions as the Court directs, after giving a reasonable opportunity for those persons to make representations to the Court.

(3) Sums received by the Official Receiver in payment of amounts due under a Confiscation Order shall be applied as follows –

- (a) if received from a Trustee under subsection (1), they shall first be applied in payment of the Trustee's remuneration and expenses; and
- (b) the balance shall be transferred to the Fund.

## **PART IV – CIVIL ASSET RECOVERY**

### **Sub-Part A – Restriction Order**

#### **27. Restriction Order**

(1) (a) Where specified property is reasonably believed by the Enforcement Authority to be recoverable under Sub-Part B of this Part and to be proceeds or an instrumentality or terrorist property, it may apply to a Judge for a Restriction Order in respect of that property.

(b) It shall be sufficient for the purposes of paragraph (a) for the Enforcement Authority to show that the property is proceeds or an instrumentality or terrorist property, without having to show that the property was derived directly or indirectly from a particular offence or that any person has been charged in relation to such an offence.

(c) The Enforcement Authority may make an application under paragraph (a) even where the act which is the subject of the application was committed by a person who is deceased at the time of the application.

(d) Where the Enforcement Authority is of opinion that, for any reason, it is necessary to appoint an Asset Manager in respect of the property, it shall state the reason in its application and nominate a suitably qualified person for appointment.

(2) The Judge shall, where he is satisfied that there are reasonable grounds to believe that the property referred to in the application is proceeds or an instrumentality or terrorist property, make a Restriction Order which may –

- (a) authorise, require or secure the delivery up, seizure, detention or custody of the property; or
- (b) appoint an Asset Manager who shall be authorised or required to take –
  - (i) custody and control of the property and to manage or otherwise deal with it as the Judge may direct; or
  - (ii) steps which the Judge considers appropriate to secure the detention, custody or preservation of the property or for any other purpose.

(3) The Judge may make a Restriction Order where a person was acquitted of the offence, the charge was withdrawn before a verdict was returned or the proceedings were stayed.

(4) (a) In order to prevent property subject of a Restriction Order from being disposed of or removed contrary to the Order, a law enforcement agent may seize the property where he has reasonable grounds to suspect that the property will be disposed of or removed.

(b) Any property seized pursuant to paragraph (a) shall be dealt with in accordance with the directions of a Judge.

(5) (a) Where a Judge makes a Restriction Order, the Enforcement Authority shall, within 21 days of the making of the Order or such longer period as the Judge may direct, give notice of the Order to every person known to the Enforcement Authority to have an interest in property which is subject of the Order and such other persons as the Judge may direct.

(b) Where a person who is the owner of the property is unknown or cannot be found, the Judge shall cause to be published a notice of the Order in 2 daily newspapers of wide circulation as soon as practicable after the Order is made.

## **28. Powers of Asset Manager**

(1) An Asset Manager may do anything which he considers reasonably necessary or appropriate to preserve the property to which the Restriction Order applies and its value, and may, in particular –

- (a) realise or otherwise deal with the property if it is perishable subject to wasting or other form of loss, its value is volatile or the cost of its storage or maintenance is likely to exceed its value;
- (b) where the property comprises assets of a trade or business –
  - (i) carry on, or arrange for another to carry on, the trade or business;
  - (ii) employ person in the trade or business or terminate their employment; and
  - (iii) with a Judge's approval, sell, liquidate or wind up the trade or business if it is not a viable or going concern or it is otherwise commercially advantageous to do so;
- (c) with a Judge's approval, incur any necessary capital expenditure in respect of the property;
- (d) where the property includes shares in a company exercise rights attaching to the shares as if he was the registered holder of the shares;
- (e) ensure that the property is insured; or
- (f) become a party to any civil proceedings that affect the property.

(2) A Judge may make such order relating to the fees and expenditure of an Asset Manager as he thinks fit, including an order for the payment of the fees and expenditure –

(a) where a Recovery Order is made, from the forfeited property; or

(b) where no Recovery Order is made, by the State.

(3) A Restriction Order may, subject to subsection (4), make such provision as the Judge thinks fit for –

(a) reasonable living expenses of a person holding an interest in property subject of a Restriction Order; and

(b) reasonable legal expenses of such a person in connection with any proceedings instituted against him under this Act or any related criminal proceedings.

(4) The Judge shall not make provision for any expenses under subsection (3) unless he is satisfied that the person cannot meet the expenses concerned out of his property which is not the subject of the Restriction Order and he determines that it is in the interests of justice to do so.

## **29. Exclusion of property from Order**

Where a person who has an interest in property that is the subject of a Restriction Order applies to the Judge to exclude his interest from the Order, the Judge shall grant the application where he is satisfied that –

(a) the property is not proceeds, an instrumentality or terrorist property;

(b) the applicant was not, in any way, involved in the commission of the offence in relation to which the Restriction Order was made;

(c) where the applicant acquired the interest before the commission of the offence, the applicant did not know that any person would use, or intend to use, the property in or in connection with the commission of the offence; or

- (d) where the applicant acquired the interest at the time or after the commission of the offence, the interest was acquired in circumstances which would not arouse a reasonable suspicion that the property was proceeds, an instrumentality or terrorist property.

### **30. Order in respect of immovable property**

(1) Following the grant of a Restriction Order in respect of immovable property of a particular kind and where any enactment provides for the registration of title to, or charges over, property of that kind, the Judge may, on application by the Enforcement Authority, order the Registrar-General to endorse any one or more of the restrictions referred to in subsection (2) on the title deed of the immovable property with a view to ensuring the effective execution of a subsequent order made by a Judge or by the Court.

(2) An order under subsection (1) may include a restriction that the property shall not, without the consent of a Judge –

- (a) be mortgaged or otherwise burdened;
- (b) be attached or sold in execution;
- (c) vest in the liquidator when the estate of the owner of that immovable property is sequestrated; or
- (d) where the owner of the property is a corporate body, form part of the assets of that corporate body where it is wound up.

(3) In order to give effect to an order made under subsection (1), the Registrar-General shall make the necessary entries in his register and the necessary endorsement on the title deed, and thereupon any restriction referred to in subsection (2) shall be effective against all persons except, in the case of a restriction contemplated in subsection (2)(b), against any person in whose favour a mortgage bond or other charge was registered against the title deed of immovable property before the endorsement of the restriction on the title deed of the immovable property, but shall lapse on the transfer of ownership of the immovable property.

### **31. Variation and rescission of Order**

(1) Any person affected by a Restriction Order may apply to a Judge for the variation or rescission of the Order.

(2) The Judge –

(a) may vary or rescind the Order where necessary in the interests of justice; or

(b) shall rescind the Order where the proceedings concerned are concluded.

(3) Where a Restriction Order in respect of immovable property is varied or rescinded, the Judge shall direct the Registrar-General to cancel or, as the case may be, amend any restriction endorsed by virtue of that Order on the title deed of the immovable property, and the Registrar-General shall give effect to any such direction and declare the respective rights of every person who acquired an interest in the property on or after the day on which the Order was made and before the day on which it was varied or rescinded.

### **32. Contravention of Order**

(1) A person who knowingly contravenes a Restriction Order by disposing of or otherwise dealing with property that is subject to the Order shall commit an offence.

(2) The Enforcement Authority may apply to a Judge for an order that any dealing with property be set aside where –

(a) the property is dealt with in contravention of the Order; or

(b) the dealing was not for sufficient consideration or not in favour of a person who acted in good faith and without notice of the Order.

(3) The Judge may, on an application under subsection (2), order that –

(a) the disposition or dealing shall be set aside from the day on which it took place; or

(b) the disposition or dealing shall be set aside from the day on which he makes the order and declare the respective rights of every person who acquired an interest in the

property on or after the day on which the disposition or dealing took place and before the day on which he makes the order.

### **33. Duration of Order**

(1) Subject to subsection (2), a Restriction Order shall expire 12 months after the date on which it was made unless –

- (a) there is an application for a Recovery Order pending before the Court in respect of the property which is the subject of the Restriction Order;
- (b) there is an unsatisfied Recovery Order in force in relation to the property which is the subject of the Restriction Order; or
- (c) the Restriction Order is rescinded before the expiry of that period.

(2) The Enforcement Authority may, on good cause shown, apply to a Judge to extend the duration of a Restriction Order for a specific period not exceeding 3 years as the Judge thinks fit to do in the interests of justice.

### **Sub-Part B – Recovery Order**

### **34. Application for Order**

(1) Where any property has come to the notice of the Enforcement Authority, or property is found by a law enforcement agent to be in the possession of any person and the property is reasonably believed by the Enforcement Authority to be worth more than 500,000 rupees and to be proceeds, an instrumentality or terrorist property, the Enforcement Authority may, unless it would not be in the interests of justice, make an application to the Court for the grant of a Recovery Order in respect of the property.

(2) The Enforcement Authority shall, within 14 days of an application under subsection (1), give notice to every person known to the Enforcement Authority to have an interest in the property subject to the application.

(3) Any person referred to in subsection (2) or any other person claiming an interest in the property may appear at the hearing of an application under subsection (1) –

- (a) to oppose the making of the Order; or
- (b) to apply for an order –
  - (i) excluding his interest in that property from the operation of the Order; or
  - (ii) varying the operation of the Order in respect of that property; and
- (c) to adduce evidence at the hearing of the application.

### **35. Recovery Order**

(1) The Court shall, subject to subsection (2) and section 37, make a Recovery Order where it finds that the property concerned is proceeds, an instrumentality or terrorist property.

(2) The Court shall not make a Recovery Order of property or transfer the proceeds from the sale of the property to the State unless it is satisfied that it is in the interests of justice to do so and until such notice as the Court may direct has been given to any person in whose possession the property is found or who may have interest in the property or claim ownership of the property, to show cause why the property should not be recovered.

(3) The Court may make an Order under this section where a person was acquitted of the offence, the charge was withdrawn before a verdict was returned or the proceedings were stayed.

(4) The Court making a Recovery Order shall cause to be published a notice of the Order in 2 daily newspapers of wide circulation as soon as practicable after the Order is made.

- (5) A Recovery Order shall not take effect –
  - (a) before the period allowed for an application under section 36, or an appeal under section 39, has expired; or
  - (b) before such an application or appeal has been disposed of.



### **36. Failure to notify**

(1) Any person affected by a Recovery Order who was entitled to receive notice of the application for the Order under section 34(2), but did not receive the notice, may, within 45 days after the last publication of the notice under section 35(4), apply for an order excluding his interest in the property concerned from the operation of the Order, or varying the operation of the Order in respect of that property.

(2) An application under subsection (1) shall be accompanied by an affidavit setting out –

- (a) the nature and extent of the applicant's right, title or interest in the property concerned;
- (b) the time and circumstances of the applicant's acquisition of the right, title, or interest in the property;
- (c) any additional facts supporting the application; and
- (d) the relief sought.

(3) The application and the affidavit shall be served on the Enforcement Authority which shall be entitled to appear at the hearing of the application.

(4) The hearing of the application shall, to the extent practicable and consistent with the interests of justice, be held within 30 days of the filing of the application.

(5) The Court may consolidate the hearing of the application with the hearing of any other application filed under this section.

(6) The Court may make an order under subsection (1) where it finds that the applicant for such an order –

- (a) had acquired the interest concerned lawfully; and
- (b) neither knew nor had reasonable ground to suspect that the property in which the interest is held is proceeds, an instrumentality or terrorist property.

### **37. Exclusion of property from Order**

(1) The Court may, on an application for a Recovery Order, make an order excluding any interest in the property concerned.

(2) The Court may make an order under subsection (1) where it finds that the applicant for such an order –

- (a) had acquired the interest concerned lawfully; and
- (b) neither knew nor had reasonable ground to suspect that the property in which the interest is held is proceeds, an instrumentality or terrorist property.

(3) Where an applicant for an order under subsection (1) provides evidence purporting to satisfy the Court that he did not know or did not have reasonable ground to suspect that the property in which the interest is held, is an instrumentality, the Enforcement Authority may submit a return of the service on the applicant of a notice issued under section 34(2) in rebuttal in respect of the period since the date of that service.

(4) Where the Enforcement Authority submits a return of the service on the applicant of a notice issued under section 34(2), the applicant shall have to prove that, since such service, he has taken all reasonable steps to prevent the further use of the property concerned as an instrumentality.

(5) The Court, in considering whether to make an order under subsection (1), may, in the public interest, make that order on such condition as it thinks appropriate, including a condition requiring the person who applied for the exclusion to take all reasonable steps, within such period as the Court may determine, to prevent the future use of the property as an instrumentality.

### **38. Appeal against Recovery Order**

(1) Any person aggrieved by the grant of, or refusal to grant, a Recovery Order, who appeared at the hearing of the application for the Order, may appeal to the Court of Civil Appeal in accordance with the Court of Civil Appeal Act.

(2) Where a Recovery Order has been made, it shall remain in force until the final determination of an appeal under subsection (1).

### **39. Enforcement of Order**

(1) On the day on which a Recovery Order takes effect, the property which is the subject of the Order vests in the State.

(2) On a Recovery Order taking effect, the Enforcement Authority, or a Trustee appointed by the Court at the request of the Enforcement Authority, may take possession of that property on behalf of the State from any person in possession, or entitled to possession, of the property.

(3) The Enforcement Authority or the Trustee shall, subject to any order for the exclusion of an interest in recovered property under section 37, dispose of property recovered under section 35 by sale or any other means subject to the direction of the Court.

(4) Any right or interest in recovered property not exercisable by or transferable to the State shall expire and shall not revert to the person who has possession, or was entitled to possession, of the property immediately before the Order took effect.

(5) No person who has possession, or was entitled to possession, of recovered property immediately before the Recovery Order took effect, and no person acting in concert with or on behalf of that person shall be eligible to purchase recovered property at any sale conducted by the Enforcement Authority or the Trustee.

(6) The Enforcement Authority or the Trustee shall deposit into the Fund any proceeds of any sale or disposition of recovered property and any moneys recovered.

(7) The expenses incurred in connection with the recovery and the sale, including expenses of seizure, maintenance and custody of the property pending its disposition, advertising and Court costs, shall be defrayed out of the Fund.

### **Sub- Part C – Tracing of Assets**

#### **40. Recoverable property**

(1) Subject to section 42, where any property which constitutes proceeds or an instrumentality or terrorist property has been disposed of since it was used or obtained in connection with the commission of an offence, it is recoverable pursuant to Sub-Part A or B of this Part if it is held

by a person into whose hands it may be followed in accordance with subsection (2).

(2) Property may be followed into the hands of a person obtaining it on a disposal by –

- (a) the person who used or intended to use the property as an instrumentality or through the offence obtained the property or terrorist property; or
- (b) a person into whose hands it may, by virtue of this subsection, be followed.

#### **41. Property indirectly obtained or used**

(1) Subject to section 42, where property which is terrorist property or an instrumentality of, or has been obtained through, an offence (in this section, referred to as “the original property”) is or has been recoverable, any property which represents that property is also so recoverable.

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

- (a) he disposes of property which is recoverable, whether the original property or property which represents the original property; and
- (b) he obtains other property in place of it,

the other property represents the original property.

(3) Where a person disposes of property which represents the original property, the property may be followed into the hands of the person who obtains it.

(4) (a) The part of any mixed property which is attributable to property which is recoverable represents the property used as an instrumentality of, or obtained through, an offence.

(b) Property may be mixed with other property where it is used –

- (i) to increase funds held in a bank account;
- (ii) in part payment for the acquisition of an asset;

- (iii) for the restoration or improvement of land;
- (iv) by a person holding a leasehold interest in the property to acquire the freehold; or
- (v) for any similar purpose.

(5) Where a person who has property which is used as an instrumentality of or is derived from an offence obtains further property consisting of profits accruing in respect of the use or derivation, the further property shall be treated as representing the property used as an instrumentality of, or obtained through, an offence.

(6) (a) Where a person grants an interest in property that is recoverable pursuant to Sub-Part A or B of this Part, the question whether the interest is also recoverable shall be determined in the same manner as it is on any other disposal of recoverable property.

(b) Where the property in question is proceeds or an instrumentality of, or obtained through, an offence, the interest is also to be treated as part of the instrumentality or as obtained through that offence, as the case may be.

(c) Where the property in question represents in the person's hands proceeds or an instrumentality of or obtained through an offence, the interest is also to be treated as representing in his hands part of the instrumentality or the property so obtained, as the case may be.

#### **42. Property not recoverable**

(1) Where –

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

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

(2) Where property which is recoverable is vested, recovered or otherwise disposed of in pursuance of powers conferred by virtue of this Part, it ceases to be recoverable.

(3) Where –

- (a) in pursuance of a judgment in civil proceedings, the losing party makes a payment to the claimant or the claimant otherwise obtains property from the losing party;
- (b) the claimant's claim is based on the losing party's unlawful activity; and
- (c) apart from this subsection, the sum received, or the property obtained, by the claimant would be capable of being recovered by reason of the same unlawful activity,

the sum received or property obtained ceases to be recoverable.

(4) Where –

- (a) a payment is made to a person in pursuance of any Compensation Order or a restitution or other order made by a Court under any other enactment; and
- (b) apart from this subsection, the sum received would be recoverable,

the property ceases to be recoverable.

(5) Property shall not be recoverable while a Restriction Order or any other similar order applies to it.

(6) Where –

- (a) a person enters into a transaction to which section 41(2) applies; and
- (b) the disposal is one to which subsection (1) or (2) applies,

this section shall not affect the recoverability of any property obtained on the transaction in place of the property disposed of pursuant to section 41(2).

#### **43. Offences related to Investigations**

(1) Where a person knows or has reason to suspect that the Enforcement Authority or the Investigative Agency is acting, or proposing to act, in connection with an Investigation which is being or is about to be conducted, he shall, subject to subsections (2) and (4), commit an offence where –

- (a) he makes a disclosure which is likely to prejudice the Investigation; or
- (b) he falsifies, conceals, destroys or otherwise disposes of, a document which is relevant to the Investigation.

(2) A person shall not commit an offence under subsection (1)(a) where –

- (a) he does not know or suspect 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 unlawful activity or benefit from unlawful activity or in compliance with a requirement of this Act; or
- (c) he is a professional legal adviser and the disclosure falls within subsection (3).

(3) A disclosure, other than a disclosure made for a criminal purpose, falls within this subsection where it is a disclosure –

- (a) to a client of a professional legal adviser in connection with the giving, by the adviser, of legal advice to the client; or
- (b) by a professional legal adviser to any person in connection with legal proceedings or contemplated legal proceedings.

(4) A person shall not commit an offence under subsection (1)(b) where –

- (a) he does not know or suspect that the document is relevant to the Investigation; or

- (b) he does not intend to conceal any fact disclosed by the document from a law enforcement agent carrying out the Investigation.

## **PART V – ANCILLARY ORDERS**

### **44. Application for Ancillary Order**

The Enforcement Authority may, for the purposes of, or in connection with, an application for, or the enforcement of, an Order under Part III or Part IV, apply to a Judge for an Ancillary Order under this Part.

### **45. Production Order**

(1) A Judge may, on an application made by the Enforcement Authority, make a Production Order where he is satisfied that each of the requirements for the making of the Order set out in this section is fulfilled.

(2) An application for a Production Order shall state that a person or property specified in the application is the subject of an Investigation.

(3) The application shall also state that –

- (a) the Order is sought for the purposes of the Investigation;
- (b) the Order is sought in relation to material, or material of a description, specified in the application; and
- (c) a person specified in the application appears to be in possession or control of the material.

(4) A Production Order is an order requiring –

- (a) the person mentioned in the Order as appearing to be in possession or control of the material to produce it to the Enforcement Authority for a law enforcement agent to take possession; and
- (b) that person to give the Enforcement Authority access to the material within the period stated in the Order.

(5) The period stated in a Production Order shall be a period of 14 days beginning with the day on which the Order is made, unless it



appears to the Judge by whom the Order is made that a longer or shorter period would be appropriate in the particular circumstances.

(6) A Judge shall not make a Production Order unless there is reasonable ground for suspecting that –

- (a) any property which the application for the Order specifies as being subject to an Investigation is proceeds, an instrumentality or terrorist property;
- (b) the person the application specifies as appearing to be in possession or control of the material so specified is in possession or control of it;
- (c) the material is likely to be of substantial value, whether or not by itself, to the Investigation for the purposes for which the Order is sought; and
- (d) it is in the public interest for the material to be produced or for access to it to be given, having regard to –
  - (i) the benefit likely to accrue to the Investigation if the material is obtained; and
  - (ii) the circumstances under which the person the application specifies as appearing to be in possession or control of the material holds it.

(7) Where any material specified in an application for a Production Order consists of information contained in a computer, the Order shall –

- (a) where it requires a person to produce the material to a law enforcement agent for him to take away, have effect as an order to produce the material in a form in which it can be taken away by him and in which it is visible and legible; or
- (b) where it requires a person to give a law enforcement agent access to the material, have effect as an order to give him access to the material in a form in which it is visible and legible.

(8) (a) A Production Order may be made in relation to material in the possession or control of a Ministry or Government Department.

(b) A Production Order may require any public officer who may for the time being be in possession or control of the material to comply with it.

(c) An Order containing such a requirement shall be served as if the proceedings were civil proceedings against the State.

(d) Where an Order contains such a requirement –

(i) the person on whom it is served shall take all reasonable steps to bring it to the attention of the law enforcement agent concerned; and

(ii) any other officer of the Ministry or Department who receives the Order shall also take all reasonable steps to bring it to the attention of the law enforcement agent concerned.

(e) Where a Production Order is not brought to the attention of a law enforcement agent within the period specified in the Order, the person on whom it is served shall report to the Judge the reason for the failure.

(9) A Production Order may not require a person to produce, or give access to, privileged material.

(10) A law enforcement agent may take copies of any material which is produced, or to which access is given, in compliance with a Production Order.

(11) Any material produced in compliance with a Production Order may be retained for so long as it is necessary to retain it in connection with the Investigation for the purposes of which the Order was made.

#### **46. Search and Seizure Order**

(1) A Judge may, on the application of the Enforcement Authority, make a Search and Seizure Order which authorises a law enforcement agent to –

(a) search for, examine or seize any property or other material referred to in subsection (2); and

- (b) for the purposes of paragraph (a), enter any premises in which he has reasonable ground to believe the property or material may be found.

(2) (a) Property to which subsection (1) applies is any property which –

- (i) is the subject of an Order made under Part III or Part IV;
- (ii) is the subject of an Investigation; or
- (iii) is reasonably believed by the Enforcement Authority to be proceeds, an instrumentality or terrorist property.

(b) Material to which subsection (1) applies is any material which –

- (i) is likely to be of substantial value or benefit to an Investigation;
- (ii) is not likely to be obtained by means of a Production Order because –
  - (A) it is not practicable to communicate with any person against whom the Production Order would be made;
  - (B) it is not practicable to communicate with any person who would be required to comply with an Order to grant entry to the premises; or
  - (C) an Investigation might be seriously prejudiced unless the Enforcement Authority is able to secure immediate access to the material; or
- (iii) has not been obtained or made available by any person against whom a Production Order was made.

(3) Where, during the course of searching under an Order granted under this section, a law enforcement agent finds anything that he believes on reasonable ground –

- (a) will afford evidence as to the commission of an offence; or
- (b) is of a kind that could have been included in the Order, had its existence been known at the time of the application,

he may seize it.

(4) An Order under this section shall authorise a law enforcement agent to require any information held in a computer and accessible from premises specified in the application which he reasonably believes relates to any matter relevant to an Investigation to be produced in a form in which –

- (a) it is visible and legible; and
- (b) it can be copied or taken away.

(5) An Order under this section shall not authorise the seizure of privileged material.

(6) Any material seized pursuant to an Order under this section may be retained for so long as may be necessary in connection with an Investigation or any other purpose specified in the Order.

(7) An Order under this section shall remain in force for 30 days unless the Judge otherwise orders on the application of the Enforcement Authority.

#### **47. Disclosure Order**

(1) A Judge may, on an application made by the Enforcement Authority, make a Disclosure Order where he is satisfied that each of the requirements for the making of the Order set out in this section is fulfilled.

(2) An application for a Disclosure Order shall state that the property or a person specified in the application is the subject of an Investigation and the Order is sought for the purposes of the Investigation.

(3) A Disclosure Order shall authorise the Enforcement Authority or a law enforcement agent to give, to any person the Enforcement Authority considers has relevant information, notice in writing requiring him, with respect to any matter relevant to the Investigation for the purposes of which the Order is sought, to –

- (a) answer questions, either at a time specified in the notice or at once, at a place so specified;
- (b) provide information specified in the notice, by a time and in a manner so specified; or
- (c) produce documents, or documents of a description, specified in the notice, either at or by a time so specified or at once, and in a manner so specified.

(4) A person shall not be bound to comply with a requirement imposed by a notice given under a Disclosure Order unless evidence of authority to give the notice is produced to him.

(5) A Judge shall not make a Disclosure Order unless he is satisfied that there is reasonable ground for suspecting that –

- (a) any property specified in the application for the Order is proceeds, an instrumentality or terrorist property;
- (b) a person specified in the application for the Order has derived a benefit from his unlawful conduct;
- (c) information which may be provided in compliance with a requirement imposed under the Order is likely to be of substantial value to the Investigation for the purposes of which the Order is sought; or
- (d) it is in the public interest for the information to be provided, having regard to the benefit likely to accrue to the Investigation if the information is obtained.

(6) Any information gathered following a Disclosure Order shall not be used in evidence in any proceedings involving a person who complied with the Order unless –

- (a) he subsequently denies having made the disclosure; or

(b) he is charged with providing false or misleading information.

(7) A Disclosure Order may not compel any person to disclose privileged material.

#### **48. Customer Information Order**

(1) A Judge may, on an application made by the Enforcement Authority, make a Customer Information Order where he is satisfied that each of the requirements for the making of the Order set out in this section is fulfilled.

(2) Every application for a Customer Information Order shall state that property specified in the application is the subject of an Investigation and the person specified in the application appears to hold the property.

(3) The application shall also state that the Order is sought –

(a) for the purposes of the Investigation; and

(b) against every financial institution specified in the application.

(4) An application for a Customer Information Order may specify –

(a) all financial institutions;

(b) a particular description, or particular descriptions, of financial institutions; or

(c) a particular financial institution or particular financial institutions.

(5) A Customer Information Order is an Order that a financial institution specified in the application for the Order shall, on being required to do so by notice in writing given by the Enforcement Authority, provide such customer information as it may have, relating to a person specified in the application.

(6) A financial institution which is required to provide information under a Customer Information Order shall provide the information to the Enforcement Authority in such manner, and at or by such time, as the Enforcement Authority shall specify.

(7) Where 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, it shall not be bound to comply with the requirement unless evidence of the authority has been produced to it.

(8) For the purposes of an Investigation, there shall be reasonable ground for suspecting that –

- (a) the property specified in the application for a Customer Information Order is property capable of being recovered; and
- (b) the person specified in the application holds all or some of the property.

(9) There shall be reasonable ground for believing that customer information which may be provided in compliance with the Order is likely to be of substantial value to the Investigation for the purposes of which the Order is sought.

(10) There shall be reasonable ground for believing that it is in the public interest for the customer information to be provided, having regard to the benefit likely to accrue to the Investigation if the information is obtained.

#### **49. Account Monitoring Order**

(1) A Judge may, on an application made by the Enforcement Authority, make an Account Monitoring Order where he is satisfied that each of the requirements for the making of the Order set out in this section is fulfilled.

(2) Every application for an Account Monitoring Order shall state that the property specified in the application is the subject of an Investigation and a person specified in the application appears to hold the property.

- (3) The application shall also state that the Order is sought –
- (a) for the purposes of the Investigation; and

- (b) against the financial institution specified in the application in relation to account information of the description so specified.

(4) An application for an Account Monitoring Order may specify information relating to –

- (a) all accounts held by the person specified in the application for the Order at the financial institution so specified;
- (b) a particular description, or particular descriptions, of accounts so held; or
- (c) a particular account, or particular accounts, so held.

(5) An Account Monitoring Order is an Order that a 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 the Enforcement Authority in the manner, and at or by the time, stated in the Order.

(6) The period stated in an Account Monitoring Order shall not exceed the period of 90 days beginning with the day on which the Order is made.

(7) A statement made by a financial institution in response to an Account Monitoring Order may not be used in evidence against it in any proceedings.

(8) For the purposes of an Investigation, there shall be reasonable ground for suspecting that –

- (a) the property specified in the application for the Order is proceeds of crime, an instrumentality or terrorist property;
- (b) the person specified in the application holds all or some of the property;



- (c) account information which may be provided in compliance with the order is likely to be of substantial value to the investigation for the purpose for which the order is sought; and
- (d) it is in the public interest that the account information be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

**50. Failure to comply with Ancillary Order**

Any person who –

- (a) refuses or fails to comply with an Ancillary Order;
- (b) in purported compliance with an Ancillary Order, provides or makes available any false or misleading information,

shall commit an offence.

**51. Tipping off**

Any financial institution which has, pursuant to section 48 or 49, been required to provide customer information or account information in relation to any person and provides information, or enables information to be provided, to that person by any means whatsoever regarding the Customer Information Order or Account Monitoring Order, as the case may be, shall commit an offence.

**52. Discharge or variation of Ancillary Order**

(1) An application to discharge or vary an Ancillary Order may be made to a Judge by –

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

(2) The Judge may, on an application under subsection (1), vary or discharge the Ancillary Order where he is of opinion that it is in the interest of justice to do so.

## **PART VI – INTERNATIONAL CO-OPERATION**

### **53. International co-operation agreements**

The Attorney-General or the Enforcement Authority may enter into an agreement with any Ministry, Department, public authority or body outside Mauritius for the collection, use or disclosure of information, including personal information, for the purpose of exchanging or sharing information outside Mauritius or for any other purpose under this Act.

### **54. Foreign request in connection with civil asset recovery**

(1) Where a foreign State requests the Enforcement Authority to obtain the issue of an order against property believed to be proceeds, an instrumentality or terrorist property which is located in Mauritius, the Enforcement Authority may apply to a Judge for a Restriction Order under section 27.

(2) Where a Judge receives an application under subsection (1), he may make an Order under section 30 as if the application were an application in respect of property in Mauritius.

### **55. Foreign request for enforcement of foreign Restriction or Recovery Order**

(1) Notwithstanding any other enactment, where a foreign State requests that necessary measures be taken for the enforcement of a foreign Restriction or Recovery Order, the Enforcement Authority may apply to a Judge or the Court, as the case may be, for registration of the Order.

(2) The Judge shall register the foreign Restriction Order where he is satisfied that, at the time of registration, the Order is in force in the foreign State.

(3) The Court shall register the foreign Recovery Order where it is satisfied that –

- (a) at the time of registration, the Order is in force in the foreign State; and
- (b) any person who had an interest in the property the subject of the Order had the opportunity to be

represented before the court that granted the order in the foreign State.

(4) Where a foreign Order is registered in accordance with this section, a copy of any amendment made to the Order in the foreign State shall be registered in the same way as the order.

(5) Notice of the registration of any foreign Order shall be published in the *Gazette* and 2 daily newspapers specified by the Court.

(6) Subject to subsection (8), where the foreign Order or an amendment thereof comprises a facsimile copy of a duly authenticated foreign Order, or amendment made to such an Order, the facsimile shall be regarded for the purposes of this Act, as the duly authenticated foreign Order.

(7) Any registration effected on production of a facsimile shall cease to have effect up to the end of the period of 14 days commencing on the date of registration, unless a duly authenticated original of the order is registered by that time.

(8) Where a foreign Order has been registered pursuant to this section, sections 25 and 26 shall apply to the registration.

## **56. Effect of registration of foreign Order**

(1) Subject to subsections (2) and (3), where an Order has been registered under section 55 and the Court is notified that it has been established to the satisfaction of a foreign court that the property constitutes proceeds, an instrumentality or terrorist property, it may order that the property be recovered and be vested in the State until such arrangement is made by the Enforcement Authority with the foreign State for its disposal or transfer.

(2) The Court may make an order under subsection (1) on such conditions as it thinks fit to impose, including any condition as to payment of debts, sale, transfer or disposal of any property.

(3) Any person who claims to have an interest in property subject to an Order registered under section 55 may, within 21 days from the last publication of the registration under section 55(5), apply to the Court for an order under subsection (4).

(4) Where the Court is satisfied that the applicant under subsection (3) acquired the property without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was, at the time of acquisition, proceeds or an instrumentality or terrorist property, the Court shall make an order declaring the nature of the interest of the applicant.

(5) The Court shall, on application by the Enforcement Authority, cancel the registration of any foreign Order if it appears to it that the Order has ceased to have effect.

#### **57. Foreign request for the location of tainted property**

(1) Where a foreign State requests the Enforcement Authority to assist in locating property believed to be proceeds, an instrumentality or terrorist property, the Enforcement Authority may apply to a Judge for an order that –

- (a) any information relevant to –
  - (i) identifying, locating or quantifying any property; or
  - (ii) identifying or locating any document necessary for the transfer of any property,be delivered forthwith to the Enforcement Authority; or
- (b) a financial institution forthwith produces to the Enforcement Authority all information obtained by it about any business transaction relating to the property for such period before or after the date of the order as the Judge may direct.

(2) Notwithstanding section 26 of the Bank of Mauritius Act, section 64 of the Banking Act and section 83 of the Financial Services Act, a Judge may grant an order under subsection (1) on being satisfied that –

- (a) the document is material and necessary to the proceedings in the foreign State; and
- (b) the law of the foreign State authorises the granting of such an order in circumstances similar to the one relating to the request.

(3) A Judge may, on good cause shown by the Enforcement Authority that a person is failing to comply with, is delaying or is otherwise obstructing an order made in accordance with subsection (1), order a law enforcement agent to enter and search the premises specified in the order and remove any document, material or other thing therein for the purposes of executing such order.

#### **58. Disposal of proceeds of crime**

(1) On a request by a foreign State made to him, the Attorney-General shall transfer to it any proceeds, instrumentality or terrorist property recovered in Mauritius in response to a request for the enforcement of a foreign Order.

(2) Unless the foreign State and Mauritius agree otherwise, the Attorney-General may deduct reasonable expenses incurred in the recovery, investigation and judicial proceedings which have led to a transfer referred to in subsection (1).

### **PART VII – MISCELLANEOUS**

#### **59. Domestic co-operation agreement**

The Enforcement Authority may enter into an agreement with any Ministry, Department, public authority or body in Mauritius for the collection, use or disclosure of information, including personal information, for the purpose of exchanging or sharing information within or outside Mauritius or for any other purpose under this Act.

#### **60. Compensation Order**

(1) The Court may, on application to it, make a Compensation Order where, in its opinion, it would be in the interests of the justice, to do so and –

- (a) a Restriction Order had been made; or
- (b) an application for a Recovery Order was not granted and the Restriction Order was revoked; and
- (c) the applicant suffered a loss as a result of the operation of the Restriction Order.

(2) The Court may, if it is of opinion that to do so would be in the interests of justice, make a Compensation Order on application by a person where –

- (a) a Recovery Order relating to an instrumentality was made that affects property in which the person had an interest before the making of the Order; or
- (b) in the opinion of the Court, the value of the person's recovered interest in the property is disproportionate to its value to the offence in question; and
- (c) the person suffered a loss as a result of the operation of the Recovery Order.

(3) The Court may make a Compensation Order on application made to it where –

- (a) a Restraining Order was made;
- (b) an application for a Confiscation Order was not granted or was withdrawn and the Restraining Order was revoked, or an application for such a Confiscation Order was never made because the defendant was acquitted; or
- (c) there was a serious default consisting of gross negligence or intentional misconduct on the part of a person involved in an Investigation or prosecution and the Investigation would not have continued or the proceedings would not have started or continued had the default not occurred; and
- (d) the person suffered a loss as a result of the operation of the Restraining Order or the default.

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

(5) An application under this section shall be made no later than 6 months after the date of the Restraining or Restriction Order or of the default and notice of the application shall be given to the Enforcement Authority.

## **61. Proceedings in foreign territory**

The Attorney-General may initiate legal proceedings in a court of a foreign State, subject to the provisions and requirements of the national law of the foreign State, in order to establish title to, or ownership of, property acquired through the commission of an offence which is also an offence in accordance with Part III of the UN Convention against Corruption 2003, and to seek recovery of that property.

## **62. Immunity**

No action or other proceeding shall be instituted against the Enforcement Authority, or any person acting on behalf of the Enforcement Authority or against a Trustee or an Asset Manager for any act done in good faith in the performance or intended performance of any duty under this Act or in the exercise or intended exercise of any power under this Act, or for any default in the performance or exercise in good faith of any such duty or power.

## **63. Penalties**

(1) Any person who commits an offence under this Act shall, on conviction, be liable –

- (a) in the case of an offence under section 15, 32, 50(b) or 51, to a fine not exceeding 2 million rupees and to penal servitude for a term not exceeding 10 years; and
- (b) in every other case, to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 5 years.

(2) Sections 150, 151 and Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a conviction for an offence specified in subsection (1)(a).

## **64. Regulations**

(1) The Attorney-General may, for the purposes of this Act, make such regulations as he thinks fit.

(2) Any regulation made under subsection (1) may provide for the taking of fees and the levying of charges.

## **65. Consequential amendments**

(1) The Banking Act is amended, in section 64 (3), by repealing paragraph (k) and replacing it by the following paragraph –

- (k) the financial institution is required to provide information in compliance with a Customer Information Order or an Account Monitoring Order made pursuant to the Asset Recovery Act 2011; or

(2) The Dangerous Drugs Act is amended by repealing sections 45 and section 45A.

(3) The Finance and Audit Act is amended, in the First Schedule, by inserting, in the proper alphabetical order, the following item –

Recovered Assets Fund

(4) The Prevention of Corruption Act is amended by repealing Part VII and section 85.

(5) The Prevention of Terrorism Act is amended by repealing sections 16 and 17.

## **66. Transitional provision**

Where, at the commencement of this Act, any matter is pending before the Dangerous Drugs Commissioner under the Dangerous Drugs Act, he shall complete the assignment in accordance with the repealed provisions of that Act.

## **67. Commencement**

This Act shall come into operation on a date to be fixed by Proclamation.

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