

**THE PREVENTION AND SUPPRESSION OF MONEY
LAUNDERING ACTIVITIES LAW**

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**A LAW TO PROVIDE FOR THE PREVENTION
AND SUPPRESSION OF MONEY LAUNDERING
ACTIVITIES**

PART I - INTRODUCTORY PROVISIONS

1. This Law may be cited as the Prevention and Suppression of Money Laundering Activities Law of 1996. Short title.
61(I) of 1996
25(I) of 1997
41(I) of 1998.
- 2-(1) For the purposes of this Law, unless the context otherwise requires- Interpretation.

"Advisory Authority" means the Advisory Authority for Combating Money Laundering which is established under section 55;

"Attorney-General" means the Attorney-General of the Republic;

"bonds" includes shares, debentures and other securities issued by a legal person irrespective of whether they constitute a charge on the property of the said legal person;

"civil proceedings" means any proceedings of a civil nature which are not of a criminal nature;

"conclusion of criminal proceedings" with its cognate expressions means-

(a) the withdrawal of a charge under section 91 of the Criminal Procedure Law;

Cap. 155,
93 of 1972
2 of 1975
12 of 1975
41 of 1978
162 of 1989
142 of 1991
9(I) of 1992
10(I) of 1996
89(I) of 1997
54(I) of 1998.

(b) the entering of nolle prosequi under section 154 of the Criminal Procedure Law;

(c) the acquittal of the accused by the court of first instance or on appeal by the Supreme Court;

(d) pardon by the President of the Republic;

(e) sentencing for a prescribed offence without the issue of a confiscation order;

(f) the full compliance with a confiscation order either by paying the amount due or by serving the term of imprisonment in lieu of payment of the amount due;

"court" means an assize court or a district court in the exercise of its criminal jurisdiction and for the purposes of section 38 (Procedure for the enforcement of foreign orders) has the meaning

ascribed to it in Part IV of this Law;

"criminal proceedings" means any criminal proceedings within the meaning ascribed thereto in the Courts of Justice Law;

14 of 1960
50 of 1962
11 of 1963
8 of 1969
40 of 1970
58 of 1972
1 of 1980
35 of 1982
29 of 1983
91 of 1983
16 of 1984
51 of 1984
83 of 1984
93 of 1984
18 of 1985
71 of 1985
89 of 1985
98 of 1986
317 of 1987
49 of 1988
64 of 1990
136 of 1991
149 of 1991
237 of 1991
42(l) of 1992
43(l) of 1992
102(l) of 1992
26(l) of 1993
82(l) of 1995
102(l) of 1996
4(l) of 1997
53(l) of 1997
90(l) of 1997
27(l) of 1998
53(l) of 1998.

"dividend" includes interest, any kind of income derived from securities and any income derived from the distribution of profits of a unit trust;

"drug trafficking" means doing or being concerned in doing any of the following acts in or out of the Republic;

- (a) Producing or supplying a controlled drug, where the production or supply is prohibited by the Narcotic Drugs and Psychotropic Substances Law or any other corresponding law; 29 of 1977.
- (b) transporting or storing a controlled drug where possession of the drug contravenes the Narcotic Drugs and Psychotropic Substances Law or any other corresponding law; 29 of 1977.
- (c) importing or exporting a controlled drug, where the importation or exportation is prohibited by the Narcotic Drugs and Psychotropic Substances Law or the Customs and Excise Law or any other related law; 29 of 1977.
- (d) entering into an agreement or arrangement for the purpose of-
 - (i) assisting or facilitating a person to retain the proceeds from drug trafficking or to retain control on such proceeds;

(ii) securing or disposing funds derived from drug trafficking so as to enable the person involved in drug trafficking to acquire property by way of investment;

"drug trafficking offence" means an offence committed in contravention-

(a) of sections 4, 5, 5A, 6, 7, 9, 12, 20, 21, 22, 25 and 26 of the Narcotic Drugs and Psychotropic Substances Law; 29 of 1977
87 of 1983
20(l) of 1992.
2(a) of 41(l)
of 1998.

(b) of sections 39, 40, 48, 49, 55, 191 and 193 of the Customs and Excise Law; 82 of 1967
57 of 1969
4 of 1971
45 of 1973
12 of 1977
104 of 1987
98 of 1989
5 of 1991.
2(a) of 41(l)
of 1998.

(c) of sections 20 (c) and 20(d) of the Criminal Code in connection with the commission of any of the offences referred to in paragraphs (a) and (b) above; Cap. 154.
3 of 1962
43 of 1963
41 of 1964
69 of 1964
70 of 1965
5 of 1967
58 of 1967
44 of 1972
92 of 1972

29 of 1973
59 of 1974
3 of 1975
13 of 1979
10 of 1981
48 of 1982
88 of 1983
188 of 1988
111 of 1989
236 of 1991
6(l) of 1994
3(l) of 1996
99(l) of 1996
36(l) of 1997
40(l) of 1998
45(l) of 1998

(d) of section 370 of the Criminal Code in connection with the commission of any of the offences referred to in paragraph (a) and (b) above;

(e) of section 371 of the Criminal Code in connection with the commission of any of the offences referred to in paragraph (a) above;

"government stocks" includes development bonds, short term government bonds without interest, saving bonds and any other security issued in the name of a specific person but does not include a saving bond or any other security which is not issued to the bearer;

"immovable ownership or property" has the same meaning as in the Immovable Property (Tenure, Registration and Valuation) Law;

Cap. 224.
A3 of 1960

78 of 1965
10 of 1968
75 of 1968
51 of 1971
2 of 1978
16 of 1980
23 of 1982
68 of 1984
82 of 1984
86 of 1985
189 of 1986
12 of 1987
74 of 1988
117 of 1988
43 of 1990
65 of 1990
30(l) of 1992
90(l) of 1992
8(l) of 1993
58(l) of 1994
40(l) of 1996
31(l) of 1998.

"instrumentalities" means any property used or intended to be used, in any manner, wholly or in part, to commit a predicate offence;

"laundering offences" (or money laundering offences as known internationally) means the offences referred to in section 4;

"movable property or movables" means any property which is not immovable;

"predicate offence" means the offences referred to in section 5;

"prescribed offences" means the offences referred to in section 3;

"property" means movable and immovable property wherever located;

"Republic" means the Republic of Cyprus;

"Supervisory Authorities" means the authorities established under section 60;

"Unit" means the Unit for Combating Money Laundering established under section 53;

"unit trusts" means any trust established for the purpose or having the effect of providing for persons having funds available for investment facilities the right of participation as beneficiaries under the trust in any profits or income arising from the acquisition, management or disposal of any property whatsoever;

(2) The words and phrases set out in the first column are interpreted in the sections of this Law set out in the second column:

Appeal	37
Charging order	15
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Confiscation order	8
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(a) laundering offences;

(b) predicate offences.

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Making a gift	13
Order for sale of bonds	18
Order for the disclosure of information	45
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Preferential debts	13
Privileged information	44
Proceeds of prescribed offence	7
Prohibited gift	13
Realizable property	13
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Value of property	13

(3) References in this Law to offences include offences committed before the commencement of this Law, but the courts have no obligation to exercise any of the powers conferred on them by this Law in connection with a criminal case for the commission of a prescribed offence instituted before the commencement of this Law. 2(b) of 41(I) of 1998.

3. This Law shall have effect in relation to the offences referred to below and which for the purposes of this Law shall be referred to as prescribed offences. Prescribed offences.

(a) laundering offences;

(b) predicate offences.

4.-(1) Every person who-

Laundrying
offences.

- (a) knows; or
- (b) at the material time ought to have known that any kind of property constitutes proceeds-
 - (i) and converts or transfers or removes such property, for the purpose of concealing or disguising its illicit origin or of assisting in any way any person who is involved in the commission of the predicate offence to carry out any of the above actions or acts in any other way in order to evade the legal consequences of his actions;
 - (ii) conceals or disguises the true nature, the source, location, disposition, movement of and rights in relation to, property or ownership of this property;
 - (iii) acquires, possesses or uses such property;
 - (iv) participates in, associates, co-operates, conspires to commit, or attempts to commit and aids and abets and provides counselling or advice for the commission of any of the offences referred to above;
 - (v) provides information in relation to investigations;

that are carried out for laundering offences for the purpose of enabling the person who acquired a benefit from the commission of a predicate offence to retain the proceeds or the control of the proceeds from the commission of the said offence,

commits an offence punishable by fourteen years' imprisonment or by a pecuniary penalty or by both of these penalties in the case of (a) above, or by five years' imprisonment or by a pecuniary penalty or by both in the case of (b) above.

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

- (a) it shall not matter whether the predicate offence is subject to the jurisdiction of the Cyprus Courts or not;
- (b) a laundering offence may be committed by the offenders of a predicate offence as well;
- (c) the knowledge, intention or purpose which are required as elements of the offences referred to in subsection (1) may be inferred from objective and factual circumstances.

5.-(1) Predicate offences are the criminal offences as a result of which proceeds were generated that may become the subject of a laundering offence as defined in section 4 and they are the following:

Predicate offences.

- (a) Premeditated murder;

- (b) drug trafficking offence;
- (c) offences in relation to illicit importation, exportation, trade, disposition, possession, transfer and trafficking of firearms and ammunitions;
- (d) offences in relation to importation, exportation, purchasing, selling, disposition, possession, transfer of stolen objects, works of art, antiquities and tokens of cultural heritage;
- (e) abduction of a minor or of a mentally retarded person or of any other person against his will for any unlawful purpose;
- (f) extortion of money or of property of any kind by the use or threat of use of force or by any other illicit act;
- (g) offences in contravention of the provisions of the Convention on the Physical Protection of Nuclear Material (Ratification and Other Provisions) Law of 1998; 3(II) of 1998.
3 of 41(I)
of 1998.
- (h) offences in contravention of the provisions of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (Ratification) Law of 1998; 8(III) of 1998.
3 of 41(I)
of 1998.
- (i) attempt of murder; 3 of 41(I)
of 1998.
- (j) living from the earnings of prostitution and offences in relation to the procurement and defilement of women and 3 of 41(I)
of 1998.

minors;

(k) offences in relation to the corruption of public or private officers; 3 of 41(f) of 1998.

(l) any other offence or category of offences punishable by imprisonment for a period exceeding twenty-four months and which the Council of Ministers may prescribe by an order published in the Official Gazette of the Republic as a predicate offence. 3 of 41(f) of 1998.

PART II - CONFISCATION ORDERS, TEMPORARY ORDERS AND OTHER MEASURES

A. Confiscation Orders

6.-(1) A Court which has convicted a person for a predicate offence shall, before sentencing, proceed with an inquiry in order to determine whether the accused acquired any proceeds from the commission of a predicate offence, by applying the procedure set out in this Part of the Law or the procedure referred to in Part VI. Inquiry in order to determine whether the accused acquired proceeds.

(2) For the procedure set out in this Part to be applied, the Attorney General shall so decide by submitting a relevant application to the Court. The Court may make a confiscation order if the procedure under this Part is applied or impose a corresponding pecuniary penalty if the procedure under Part VI is applied.

7.-(1) For the purposes of this Law-

Assessing the proceeds

from the
commission
of a predicate
offence.

(a) all payments which have been made to the accused or to any other person at any time before or after the commencement of this Law in connection with the Commission of a predicate offence are deemed to be proceeds of the accused from the commission of a predicate offence irrespective of whether this has been committed by the accused himself or another person.

(b) the value of the proceeds acquired by the accused from the commission of a predicate offence is the aggregate value of payments or other rewards made to him or the product of a predicate offence.

4 of 41(i)
of 1998.

(2) The Court may, for the purpose of determining whether the accused has acquired proceeds from the commission of a predicate offence and of assessing the value of these proceeds, assume, unless the contrary is proved under the circumstances of a case, that-

(a) any property acquired by the accused after committing the said offence or transferred into his name at any time during the last six years prior to the commencement of criminal proceedings against him, was acquired by him as early as the court considers that it has been so acquired in the form of payment or reward connected with the commission of a predicate offence;

(b) any expenditure incurred by the accused during the above period was met out of payments or rewards made to him in connection with a predicate offence committed by him;

(c) for the purpose of valuing such property, he received the property free of any charge or any interest of any other persons in it.

(3) The provisions of subsection (2) shall not apply if-

(a) it is proved that they do not apply to the accused; or

(b) the court considers that there would be a serious risk of injustice against the accused, if they were to apply.

(4) Where the court decides not to apply the provisions of subsection (2), it shall set out the reasons for taking such a decision.

(5) For the purposes of assessing the value of the proceeds acquired by the accused from the commission of a predicate offence, if a confiscation order had previously been made against him, the court shall not take into account any of his proceeds from the commission of a predicate offence that are shown to the court to have been taken into account in determining the amount referred to in the said order.

8.-(1) Where the court, after the conduct of an inquiry under this Part, determines that the accused has acquired proceeds, it shall, before sentencing him for the offence for which he has been convicted or for offences which the court can take into

Confiscation
order.

consideration in sentencing-

(a) make a confiscation order for the recovery of the amount of proceeds in accordance with section 9 as assessed and determined under section 7;

(b) make an order for the confiscation of instrumentalities;

and shall, thereafter, impose any of the penalties which it has the competence to impose.

(2) The making of a confiscation order is not affected by any provision in any other law limiting the power of the court in the imposition of pecuniary penalties.

9.-(1) Without prejudice to the power of the court mentioned in sections 17 to 19, the effect of a confiscation order shall be the same as the effect of imposing a pecuniary penalty and the Table in section 128 of the Criminal Procedure Law shall be replaced for the purposes of this Law by the following:

Procedure for enforcing a confiscation order.
Table.
Cap.155.

TABLE

<u>First column</u>	<u>Second column</u>
An amount not exceeding £50	7 days
An amount exceeding £50 but not exceeding £100	14 days
An amount exceeding £100 but not exceeding £500	30 days
An amount exceeding £500 but not exceeding £1,000	60 days

An amount exceeding £1,000 but not exceeding £2,000	90 days
An amount exceeding £2,000 but not exceeding £5,000	6 months
An amount exceeding £5,000 but not exceeding £10,000	9 months
An amount exceeding £10,000 but not exceeding £20,000	12 months
An amount exceeding £20,000 but not exceeding £50,000	18 months
An amount exceeding £50,000 but not exceeding £100,000	2 years
An amount exceeding £100,000 but not exceeding £250,000	3 years
An amount exceeding £250,000 but not exceeding one million pounds	5 years
An amount exceeding one million pounds	10 years

(2) The provisions of subsection (1) of this section shall also apply where a confiscation order is made under section 28 (Confiscation order where the accused has died or absconded) and the defendant had absconded and subsequently appeared.

10. The enforcement of an order for the confiscation of Procedure for enforcing an

means shall be effected by forfeiture by following instructions that may be given by the court according to the kind of instrumentality.

order for the
confiscation
of
instrumental-
ties.

11.-(1) The prosecution, together with the application of the Attorney General for an inquiry under section 6 (Inquiry in order to determine whether the accused acquired proceeds) or under sections 35 (Reconsideration of a case) or 36 (Re-assessment of proceeds) or within such a time limit as the court may direct, submits a statement of allegations in which facts and particulars are set out in relation to the inquiry for the determination of whether the accused has acquired proceeds from the commission of a predicate offence or to an assessment of the value of the proceeds and, if the accused, in accordance with the procedure prescribed in this section, admits the correctness of the content of the said statement or of a part thereof, the court for the purposes of such inquiry and assessment may treat such an admission as conclusive proof of the facts and particulars to which it relates.

Statement of
facts and
particulars.

(2) Following the submission by the prosecution of the statement of facts and particulars under subsection (1), the court, if satisfied that a copy of it has been served on the accused, calls upon him to declare whether he admits any of the allegations contained in the statement and to submit a statement in relation to those of the allegations he does not admit (hereinafter to be referred as a "statement in rebuttal") in which he shall indicate the particulars and the reasons on which he intends to rely both in rebutting the allegation of the prosecution and in determining the amount that may be received from his realizable property. The statement in rebuttal is

submitted within such a period of time as the court may direct or within three days from the service of the statement of facts and particulars on the accused by the prosecution.

(3) Failure of the accused to comply with any of the directions of the court shall be treated for the purposes of this section as an admission of all the facts and particulars contained in the statement of facts and particulars.

(4) Where in the statement of rebuttal allegations are included which are relevant to determining the amount that may be realized at the time the confiscation order is made and the prosecution accepts all or some of these allegations or a part thereof, the court may treat such acceptance on the part of the prosecution, for the purposes of such determination, as conclusive proof of the allegations to which it relates.

(5) The acceptance of allegations either by the prosecution or by the accused is made orally before the court unless the court otherwise directs.

(6) The admission made by the accused for the purposes of this section shall not be admissible as evidence in any other criminal proceedings.

(7) The court may set a date for the conduct of the inquiry and adjourn it whenever it appears to the court necessary to do so.

(8) The court delivers a reasoned decision on all matters of the inquiry.

12.-(1) Subject to the provisions of subsection (2), the amount to be recovered under a confiscation order shall be the amount which the court assesses to be representative of the value of the proceeds of the accused from the commission of a predicate offence.

Amount to be recovered under a confiscation order.

(2) If the court is satisfied that the amount that may be realised at the time the confiscation order is made is less than the amount the court has assessed to be representative of the value of the proceeds of the accused from the commission of a predicate offence, the amount to be recovered under the confiscation order shall be the amount which, in the opinion of the court, might in fact be so secured from the realizable property. In such a case, the order also mentions the amount which ought to have been recovered as the amount representing the proceeds of the accused from the commission of a predicate offence.

(3) Where the court comes to the conclusion that the amount which may be recovered from the realizable property of the accused is less than the amount which ought to have been recovered, it may make an order for the cancellation of this difference or for postponement of its recovery if such an order is, in the opinion of the court, just and expedient having regard to the reasons giving rise to this difference.

13.-(1) In this Law, subject to the provisions of subsection (2), "realizable property" means-

Realizable property and other principal terms.

(a) any property held by the accused; and

(b) any property held by another person to whom the accused has directly or indirectly made a gift prohibited by this Law.

(2) Property is not realizable if such property is subject to forfeiture by virtue of an order of the court made in criminal proceedings.

(3) For the purposes of sections 11 (Statement of facts and particulars) and 12 (Amount to be recovered under a confiscation order), the amount that may be realized, at the time a confiscation order is made, is made up of-

(a) the total value of all realizable property held by the accused at the time the order is made;

(b) plus the total value, at the time the order is made, of all gifts prohibited by this Law;

(c) less, the total of obligations which in accordance with subsection (6) below have priority at the time the order is made.

(4) Subject to the following provisions of this section, the value of property, other than cash, is-

(a) the market value of the property, when such property belongs absolutely to one person;

(b) when another person has an interest in such property, the market value of the property less the amount

required to pay off the interest of the other person and to discharge any encumbrance, other than an encumbrance based on a charging order.

(5) Subject to the provisions of this section, reference in this Law to the value of a gift means the value of the property in the open market at the time the confiscation order is made or at the time the gift is made, if at that time the value of this property was higher than its value at the time the order was made.

(6) For the purposes of subsection (3) above the obligations of the accused that have priority over other obligations, are:

- (a) the obligations for the payment of pecuniary penalties imposed before the confiscation order was made or for other amounts due by virtue of order of the court made before the confiscation order was made;
- (b) his obligation for the payment of amounts which would have been included among the preferential debts of the accused, if at the time the confiscation order was made he was declared bankrupt or, in the case of a company, a winding up order was made;
- (c) any other bona fide claim against the accused to which the court considers appropriate to grant priority on such terms as the court under the circumstances of the case deems just;

and "Preferential debts" in this subsection means:

- (i) in relation to bankruptcy, the debts to be paid in priority

under section 38 of the Bankruptcy Law or any other law, as if the date on which the confiscation order was made was the date on which the receiving order of the company was made;

Cap. 5.
49 of 1985
197 of 1986.

(ii) In relation to the winding up of a company, the debts to be paid in priority, under section 300 of the Companies Law or any other law, as if the date the confiscation order was made was the date the winding up order was made;

Cap. 113.
9 of 1968
76 of 1977
17 of 1979
105 of 1985
198 of 1986
19 of 1990
46(i) of 1992
41(i) of 1994
15(i) of 1995
21(i) of 1997.

(iii) in relation both to the bankruptcy of a natural person and the winding up of a company, the claims mentioned in paragraph (c) of subsection (6) above.

(7) Gifts, including gifts made before the commencement of this Law, which are prohibited gifts under this Law are-

(a) those made by the accused at any time during the last six years prior to the institution of criminal proceedings against him; and

(b) those made by the accused at any time and relate to property-

(i) received by the accused in connection with a predicate offence committed by him or any other

person; or

- (ii) which in whole or in part, directly or indirectly, represent property received by the accused in connection with a predicate offence committed by him or by another person.

(8) For the purposes of this Law the accused is to be treated as making a gift where he transfers property to another directly or indirectly for a consideration the value of which is significantly less than the actual value of the property at the time of transfer. In such a case, the preceding provisions of this section shall apply as if the accused has made a gift of that part of the property which by comparison to the total value of the property represents the proportion of the difference between the value of the consideration he accepted for the transfer of the property and the actual value of the property at the time of transfer.

B. Interim Orders

14.-(1) The court may make a restraint order where-

Restraint
order.

- (a) criminal proceedings have been instituted and have not been concluded or are about to be instituted in the Republic against a person for the commission of a predicate offence, or an application by the Attorney General has been made under sections 28 (Confiscation order where accused has died or absconded), 35 (Reconsideration of a case) or 36 (Re-assessment of proceeds) of this Law; or

- (b) the Unit possesses information which creates a reasonable suspicion that a person may be charged with the commission of a laundering offence; and
- (c) the court is satisfied that there is a reasonable ground to believe that-
 - (i) where an application under section 36 is submitted, the provisions of subsection (3) of the same section are fulfilled; and
 - (ii) the person mentioned in paragraphs (a) and (b) above has benefited from the commission of a predicate offence.

(2) A restraint order made under subsection (1) prohibits transactions in any way in realizable property. The prohibition shall be subject to such conditions and exceptions as may be specified in the order.

(3) A restraint order may apply-

- (a) to all realizable property held by a specific person whether the property is described in the order or not; and
- (b) to realizable property held by a specific person which was transferred to him after the order was made.

(4) This section shall not apply in relation to any property which is subject to a charging order made under section 15 (Charging order).

- (5) A restraint order-
- (a) may be made following an ex parte application by the Attorney-General; and
 - (b) shall provide for service of notice to all persons affected by the order.
- (6) A restraint order-
- (a) may be discharged or varied in relation to the property concerned;
 - (b) shall be discharged when the criminal proceedings against the accused for the offences with which he is charged are concluded;
 - (c) shall be discharged if an application under section 35 (Reconsideration of a case) or section 36 (Re-assessment of proceeds) is not submitted within a reasonable, in the opinion of the court, period of time.
- (7) The court may at any time after the making of a restraint order, appoint a receiver-
- (a) to take possession of any realizable property and place it under his custody; and
 - (b) to manage or otherwise deal with the said property, in accordance with the directions of the court.

(8) The court may, on appointing a receiver, impose such conditions as it considers necessary and may direct any person in possession of the property in respect of which the receiver was appointed to give possession of it to the receiver.

(9) For the purposes of this section the expression "dealing with property", without prejudice to its generality, includes-

- (a) making a payment towards a debt with a view to reducing the same; and
- (b) removing or transporting the property out of the Republic.

(10) Where the court has made a restraint order the realizable property may be seized for the purpose of preventing its transportation or removal out of the Republic.

(11) Property seized under subsection (10) above shall be subject to the instructions of the court.

(12) The court shall not exercise the powers conferred on it under this section-

- (a) if it is satisfied that the promotion of a procedure or application is delayed without any reasonable ground, or
- (b) if the Attorney-General declares that he does not intend to promote the said procedure or application.

15.-(1) The court has the power to make a charging order before or after a confiscation order is made but a charging order shall only be made before a confiscation order is made where-

Charging order.

- (a) criminal proceedings have been instituted and have not been completed or are about to be instituted in the Republic against a person for the commission of a predicate offence, or an application by the Attorney-General has been made under sections 28 (Confiscation order where accused has died or absconded), 35 (Reconsideration of a case) or 36 (Re-assessment of proceeds) of this Law; or
- (b) the Unit possesses information which creates a reasonable suspicion that a person may be accused of the commission of a laundering offence; and
- (c) the court is satisfied that there is a reasonable ground to believe that-
- (i) where an application under section 36 is submitted (Re-assessment of proceeds), the provisions of subsection (3) of the same section are satisfied; and
 - (ii) the person mentioned in paragraphs (a) and (b) above has benefited from the commission of a predicate offence.
- (2) An order made under subsection (1) shall be called a charging order and, notwithstanding the provisions of other laws, it shall create a charge on the realizable property specified in the order, with the purpose of securing payment to the Republic. -

(a) of an amount equal to the value of the property charged, where a confiscation order has not been made; and

(b) in any other case, of an amount not exceeding the amount payable under the confiscation order.

(3) A charging order is made following an ex parte application by the Attorney General.

(4) Subject to subsection (6) below, a charge may be imposed by a charging order only on-

(a) any interest the accused has in realizable property either of the kind mentioned in subsection (5) or under a trust;

(b) any interest in realizable property held by any other person either of the kind mentioned in subsection (5) or under a trust and to whom the accused has made a gift prohibited under this Law.

(5) Subject to the provisions of subsection (12), the kinds of assets referred to in subsection (4) above are:

(a) immovable property;

(b) the following bonds:

(i) government stocks,

(ii) bonds of any legal body incorporated in the Republic;

(iii) bonds of any legal body incorporated outside the Republic being stocks registered in a register kept at any place within the Republic;

(c) units of any unit trust in respect of which a register of the unit holders is kept at any place within the Republic;

(d) funds in court.

(6) Where a court makes a charging order on any interest in any asset of the kind mentioned in paragraphs (b) and (c) of subsection (5) above, it may order that the charge be extended so as to cover any interest on dividend or on interest payable in respect of the asset.

(7) The court may make an order discharging or varying the charging order and in any case shall make an order discharging the charging order if the proceedings for the offence have been concluded or the amount of the payment which is secured by the charge is paid into court or if the applications under sections 35 (Reconsideration of a case) or 36 (Re-assessment of proceeds) are not submitted within a reasonable, in the opinion of the court, period of time.

(8) A charging order may be made either without conditions or subject to conditions as to the service of a notification to any person holding an interest in the property to which the order relates or as to the time when the charge is to become enforceable or as to other matters.

(9) The making of a charging order, in respect of the assets in paragraphs (b), (c), and (d) of subsection (5) above, has all or

some of the following effects which the court may specify, subject to such conditions and directions as it may consider necessary or supplementary to the effect or effects so specified:

- (a) the creation of a charge in favour of the Republic in the property for which the order is made by the payment of the amount mentioned in subsection (1) with priority of the interest of the Republic as against any other debt or obligation of the accused which has not previously been the subject of a charging order made in respect of the same assets, or as against any other charges not created prior to the making of the order in any legal way;
- (b) the prohibition of transfers, sales, payments or other dealings in respect of the subject matter of the order, without prejudice to the enforcement of court decisions or orders made before the making of the order;
- (c) the prohibition of payment of dividends to the debtor in respect of the subject matter of the order;
- (d) in the case of a unit trust, the prohibition of any acquisition of the units or any dealing in connection with the units by any natural or legal person which performs functions under the trust.

After the service of the order to any person under this subsection, a duty is created for such person to comply with the order and further, if such person keeps any record in respect of the registration of a transfer or any other dealings in relation to the subject matter of the order, to enter into such record all the registrations or amendments which are consequential to the

making of the order.

(10) A charging order made in respect of immovable property is deposited with the District Lands Office of the district where the property affected is situated and thereafter the provisions of sections 57, 60 and 61 of the Civil Procedure Law are applied with the necessary adjustments as if-

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11 of 1965

161 of 1989

228 of 1989.

(a) the charging order was a judgment of the Court for debt;
and

(b) the depositing of the order constituted registration of a judgment of the court for debt.

(11) Every order of the court varying or discharging a charging order on immovable property is deposited with the District Lands Office of the district where the property affected is situated and the District Lands Officer amends or deletes accordingly the relevant entry in the register kept under section 60 of the Civil Procedure Law.

(12) (a) The Council of Ministers may by Regulations amend subsection (5) by adding or removing assets which, in its opinion, ought to have been added or deleted, provided that in the case of addition of new assets such addition does not entail any other amendments of the Law.

(b) Regulations made under this subsection are laid before the House of Representatives for approval and following that the provisions of subsection (2) of section 3 of the Laying before the

99 of 1989

227 of 1990

House of Representatives Regulations issued under the 27(i) of 1992.
authority of a Law, Law of 1989 apply.

(13) The court shall not exercise the powers conferred on it
under this section-

- (a) if it is satisfied that the promotion of a procedure or
application is delayed without any reasonable ground; or
- (b) if the Attorney-General declares that he does not intend
to promote the said procedure or application.

16.-(1) The court may make an order discharging orders Supplementa-
ry provisions.
made under sections 14 (Restraint order) and 15 (Charging
order) before the making of a confiscation order, if the
contemplated criminal proceedings have not commenced within
a reasonable period of time or within the period of time specified
by the court in making the order.

(2) When the powers under section 14 and 15 are exercised
before the commencement of the criminal proceedings, then-

- (a) the reference to the accused made in this Law shall be
interpreted as a reference to the person mentioned in
section 14(1)(a) and section 15(1)(a);
- (b) the reference to realizable property made in this Law
shall be interpreted as if criminal proceedings against the
person mentioned in section 14(1)(a) or in section
15(1)(a) for the commission of a predicate offence were
commenced immediately before the making of an order
under sections 14 (Restraint order) and 15 (Charging

order).

C. Other measures

17.-(1) After a confiscation order is made for which there was no appeal and which remains unenforced, the court may on application by the prosecution exercise the following powers: Appointment
of a receiver.

- (a) appoint a receiver for the realization of the property;
- (b) empower the receiver so appointed or a receiver appointed under subsection (7) of section 14 or under other provisions which relate to the making of charging orders-
 - (i) to enforce any charge imposed under section 15 on realizable property or on interest or dividend payable in respect of such property; and
 - (ii) subject to such conditions or exceptions as the court thinks appropriate to take possession of any other realizable property not affected by a charge;
- (c) to order any person having possession of realizable property to give possession of it to any such receiver;
- (d) to empower any such receiver to realize realizable property in such manner as the court may direct;
- (e) to order any person holding an interest in realizable property to make such payment to the receiver in respect of any interest held by the accused, or, as the

case may be, the recipient of a prohibited gift, and then the court may, after the payment is made, order the transfer, grant or extinction of any interest in the property.

(2) Paragraphs (c), (d) and (e) of subsection (1) above do not apply to property affected by a charge created under section 15 (Charging order).

(3) The court shall not exercise the powers conferred upon it by paragraphs (b) (i), (d) and (e) of subsection (1), unless satisfied that a reasonable opportunity has been given to the persons holding an interest in the property to make representations to the court.

(4) A receiver appointed under this section has the same powers, to the extent to which they do not contradict the provisions of this Law, as if he were appointed for the purposes of sale, disposition or realization of assets charged with a charging order for the satisfaction of a civil debt under the Charging Orders Law.

31(I) of 1992.

18.-(1) Subject to the provisions of subsection (4), where the subject matter of a charging order is the property mentioned in paragraphs (b) and (c) of subsection (5) of section 15 (Charging order), the disposal, sale or realization of such property can only be effected by an order of the court made on the application of the prosecution or of a receiver appointed under section 17 (Appointment of receiver) and which is called an order for sale of bonds.

Order for sale of bonds.

(2) The court, when making an order for sale of bonds, may

impose such conditions as it may consider necessary for safeguarding the interests of any person having an interest in the sale of the said bonds.

(3) The court, before making an order for the sale of bonds, secures the views of all interested persons including the views of the Registrar of Companies and Official Receiver, as well as the views of the directors of companies or other legal persons, with a view to ascertaining the interests in the property under a charge which might be affected by its sale, realization or disposition. For this purpose, the court may give such directions as it considers in the circumstances proper and necessary.

(4) An order for the sale of bonds can only be made after the making of a confiscation order.

(5) Where the subject-matter of a charging order is shares in a company, their sale is only effected by public auction, unless the court otherwise directs and, subsequently, the provisions of the Charging Orders Law shall apply as if the charging order were made for a civil debt under that Law. 31(i) of 1992.

19.-(1) The sums specified in subsection (2) which are in the hands of a receiver, whether appointed under section 14 (Restraint order) or 17 (Appointment of a receiver) or with a view to enforcing a charging order, shall be applied on behalf of the accused in accordance with the provisions of subsection (4), towards the satisfaction of the amount due under the confiscation order and such amount is reduced accordingly after the deductions of the sums specified in subsection (3). Application of proceeds from the realization of property.

(2) The sums applied under subsection (1) are:

- (a) the proceeds of the enforcement of any charge imposed under section 15 (Charging order);
- (b) the proceeds of the realization of property under section 14 or 17 other than by enforcement of a charge;
- (c) any other sums belonging to the accused.

(3) Irrespective of the provisions of section 126 of the Criminal Procedure Law, the sums which are deducted from the sums specified in subsection (2), before the reduction of the amount due under a confiscation order, are: Cap. 155.

- (a) the remuneration and expenses of the receiver;
- (b) any sum paid by the prosecution under section 24(2) (Receiver. Supplementary provisions);
- (c) payments effected by order of the court.

(4) The sums specified in subsection (2) are applied as follows:

- (a) the sums specified in subsection (3) are paid in the order in which they are enumerated in the said subsection, unless the court otherwise directs;
- (b) any balance shall be treated as if it were a fine and is applied for the satisfaction of the amount payable under the confiscation order;

- (c) if after the amount payable under the confiscation order has been fully paid there is any balance, it is distributed among the persons who had a right over the property which has been realized in such proportions as the court may direct, after giving a reasonable opportunity to such persons to make representations to the court.

20. The following basic principles apply to the powers conferred on the court under sections 15 (Charging order) and 19 (Application of proceeds from the realization of property) or on a receiver appointed under sections 14 (Restraint order) and 17 (Appointment of a receiver) or in pursuance of a charging order;

General principles in exercising certain powers.

- (a) in the case of realizable property held by a person to whom the accused has directly or indirectly made a prohibited gift, the power is exercised with a view to realizing no more than the value of the gift;
- (b) the powers shall be exercised with a view to allowing any person other than the accused or the recipient of any prohibited gift, to retain or recover the value of any property belonging to him;
- (c) in exercising those powers, no account shall be taken of any obligations of the accused or of the recipient of any prohibited gift which conflict with the obligation to satisfy the confiscation order;
- (d) subject to the above principles, the power shall be exercised with a view to satisfying the amount due under a confiscation order by recovering the current

value of the realizable property.

21.-(1) If on any application by the accused in respect of a confiscation order or of the receiver appointed under section 17 (Appointment of a receiver), or on the application for the making of a charging order, the court is satisfied that the realizable property is inadequate for the payment of any amount remaining to be recovered under the confiscation order, it may, subject to subsection (2), vary the confiscation order:

Variation of a
confiscation
order.

(a) by substituting for the amount to be recovered under the confiscation order such lesser amount as the court considers just; and

(b) by substituting for the terms of imprisonment prescribed by section 126 of the Criminal Procedure Law and section 9 (Procedure for enforcing a confiscation order, Table) of this Law in respect of the amount to be recovered under the order, a shorter period corresponding, in accordance with the above provisions, to the lesser amount which will be recovered.

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(2) For the purposes of subsection (1) above:

(a) in the case of realizable property held by a person who has been adjudged bankrupt, the amount of that property which could be distributed among the creditors of the bankrupt shall be treated as property which cannot be recovered, but;

(b) any inadequacy in the realizable property which appears to the court to be attributable wholly or partly to anything

done by the accused for the purpose of preserving from any risk of realization under this Law any property held by a person to whom the accused had directly or indirectly made a prohibited gift shall not be treated as property which cannot be recovered.

(3) The application for variation of the confiscation order is made in writing and is supported by a sworn statement in verification of the facts on which it is based and such application is served on the prosecution and on other affected persons as the court may direct.

(4) For the purposes of this section "court" means the court which made the confiscation order or any other court of similar jurisdiction.

22.-(1) Where a person holding realizable property is adjudged bankrupt, for the purposes of the Bankruptcy Law the following are excluded from the bankrupt's estate-

Bankruptcy of
the accused.
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49 of 1985
197 of 1986.

- (a) property which is the subject of a restraint order made before the order adjudging him bankrupt; and
- (b) any proceeds of property realized by virtue of sections 14(6), 17(1)(d) and 17(1)(e) being in the hands of a receiver appointed under section 14 (Restraint order) or 17 (Appointment of a receiver).

(2) Where a person has been adjudged bankrupt, the powers conferred on the court by sections 14 to 18 or on a receiver appointed for the purposes of those sections shall not be

exercised in relation to any property of the bankrupt which, under section 41 of the Bankruptcy Law, is subject to distribution among his creditors.

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(3) Subsection (1) above does not affect the enforcement of a charging order made before the making of a bankruptcy order or made in respect of property which was subject to a restraint order when the order adjudging him bankrupt was made.

(4) Nothing in the Bankruptcy Law shall be taken as restricting in any way the exercise of the powers referred to in subsection (2).

(5) Where the Official Receiver acts as a provisional receiver under sections 9 and 10 of the Bankruptcy Law and the property of the debtor is subject to a restraint order, such property shall be administered according to the directions of the court without prejudice to a lien for any expenses, including the remuneration of the receiver, incurred in respect of such property.

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(6) Where a person is adjudged bankrupt and has directly or indirectly made a prohibited gift, the provisions of section 46 of the Bankruptcy Law-

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(a) shall not apply in respect of the making of the gift if-

(i) the gift was made at any time when criminal proceedings for the commission of a predicate offence had been instituted against him and not concluded;

(ii) the gift was made at the time when an application

against him, under sections 28 (Confiscation order where the accused has died or absconded) 35 (Reconsideration of a case) or 36 (Re-assessment of proceeds), was pending; or

(iii) the property of the person to whom the gift was made is subject to a restraint or charging order, but

(b) shall apply after the conclusion of the criminal proceedings for the commission of a predicate offence, provided account is taken of any realizations under this Law of property held by the person to whom the gift was made.

23.-(1) Where realizable property is held by a company in respect of which an order for winding up was made or a resolution has been passed by the company for a voluntary winding up, the functions of the liquidator or provisional liquidator shall not be exercised in relation to-

Winding up of a company holding realizable property.

(a) property subject to a restraint order made before the relevant date, as specified in subsection (4);

(b) any proceeds of property realized by virtue of sections 14(6), 17(1)(d) or 17(1)(e) which are in the hands of a receiver appointed under section 14 (Restraint order) or 17 (Appointment of a receiver):

Provided that out of such property any expenses, including the remuneration of the liquidator or provisional liquidator, properly incurred in the winding up in respect of the property,

shall be payable.

(2) In the case of a company for which a winding up order was made or a resolution has been passed by the company for its voluntary winding up, the powers conferred on the court under sections 14 to 18 or on a receiver appointed under the said sections shall not be exercised in relation to any realizable property held by the company in relation to which the liquidator could exercise his functions if by such exercise-

- (a) he is prevented from exercising those functions for the purpose of distribution to the company's creditors of any property held by the company; or
- (b) he is prevented from paying out any expenses, including the remuneration of the liquidator or any provisional liquidator, properly incurred in the winding up of the company in respect of the said property:

Provided that nothing in the Companies Law shall be taken as restricting in any way the exercise of these powers.

Cap. 113,
9 of 1968
76 of 1977
17 of 1979
105 of 1985
198 of 1986
19 of 1990
46(I) of 1992
41(I) of 1994
15(I) of 1995
21(I) of 1997.

(3) Subsection (2) above does not affect the enforcement of a charging order made before the relevant date or in relation to property which was the subject of a restraint order at the

relevant date, as such date is defined in subsection (4).

(4) For the purposes of this section:

"company" means a company which is wound up on the basis of the provisions of the Companies Law;

"relevant date" means-

(a) the date on which the resolution for the voluntary winding up of the company has been passed in the cases where-

(i) no winding up order has been made; or

(ii) a winding up order was made, but before the filing of the petition for the winding up of the company by the court, such resolution was passed by the company;

(b) in any other case where such an order has been made, the date of the making of the order.

24.-(1) A receiver appointed under section 14 (Restraint order) or 17 (Appointment of a receiver) or in pursuance of a charging order shall not be liable to any person in respect of any loss or damage resulting from any action of his in relation to property of this person which was not realizable, provided that the said receiver-

Receiver,
Supplementa-
ry provisions.

(a) would have been entitled to take such action if such property was realizable;

- (b) believed or had reasonable grounds for believing that he was entitled to take such action; and
- (c) the loss or damage was not caused by his negligence.

(2) If any amounts due in respect of the remuneration or expenses of a receiver appointed for the purposes of this Law, remain unpaid by reason of the fact that there are no available amounts for the payment of such remuneration and expenses in accordance with section 19(3), then such unpaid amounts are paid by the Republic.

25.-(1) According to the provisions of this section, the court may order compensation to be paid to any person who had realizable property, in the case where the criminal proceedings which were instituted against him for the commission of a predicate offence-

Compensa-
tion.

- (a) did not result in a conviction; or
 - (b) resulted in a conviction but such conviction was quashed on appeal and no conviction for any other predicate offence was substituted.
- (2) The claim for compensation is made by action.
- (3) The court orders compensation under section 25(1) above if it is satisfied that-
- (a) there has been serious default on the part of a person participating in the investigation or prosecution of the

offence or offences concerned and that but for that default, the proceedings would not have been instituted or continued, and

- (b) the plaintiff has suffered substantial loss in consequence of anything done in relation to his property by virtue of any order of the court under sections 14 to 18 both inclusive.

(4) The amount of compensation shall be such as the court considers just taking into account all the circumstances of the case.

(5) The provisions of this section shall not apply where the court makes a confiscation order under section 28 (Confiscation order where accused has died or absconded).

26.-(1) In criminal proceedings against a person in relation to the provision of assistance to another in the commission of a laundering offence in contravention of the provisions of section 4 (Laundering offences), it shall constitute a defence for the accused if he proves that he intended to disclose to a police officer or to the Unit his suspicion or belief, or the facts on which he bases his suspicion or belief, in respect of the agreement or arrangement and that his failure to do so was based on reasonable grounds.

Special
defences for
persons
assisting
another for
the
commission
of laundering
offences.

(2) Where a person discloses to a police officer or to the Unit his suspicion or belief that any funds or investments are derived from or used in connection with a predicate offence or any matter on which such a suspicion or belief is based-

- (a) the disclosure shall not be treated as a breach of any restriction on the disclosure of information imposed by contract; and
 - (b) if he does any act in contravention of section 4 (Laundering offences) and the disclosure is related to the act concerned, this person shall not commit the offence of assisting another to commit a laundering offence under the said section, if the following conditions are satisfied:
 - (i) the said act was done with the consent of the police officer or Unit after the aforesaid disclosure; or
 - (ii) if the act was done before the disclosure, the disclosure was made on his initiative and without delay as soon as it was reasonable for him to make such disclosure.
- (3) Where a person is, at the material time, an employee of another person whose activities are supervised by one of the authorities established under section 60 (Supervisory Authorities), subsections (1) and (2) above shall apply in respect of disclosures or intended disclosures to the competent person in accordance with the procedure the employer wishes to establish for the purposes of such disclosures, and these disclosures shall have the same effect as disclosures or intended disclosures to a police officer or Unit.

27.-(1) A person who-

Other
offences in

connection
with
laundering
offences.

(a) knows or reasonably suspects that another person is engaged in laundering offences, and

(b) the information on which that knowledge or reasonable suspicion is based, comes to his attention in the course of his trade, profession, business or employment,

shall commit an offence if he does not disclose the said information to a police officer or to the Unit as soon as is reasonably practicable after it comes to his attention.

(2) It shall not constitute an offence for an advocate to fail to disclose any privileged information which has come to his attention.

(3) No criminal proceedings shall be brought against a person for the commission of the offences referred to in subsection (1), without the express approval of the Attorney General.

(4) An offence under this section shall be punishable by imprisonment not exceeding five years or by a pecuniary penalty not exceeding three thousand pounds or by both of these penalties.

28-(1) Subject to the provisions of subsection (3) and upon the application of the Attorney-General, the court which has Confiscation order where the accused

convicted a person for the commission of a predicate offence may make a confiscation order under section 8 (Confiscation order) against an accused who has died or absconded. has died or absconded.

(2) The Attorney-General, together with his application under subsection (1), or within such a time limit as the Court may direct, shall submit a statement of allegations which sets out facts and particulars relevant to the inquiry for the determination of whether the accused has acquired any proceeds from the commission of a predicate offence or to the assessment of the said proceeds.

(3) The court shall not make a confiscation order under subsection (1) unless-

- (a) it is satisfied that the Attorney-General has taken reasonable steps to contact him; and
- (b) any person who is likely to be affected by the making of a confiscation order by the court, has been given the opportunity to appear before the court and make representations.

(4) Where the court has made a confiscation order under this section and the accused subsequently appears before the court for the purpose of imposition of a penalty on him in relation to the same offence, subsection (1) of section 8 (Confiscation order) of this Law shall not apply so far as his appearance before the Court is in respect of the same offence.

29.-(1) This section shall apply where the court has made a confiscation order under section 28 (Confiscation order where Power to set aside a

the accused has died or absconded) in respect of an accused who had absconded and subsequently returned.

confiscation order where the accused who had absconded returns.

(2) The court, upon an application by the accused and after hearing the views of the Attorney-General, may set aside the confiscation order if it considers expedient and just to do so.

30.-(1) This section shall apply where the court has made a confiscation order under section 28 in respect of an accused who had absconded and subsequently returned.

Variation of a confiscation order made under section 28.

(2) Where the accused claims that-

- (a) the value of the proceeds from the commission of a predicate offence in respect of the period for which the assessment had been made; or
- (b) the amount which could have been realized at the time the confiscation order was made was smaller than the amount of the confiscation order,

he may submit an application to the court for the consideration of the above claims.

(3) Where the court in view of the evidence submitted before it, accepts the allegation of the accused-

- (a) it shall make a new assessment under section 7

(Assessment of proceeds from the commission of a predicate offence); and

- (b) may, if it considers just after taking into consideration all the circumstances of the case, vary the amount of the confiscation order.

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of 1998.

31.-(1) Where proceedings are being carried out before a Court for-

Prohibition of publicizing information.

- (a) the issue of a warrant of arrest, under the Criminal Procedure Law, against a person for whom there is evidence that he has committed a prescribed offence under section 3; or
- (b) the making of interim orders under this Law against a person for whom there is evidence that he has committed a prescribed offence, provided that no criminal proceedings for the commission of such offence have been instituted in the Republic against this person,

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the court may order that the proceedings be conducted in the absence of representatives of the Press and other mass media or other persons not directly interested in or affected by the proceedings and to prohibit the publication of any information in relation to the said proceeding.

(2) Any person who publishes information in contravention of the directions of the court under subsection (1), shall commit an offence punishable by one year's imprisonment or by a pecuniary penalty of one thousand pounds or by both of these

penalties.

(3) No criminal proceedings shall be instituted by virtue of this section without the express approval of the Attorney General.

D. Freezing and confiscation orders of property against an absent suspect

32.-(1) Subject to the provisions of subsection (2) and upon the application of the Attorney General, a Court may make an order for the freezing of property of a suspect who is outside the jurisdiction of the Republic or has died.

Freezing order of property against an absent suspect.

(2) The court shall make a freezing order under subsection (1), if satisfied by affidavit or other evidence that-

- (a) there is prima facie evidence against the suspect for the commission of a prescribed offence; and
- (b) the property of the suspect may be converted or transferred or removed outside the jurisdiction of the Republic for the purpose of concealing or disguising its illicit origin.

(3) The freezing order shall have effect for six months but the court may extend its validity for up to a period of one year if reasonable grounds concur.

33.-(1) Subject to the provisions of subsection (2) and upon Order of

the application of the Attorney-General, a court may make an order for confiscation of property against a suspect who is outside the jurisdiction of the Republic or has died.

confiscation
of property
against an
absent
suspect.

(2) The court shall make the confiscation order under subsection (1) if the suspect does not appear before the court during the validity of the freezing order made under section 32 (Freezing order of property against an absent suspect) and if it is satisfied that;

- (a) The prosecution has taken reasonable steps to contact him; and
- (b) any person who is likely to be affected by the making of a confiscation order has been given the opportunity to make representations, if he so wishes, before the court in respect of the making of the order.

(3) Where the court has made a confiscation order under this section and the suspect is subsequently brought before the court in respect of a prescribed offence for which a confiscation order has been made, Part II of this Law shall not apply in respect of the said offence, but the provisions of Part III shall apply mutatis mutandis.

34.-(1) This section shall apply where-

Compensa-
tion paid to an
absent
suspect
against whom
an order for
the freezing

or
confiscation
of his
property was
made.

- (a) the court has made a freezing order under section 32 (Freezing order of property against an absent suspect) or a confiscation order under section 33 (Confiscation of property order against an absent suspect) against a suspect who was outside the jurisdiction of the Republic; and
 - (b) the suspect is subsequently put on trial for the same offence and acquitted.
- (2) The court which acquits the defendant shall set aside the freezing or confiscation order.
- (3) Upon an action made by the person who had property, the court may order compensation to be paid to this person if satisfied that the person concerned has suffered loss as a result of the making of the freezing or confiscation order under section 32 or 33, as the case may be.
- (4) The amount of the compensation shall be such as the court considers just having taken into account all the circumstances of the case.

PART III - RECONSIDERATION AND REVISION OF CONFISCATION ORDERS

35.-(1) Where-

Reconsidera-

(a) Because of lack of evidence, the Court-

- (i) did not make an inquiry under section 6 (Inquiry in order to determine whether the accused acquired proceeds); or
- (ii) made an inquiry under section 6 but it was not ascertained whether the accused acquired proceeds from the commission of a predicate offence; and

(b) the Attorney General-

- (i) has secured evidence which was not available on the date of conviction of the accused; and
- (ii) believes that this evidence would have led the court to determine that the defendant had benefited from the commission of a predicate offence if an inquiry under section 6 was made on the date of conviction of the accused.

the Attorney General may ask the court to consider the evidence he has secured in accordance with subsection (b) of this section.

(2) The court shall make a confiscation order under section 8 (Confiscation order) if, having considered the evidence given under section 6 and bearing in mind all the circumstances of the case, it considers it expedient to do so.

6 of 41(l)
of 1998.

(3) For the purposes of this section and where the court has

decided to proceed with an inquiry under this section, the provisions of this Law which would have applied if the inquiry were made on the date of conviction of the accused, shall apply mutatis mutandis.

(4) No application shall be considered by the court under this section if it is made after the end of the period of six years beginning with the date of conviction.

(5) This section shall not apply where the court has imposed a penalty under Part VI.

38.-(1) Where the Attorney-General is of the opinion that the real value of the proceeds of the accused from the commission of a predicate offence was greater than their assessed value, the Attorney General may apply to the court for the consideration of the evidence on which he based his opinion.

Re-
assessment
of proceeds

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

"assessed value" means the value of the proceeds of the accused from the commission of a predicate offence as assessed by the court under section 7 of this Law;

"real value" means the value of the proceeds of the accused from a predicate offence which was committed-

(a) in the period to which the assessment of section 7 refers; or

(b) in any earlier period.

(3) The court if-

- (a) having considered the evidence given under subsection (1); and
- (b) having been satisfied that the real value of the proceeds of the accused is greater than their assessed value, (because their real value was greater than the assessed amount or because their value increased subsequently),

it may make a fresh assessment of the amount which must be recovered from the accused under section 8 (Confiscation order).

(4) The court may take into account any payment or other reward received by the accused on or after the date of the assessment under section 7 (Assessing the proceeds from the commission of a predicate offence), if the Attorney-General shows that the said payment or reward was received by the accused in connection with the commission of a predicate offence;

Provided that for the purposes of this subsection, the court shall not make the assumptions required by section 7.

(5) Where, as a result of the new assessment required above, the amount to be recovered exceeds the amount that had been assessed under section 7 the court-

- (a) may substitute for the amount to be recovered under the confiscation order such greater amount as it considers just, and

- (b) where the court replaces the amount of the order, it shall also replace the terms of imprisonment prescribed by section 128 of the Criminal Procedure Law and by section 9 of this Law.

Cap. 155.

(6) No application shall be considered by the court under this section if it is made after the end of the period of six years beginning with the date of conviction.

(7) For the purposes of this Part, "the date of conviction" means-

- (a) the date on which the accused was convicted; or
- (b) the date of the last conviction where the accused appeared for the imposition of a sentence in respect of more than one conviction, and those convictions were not all made on the same date.

PART IV - INTERNATIONAL CO-OPERATION

37. For the purposes of this Part:

Interpretation
of principal
terms.

"appeal" for the purposes of subsection 3(a) of section 38 (Procedure for the enforcement of foreign orders) shall include any proceedings the object of which is the setting aside of a judgment of the court or the retrial of the case or the stay of its execution;

"Convention" means-

2 of 25(I)
of 1997.

(a) The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances which was ratified by the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Ratification) Law; and 49 of 1990.

(b) the Convention of the Council of Europe on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime which was ratified by the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Ratification) Law of 1995, 18(III) of 1995.

"court" means the President or a Senior District Judge of the District Court of Nicosia;

"foreign country" means a country which at the time of submitting an application for the execution of a foreign order is a Contracting Party to the Convention;

"foreign order" means an order made by a court of a foreign country, which is made for the purposes of the Convention or legislation enacted for the purpose of implementing the Convention and shall include-

(a) Orders for the confiscation of proceeds and instrumentalities as these are defined in the Convention;

- (b) restraint orders and orders for the seizure of property made temporarily for the purposes of future confiscation of proceeds and instrumentalities;
- (c) any order which the Council of Ministers may, by notification published in the Official Gazette of the Republic, wish to include in the term "foreign order".

38.-(1) The request for enforcement shall be submitted by or on behalf of a foreign country to the Minister of Justice and Public Order who, if satisfied that the request comes from a foreign country and concerns a foreign order within the meaning of this Part, shall thereafter transmit the request to the court.

Procedure for
the
enforcement
of external
orders.

(2) Subject to the provisions of subsection (3), the court, after a request of a foreign country is transmitted to it, shall register the foreign order for the purpose of its enforcement.

(3) The court shall register an external order, if satisfied that-

- (a) At the time of registration the external order was in force and enforceable;
- (b) where the external order was made in the absence of the accused, the accused received notice of the proceedings in time to enable him to present his case and state his views;
- (c) the enforcement of the order would not be contrary to the interests of justice of the Republic;

- (d) the grounds for refusal of cooperation mentioned in Article 18 of the Convention do not concur.

39.-(1) Subject to the provisions of subsection (2) of this section, a foreign order registered by virtue of section 38 (Procedure for the enforcement of foreign orders) shall become enforceable as if the order had been made by a competent court of the Republic under this Law. Effect of registration.

(2) The enforcement of the order may be subject to a term of the foreign country that the penalty of imprisonment or other deprivation of liberty, in case there is compliance with the order, shall not be imposed.

(3) Where the foreign order concerns the confiscation of proceeds or property, the proceeds or property may, after the enforcement of the said order, be distributed among the competent authorities of the foreign country and the Republic of Cyprus. 7 of 41(I) of 1998.

40. The court shall cancel the registration of a foreign order if it appears to the court that the order has been complied with- Cancellation of registration.

- (a) by the payment of the amount due under the order; or
- (b) by the imprisonment of the person against whom the order was made for the reason that he did not comply therewith; or
- (c) in any other way that may be provided for under the legislation of a foreign country.

41.-(1) A foreign order may be amended or revised only by a court or any other competent authority of the foreign country which made the order. External order shall be binding.

(2) The court, when exercising the powers conferred upon it by section 39 (Effect of registration) as well as other powers in respect of the execution of a foreign order, shall be bound by the findings as to the facts in so far as they are stated in the conviction or decision of a court of the foreign country or in so far as such conviction or judicial decision is implicitly based on them.

42.-(1) Where in the foreign order there is a reference to a sum of money to be received in the currency of another country, this amount shall be converted into the currency of the Republic at the rate of exchange ruling at the time the request for registration was made. Amount of an order.

(2) Under no circumstances shall the total value of the confiscated property exceed the sum of money to be paid which is referred to in the foreign order.

43.-(1) Sections 14 to 23 both inclusive shall also apply in cases of foreign orders subject to any amendments or limitations that the Council of Ministers may wish to prescribe by regulations made under this Law. Supplementary provisions.

(2) The Council of Ministers may include in the Regulations any other provision it considers necessary for the better implementation of this Part and in particular anything relating-

- (a) to the proof of any matter or thing;
 - (b) to the circumstances which in any foreign country may be considered as constituting the commencement or conclusion of procedures for the making of an external order.
- (3) Where on the request of or on behalf of a foreign country the court is satisfied that proceedings have been instituted but not concluded in this country during which a foreign order may be made, the court shall make a restraint or charging order by applying sections 14 and 15 of this Law-
- (a) in the same way in which they would apply in respect of proceedings which were instituted in the Republic but not concluded against a person accused of commission of a prescribed offence;
 - (b) as if the reference to a confiscation order was a reference to a foreign order and the reference to an application by the prosecutor was a reference to a request from or on behalf of the foreign country;
 - (c) subject to the amendments prescribed in the Regulations made under this section.
- (4) The application of this section shall not depend upon the making of Regulations and until Regulations are made, the sections referred to in subsection (1) shall apply without any amendment or limitations.

**PART V - ORDERS FOR THE DISCLOSURE OF
INFORMATION**

44. For the purposes of this Part-

Interpretation
of terms.

"information" means any kind of oral or written communication and includes information contained in a computer;

"privileged information" means-

- (a) a communication between an advocate and a client for the purposes of obtaining professional legal advice or professional legal services in relation to legal proceedings whether these have started or not, which would in any legal proceedings be protected from disclosure by virtue of the privilege of confidentiality under the law in force at the relevant time;

Provided that a communication between an advocate and a client for the purposes of committing a prescribed offence shall not constitute privileged information;

- (b) any other information which is not admissible in court for the protection of the public interest under the law in force at the relevant time.

45.-(1) Irrespective of any provisions in other laws, for the purposes of inquiry in relation to prescribed offences or in

Order for
disclosure.

relation to inquiry for the determination of proceeds or instrumentalities, the court may, on the application of the investigator of the case, make an order for disclosure under the provisions of this Part.

(2) For the purposes of this section, inquiry shall also include an inquiry conducted abroad and investigator of the case in respect of investigation conducted abroad shall include any investigator under the provisions of any relevant law of the Republic who cooperates with the investigator of the case.

(3) Any person to whom an order of disclosure is addressed under section 46 (Conditions for the making of an order for disclosure), shall have an obligation to notify forthwith the investigator about any subsequent change in the information that has already been given under this section.

46.-(1) The court before which an application for the making of an order for disclosure is submitted, may, if satisfied that the conditions of subsection (2) are fulfilled, make an order called order for disclosure, addressed to the person who appears to the court to be in possession of the information to which the application relates, calling upon the said person to disclose or produce the said information to the investigator or any other person specified in the order within seven days or within such a longer or shorter period of time as the court may specify in the order if it considers expedient under the circumstances.

Conditions for the making of an order for disclosure.

(2) The conditions referred to in subsection (1) are that:

(a) there is a reasonable ground for suspecting that a specified person has committed or has benefited from the

commission of a predicate offence;

- (b) there is reasonable ground for suspecting that the information to which the application relates is likely to be, whether by itself or together with other information, of substantial value to the investigations for the purposes of which the application for disclosure has been submitted;
 - (c) the information does not fall within the category of privileged information;
 - (d) there is a reasonable ground for believing that it is in the public interest that the information should be produced or disclosed, having regard to:
 - (i) the benefit likely to result for the investigation from the disclosure or provision of the said information; and
 - (ii) the circumstances under which the person in possession of the information holds it.
- (3) The order for disclosure-
- (a) may also be made in relation to information which is in the possession of a government officer;
 - (b) shall have effect despite any obligation for secrecy or other restriction upon the disclosure of information imposed by law or otherwise;
 - (c) shall not confer any right for production or disclosure of

Information which is privileged.

47. Where the required information is contained in a computer-

Information contained in a computer.

(a) if the order directs the disclosure of such information, the order shall be enforced by the disclosure of this information in a visible and legible form;

(b) if the order directs the handing over of the information to the investigator or other person, the order shall be enforced by the handing over of the information to the investigator in a form which is visible, legible and portable.

48. Any person making a disclosure which may impede or prejudice the interrogation and investigation carried out in respect of prescribed offences or the ascertainment of proceeds, knowing or suspecting that the said interrogation and investigation are taking place, shall be guilty of an offence punishable by imprisonment not exceeding five years.

Offences.

PART VI - SUMMARY INQUIRY

49.-(1) The procedure of inquiry followed under this section, called summary inquiry, shall relate to the cases where the kind or amount of the benefit may be more easily determined by an evaluation of the financial position of the accused and his family.

Conduct of a summary inquiry.

(2) For the purposes of this Part-

"financial position of the accused" shall include the income of the accused derived from any source and all the movable and immovable property which he had or acquired in the last six years before his conviction;

"family of the accused" shall include his father, mother, spouse and descendants.

(3) The inquiry referred to in this Part shall be conducted upon the application of the Attorney-General where the court which has convicted a person of the commission of a predicate offence believes that there are reasonable grounds to conduct an inquiry for the purpose of imposing an appropriate pecuniary penalty in respect of the proceeds which the accused might have acquired from the commission of the offence.

50. The summary inquiry shall be conducted under section 6 (Inquiry in order to determine whether the accused acquired proceeds) and in accordance with the following provisions: Procedure to be followed.

- (a) the court shall call upon the accused to give particulars of any matter relevant to the imposition of the penalty including the financial position of the accused and his family. The particulars must be supported by receipts, titles and other documents verifying their correctness;
- (b) the examination of the accused is conducted by the court through which questions are submitted by the prosecution and by the advocate of the accused. The court, if it considers expedient, may allow the cross-examination and re-examination of the accused by the prosecution and by the advocate of the accused respectively;

- (c) the accused may after the conclusion of his examination by the court call witnesses and adduce any evidence in support of his allegations following which the prosecution may call witnesses and adduce evidence in rebuttal;
- (d) the witnesses called to give evidence under subsection (c) above shall be cross-examined and re-examined as if they were witnesses testifying in criminal proceedings;
- (e) if at the conclusion of the inquiry the accused fails to give sufficient and satisfactory explanations regarding the manner in which he acquired the various assets owned by him or his family and regarding any other matter relevant to section 7 (Assessing the proceeds from the commission of a predicate offence), the court may proceed on the assumption that:
 - (i) any property of his or part thereof acquired at any time during the last six years prior to the institution of criminal proceedings and for which no satisfactory explanations were given or which were not supported by satisfactory evidence, has been acquired with proceeds from the commission of a predicate offence;
 - (ii) any property of his family or part thereof for which no sufficient or satisfactory explanations were given and which has been transferred at any time during the last six years prior to the institution of proceedings against him was the subject of a gift which was made by the accused for the purpose of

avoiding the consequences of the Law.

- (f) the court, after having determined that the accused benefited from the commission of a predicate offence and subject to subsection (3) of section 49 (Conduct of summary inquiry), may impose a pecuniary penalty without prejudice to the power of the court to impose any other additional penalty;
- (g) the court, in assessing the fine to be imposed, takes into account the benefit the accused had from the commission of a predicate offence as such benefit was determined in an inquiry under this section;
- (h) the court may, for the purpose of making an inquiry under this section, make any order in order to compel the accused or any other person to attend and to testify or to produce anything relevant to the inquiry.

51. A person called as a witness before the court in relation to an inquiry carried out under this Part and who knowingly gives false or inaccurate information shall commit an offence punishable by four years imprisonment.

False statements.

52.-(1) The court for the purpose of enforcing a pecuniary penalty may, if it considers expedient, appoint a receiver who shall have the same functions as if he were appointed under section 17 (Appointment of a receiver).

Enforcing a pecuniary penalty.

(2) Subject to subsection (1), the provisions of section 9 (Procedure for enforcing a confiscation order, Table) shall apply for the enforcement of a pecuniary penalty as if the reference

made in that section to a confiscation order were a reference to a pecuniary penalty imposed after an inquiry had been conducted under this Part.

(3) Notwithstanding the provisions of any other law regarding the manner of enforcement of orders for the payment of pecuniary penalties, an inquiry conducted by the court for the purposes of this Part shall also be deemed to be an inquiry conducted under section 119 of the Criminal Procedure Law and the court shall not impose a pecuniary penalty which in the light of the findings of the inquiry cannot be collected either from the property of the accused or by setting aside transfers and gifts of property to members of his family.

PART VII
UNIT FOR COMBATING MONEY LAUNDERING
OFFENCES, ADVISORY AUTHORITY FOR
COMBATING MONEY LAUNDERING OFFENCES

53.-(1) A Unit for Combating Money Laundering Offences (hereinafter called "Unit") shall be established and shall be composed of representatives of the Attorney-General, the Chief of Police and the Director of the Department of Customs and Excise who shall be appointed by the Attorney-General, the Chief of Police and the Director of the Department of Customs and Excise, respectively.

Composition
of the Unit for
Combating
Money
Laundering
Offences.

(2) The members of the Unit shall be appointed by detachment and by name and the duration of their appointment shall be at least three years.

(3) The members of the Unit shall be deemed to be investigators by virtue of section 5 of the Criminal Procedure Law. Cap. 155.

(4) The Unit is presided by a representative of the Attorney-General of the Republic. 8 of 41(I) of 1998.

54.-(1) The Unit, inter alia, shall-

Functions of
the Unit.

(a) be responsible for the gathering, classification, evaluation and analysis of information relevant to laundering offences;

(b) conduct investigations whenever there are reasonable grounds for believing that a laundering offence has been committed;

(c) co-operate with the corresponding Units abroad, for the purposes of investigation of laundering offences by the exchange of information and by other relevant ways of co-operation. 9 of 41(I) of 1998.

(d) issue directives for the better exercise of its functions. 9 of 41(I) of 1998.

(2) For purposes of subsection (1)

(a) members of the Unit, upon the making of a judicial order, may enter any premises including premises of a financial institution; and

(b) the Unit may, upon a relevant application to the court, secure an order for the disclosure of information.

(3) Any report made at a police station in respect of the commission of a prescribed offence shall be transmitted forthwith to the Unit by the officer in charge of the said police station.

55.-(1) The Council of Ministers shall establish an Advisory Authority for Combating Money Laundering Offences (hereinafter referred to as "Advisory Authority") which shall be composed of a representative of-

Advisory
Authority for
Combating
Money
Laundering
Offences.

(a) The Central Bank of Cyprus;

(b) all other supervisory authorities;

(c) the Ministry of Finance;

(d) the Ministry of Justice and Public Order;

(e) the Attorney-General;

(f) the Association of Commercial Banks;

(g) the Cyprus Bar Association, the Institute of Certified Public Accountants of Cyprus and other professional bodies which the Council of Ministers may prescribe.

(h) any other organisation or service the Council of Ministers may prescribe.

(2) The Advisory Authority shall be presided by the representative of the Ministry of Justice and Public Order or in case he is absent by the representative of the Central Bank of Cyprus.

(3) The Advisory Authority shall be in quorum where at least five members are present at the meeting.

58. The Advisory Authority shall-

Powers of the
Advisory
Authority.

- (a) inform the Council of Ministers of any measures taken and the general policy applied against money laundering offences;
- (b) advise the Council of Ministers about additional measures which, in its opinion, should be taken for the better implementation of this Law;
- (c) promote the Republic internationally as a country which complies with all the conventions, resolutions and decisions of international bodies in respect of combating laundering offences.

PART VIII
SPECIAL PROVISIONS IN RESPECT OF
RELEVANT FINANCIAL BUSINESS

57. For the purposes of this Part-

Interpretation
of principal
terms.

"applicant for business" means a person seeking to form a business relationship or carry out a one-off transaction, with a person who is carrying out relevant financial business in or from within the Republic;

"business relationship" means any arrangement between two or more persons where-

- (a) the purpose of the arrangement is to facilitate the carrying out of transactions between the persons concerned on a frequent, habitual or regular basis; and
- (b) the total amount of any payment or payments to be made by any person to any other person in the course of that arrangement is not known or capable of being ascertained at the time the arrangement is made;

"one-off transaction" means any transaction other than a transaction carried out in the course of an established business relationship formed by a person acting in the course of relevant financial business;

"relevant financial business" means the business of being engaged in the carrying out of:-

- (a) any activity listed in section 61 (Relevant financial business) of this Law;
- (b) any other activity defined by the Council of Ministers

as such by an order amending section 61 of this Law published in the Official Gazette of the Republic.

58.-(1) No person shall, in the course of relevant financial business carried on by him in or from within the Republic, form a business relationship, or carry out an one-off transaction with or on behalf of another, unless that person-

Procedures to prevent money laundering offences.

(a) applies the following procedures in relation to that business-

- (i) identification procedures in accordance with sections 62-65 of this Law;
- (ii) record-keeping procedures in accordance with section 66 (Record keeping procedures) of this Law;
- (iii) internal reporting procedures, in accordance with section 67 (Internal reporting procedures) of this Law;
- (iv) such other procedures of internal control and communication, as may be appropriate for the purposes of forestalling and preventing money laundering;

(b) takes appropriate measures from time to time for the purposes of informing employees whose duties include the handling of relevant financial business about-

- (i) the procedures under sub-section 1(a) above which are followed by him and which relate to the relevant financial business in question, and
- (ii) the legislation relating to money laundering; and
- (c) provides from time to time for the training of his employees in the recognition and handling of transactions carried out by, or on behalf of, any person who is, or appears to be, engaged in money laundering offences.

(2) Any person who contravenes the provisions of this section shall be guilty of an offence punishable by imprisonment of two years or by a pecuniary penalty of two thousand pounds or by both of these penalties.

(3) In determining whether a person has complied with the requirements of sub-section (1) above, a court may take into account-

- (a) any relevant supervisory or regulatory guidance which applies to that person;
- (b) where no guidance falling within sub-section 1(a) above applies, any other relevant instructions issued by the professional body that regulates, or represents the business or work carried on by that person.

59.-(1) Where an offence under section 58 (Procedures to prevent money laundering) above committed by a body corporate is proved to have been committed with the consent or

Offences by bodies corporate.

connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of an offence and shall be liable to imprisonment of two years or to a pecuniary penalty of two thousand pounds or to both of these penalties.

partnerships
and
unincorporated
associations.

(2) Where the affairs of a body corporate are managed or controlled by shareholders who are not directors, managers, secretaries or other officers, sub-section (1) above shall apply in relation to the acts and omissions of the shareholder concerned in connection with the exercise of his managerial functions as if he were a director of a body corporate.

(3) Where an offence under section 58 above is committed by an unincorporated association, and is proved to have been committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who manages or controls the association, he as well as the association, shall be guilty of an offence and shall be liable to imprisonment of two years' imprisonment or to a pecuniary penalty of two thousand pounds or to both of these penalties.

60.-(1) The Supervisory authority-

Supervisory
Authorities.

(a) in relation to persons who have a licence under the relevant laws of the Republic to carry on banking business in or from the Republic, shall be the Central Bank of Cyprus;

(b) in relation to persons carrying out relevant financial business, other than that referred to in paragraph (a) above, shall be designated by the Council of Ministers which may designate one or more supervisory authorities.

(2) It shall be the principal duty of a supervisory authority to assess and supervise compliance, by persons falling under its area of supervisory responsibility, with the provisions of this part of the Law.

(3) A Supervisory authority may, at its discretion, issue directions or circulars to persons falling within its supervisory responsibility, to assist them in complying with this part of the Law.

(4) Where the Supervisory authority is of the opinion that a person falling within its supervisory responsibility has failed to comply with the provisions of this Part, it shall refer the matter to the Attorney-General.

(5) Where a Supervisory authority-

(a) possesses information, and

(b) is of the opinion that any person subject to its supervision may have been engaged in a money laundering offence,

it shall, as soon as is reasonably practicable, transmit the information to the Unit as soon as possible.

(6) No criminal proceedings shall be instituted under

subsection (4) without the prior express consent of the Attorney-General.

61. Relevant financial business includes the following:

Relevant
financial
business.

- (1) Acceptance of deposits by the public.
- (2) Lending money to the public.
- (3) Finance leasing, including hire purchase financing.
- (4) Money transmission services.
- (5) Issue and administration of means of payment (e.g. credit cards, travellers' cheques and bankers' drafts).
- (6) Guarantees and commitments.
- (7) Trading on one's own account or on account of customers in-
 - (a) Stocks or securities including cheques, bills of exchange, bonds, certificates of deposits,
 - (b) foreign exchange,
 - (c) financial futures and options,
 - (d) exchange and interest rate instruments,

- (e) transferable instruments.
- (8) Participation in share issues and the provision of related services.
- (9) Consultancy services to enterprises concerning their capital structure, industrial strategy and related issues and consultancy services as well as services in the areas of mergers and acquisitions of businesses.
- (10) Money broking.
- (11) Investment services, including dealing in investments, managing investments, giving investment advice and establishing and operating collective investment schemes. For the purposes of this section, the term "investment" includes long-term insurance contracts, whether or not associated with investment schemes.
- (12) Safe custody services.
- (13) Custody and trustee services in relation to stocks.

62.-(1) Identification procedures followed by a person are in accordance with this Law if in the circumstances set out in subsection (2) below they require, as soon as is reasonably practicable, after the first contact between that person and an applicant for business, concerning any particular business relationship or one-off transaction-

Identification procedures.

- (a) The production by the applicant for business of satisfactory evidence of his identity; or

- (b) the taking of such measures specified in the procedures as will produce satisfactory evidence of his identity,

and the procedures are in accordance with this Law if they require that where that evidence is not obtained as specified in (a) and (b) above, the business relationship or one-off transaction in question shall not proceed any further.

(2) The circumstances mentioned in subsection (1) above are those where-

- (a) the parties form or resolve to form a business relationship between them;

- (b) in respect of any one-off transaction, any person handling the transaction knows or suspects that the applicant for business is engaged in a money laundering offence, or that the transaction is carried out on behalf of another person engaged in a money laundering offence.

- (c) in respect of any one-off transaction, payment is to be made by or to the applicant for business of a sum of ten thousand pounds or more;

- (d) in respect of two or more one-off transactions, where:

- (i) it appears at the outset to a person handling the transactions-

- that the transactions are linked, and

- that the total sum, in respect of all of the transactions, which is payable by or to the applicant for business is ten thousand pounds or more;

(ii) at any later stage, it comes to the attention of such a person that the requirements of sub-paragraph (i) of subsection (2)(d) above are satisfied.

(3) The procedures referred to in sub-section (1) above are in accordance with this Law if, when a report is made whether in accordance with section 67 (Internal reporting procedures) or directly to the Unit, in circumstances falling within paragraph (b) of subsection (2), they provide for steps to be taken in relation to the one-off transaction in question in accordance with any directions that may be given by the Unit.

(4) In this Law references to satisfactory evidence of a person's identity shall be construed in accordance with subsection (1) of section 65 (Supplementary provisions) below.

63.-(1) This section shall apply where, in relation to a person who is bound by section 62(1) above, an applicant for business acts on behalf of another person.

Transactions on behalf of another person.

(2) Subject to the provisions of subsection (3) below, identification procedures followed by a person are in accordance with this Law if, in a case to which this Law applies, they require reasonable measures to be taken for the purpose of establishing the identity of any person on whose behalf the

applicant for business is acting.

(3) In determining, for the purposes of sub-section (2) above, what constitutes reasonable measures in any particular case, all the circumstances of the case shall be taken into account and, in particular, to the best practice which, at the material time, is followed in the relevant field of business and which is applicable to those circumstances.

64. From the identification procedures under sections 62 and 63 are exempted those clients for whom there are reasonable grounds for believing that they are persons who are bound by the provisions of section 58 (Procedures to prevent money laundering) of this Law. Exemptions.

65.-(1) For the purposes of the provisions relating to identification procedures, proof of identity is satisfactory if- Supplementary provisions.

- (a) it is reasonably possible to establish that the applicant is the person he claims to be; and
- (b) the person who examines the evidence is satisfied, in accordance with the procedures followed under this Law in relation to the relevant financial business concerned, that the applicant is actually the person he claims to be.

(2) In determining, for the purposes of subsection (1) of section 62 (Identification procedures) above, the time limit in which satisfactory evidence of a person's identity has to be obtained, in relation to any particular business relationship or one-off transaction, all the circumstances shall be taken into account including, in particular-

- (a) The nature of the business relationship or one-off transaction concerned;
- (b) the geographical location of the applicant for business;
- (c) whether it is practical to obtain the evidence before commitments are entered into between the parties or before money passes;

in to the circumstances mentioned in subsection or (d) of section 62 (Identification procedures) the time of the initial stage at which there are reasonable grounds for believing that the total amount to be received by an applicant for business is ten thousand dollars or more.

Record-keeping procedures followed by any person in accordance with this Law if they require the keeping, for a period, of the following records: Record-keeping procedures.

where, in relation to any business relationship entered into or one-off transaction that is carried out, evidence of a person's identity is obtained under procedures followed in accordance with sections 62 (Identification procedures) or 63 (Transactions on behalf of a person), a record that contains this evidence.

keeps a copy of the evidence;

in a case where it is not reasonably practicable to

- comply with (i) above, which provides sufficient information which enables the details as to a person's identity to be recovered; and
- (b) a record containing details relating to all transactions carried out by that person in the course of relevant financial business.
- (2) For the purposes of sub-section (1) above, the prescribed period is, subject to sub-section (3) below, the period of at least five years commencing with-
- (a) In relation to the records described in sub-section (1)(a), the date on which the relevant business was completed within the meaning of sub-section (3) below; and
- (b) in relation to the records described in sub-section (1)(b), the date on which all activities taking place in the course of the transaction in question were completed.
- (3) For the purposes of subsection (2)(a) above, the date on which relevant business is completed is, as the case may be-
- (a) In circumstances falling under paragraph (a) of section 62(2), the date of termination of the business relationship in respect of the formation of which, the record under sub-section (1)(a) above was compiled;
- (b) in circumstances where the formalities necessary to terminate a business relationship have not been observed, but a period of five years has elapsed since the date on which the last transaction was carried out in

the course of that relationship, the date of completion of all the activities taking place in the course of the last transaction shall be treated as the date on which the business relationship was terminated;

- (c) in circumstances falling under paragraphs (b) or (c) of section 62(2), the date of completion of all the activities taking place in the course of the one-off transaction in respect of which the record under sub-section (1)(a) above was compiled;
- (d) in circumstances falling within paragraph (d) of section 62(2), the date of completion of all the activities taking place in the course of the last one-off transaction in respect of which the record under sub-section (1)(a) above was compiled.

67. Internal reporting procedures followed by a person are in accordance with this Law if they include provisions-

Internal
reporting
procedures.

- (a) Identifying a person ("the competent person") to whom a report is to be made about any information or other matter which comes to the attention of the person handling relevant financial business and which, in the opinion of the person handling that business, proves or creates suspicions that another person is engaged in a money laundering offence;
- (b) requiring that any such report be considered in the light of all other relevant information by the competent person, or by another designated person, for the purpose of

determining whether or not the information or other matter contained in the report proves this fact or creates such suspicion;

- (c) allowing the person to whom the examination of a report in accordance with paragraph (b) above has been assigned to have access to other information which may be of assistance to him and which is available to the person responsible for maintaining the said internal reporting procedures; and
- (d) for securing that the information or other matter contained in the report is transmitted to the Unit where the person who has considered the report under the above procedures ascertains or has reasonable suspicions that another person is engaged in a money laundering offence.

PART IX - MISCELLANEOUS PROVISIONS

68. A court which adjudicates applications for the making of any order under this Law shall apply civil proceedings including the standard of proof applicable in these proceedings.

Application of civil proceedings.

69.-(1) The court may make an order setting aside any prohibited gift with a view to enforcing a confiscation order or a pecuniary penalty.

Setting aside of gifts.

(2) The court, before making the order for the setting aside of the gift, shall afford the person in possession of the property which constitutes the subject-matter of the gift the opportunity to express his views and to give reasons why the setting aside of

the gift should not be ordered.

(3) Where the person in possession of the subject-matter of the gift is a minor, the opportunity mentioned in subsection (2) shall be afforded to his guardian.

(4) The court may order that any property, after the setting aside of the gift in pursuance of the provisions of subsection (1), be registered provisionally for the purposes of enforcement of any order of the court in the name of the receiver or other person specified in the order.

(5) Any property which is the subject-matter of an order under subsection (1) shall be disposed in accordance with the directions of the court.

(6) For the purposes of this section the provisions of subsection (8) of section 13 shall apply.

70. Notwithstanding the provisions of any other Law, a prescribed offence shall constitute an offence for the purposes of extradition of fugitives under the relevant law.

Extradition of a person who has committed a prescribed offence.

71. Service of an order made under this Law to a supervisory authority shall be deemed as service to all the persons who are subject to the control of the supervisory authority:

Service of orders.

Provided that the supervisory authority shall be obliged to notify forthwith all the persons subject to its control about the order made under this Law.

72.-(1) The Supreme Court may make rules for the better implementation of the provisions of this Law.

Rules of
Court.

(2) Until rules of court are made, the courts shall apply the existing rules of court according to the nature of the proceedings with such variations or modifications as are considered necessary.

73.-(1) Upon the enactment of this Law, the Confiscation of Proceeds of Trafficking of Narcotic Drugs and Psychotropic Substances Law of 1992 shall be repealed without prejudice to any act or action that was done or instituted under the repealed Law.

Repeal and
reservation.
39(I) of 1992.

(2) Any proceedings that were instituted under the repealed Law, shall continue on the basis of the provisions of this Law.